1st BAR COUNCIL OF INDIA INTERNATIONAL MOOT COURT COMPETITION FOR LAW STUDENTS

9th - 12th February, 2011

In association with
School of Law, KIIT University,
Bhubaneshwar, Odisha

Programme, Rules & Moot Problems

BAR COUNCIL OF INDIA TRUST
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INTRODUCTION

In the practical training scheme prescribed for law students by the Bar Council of India, Moot Court practice including preparation of brief and actual argument in similar situations constitutes an important and essential learning experience. The lawyering skills, court craft, professional ethics and approaches to advocacy that the student-lawyer develops through the moot court exercises keep him/her in good stead when he/she enters the profession on his/her obtaining the law degree.

The Trust organises All India Inter-University Moot Court Competitions for law students to promote the advocacy skills and love for the profession among the new entrants. It is held in collaboration with a University, Law Department or a Law College usually during November/December each year. The students prepare four problems sent by the Trust and argue in different rounds of competitions before they are selected for the final round. The teams which are adjudged as Winner and Runner Up are awarded with Merit Certificates and Prizes.

Scholarship of Rs.1,000/- per month for a period of one year will be provided to those students who are adjudged best in each round of the competition.

National Moot Court Competitions held between 1981 and 2010

1. 1981 Delhi
2. 1982 Poona
3. 1983 Cochin
4. 1984 Banaras
5. 1985 Jodhpur
6. 1986 Delhi
7. 1987 Lucknow
8. 1988 Hyderabad
9. 1989 Shimla
10. 1990 Ujjain
11. 1993 Jodhpur
12. 1995 Kurukshetra
13. 1996 Cuttack
14. 1997 Goa
15. 1998 Pune
16. 2000 (January) Hyderabad
17. 2000 (December) Bangalore
18. 2001 Chennai
19. 2002 Kolkata
20. 2003 Pune
21. 2004 Lucknow
22. 2005 Patna
23. 2006 Bhopal
24. 2008 (January) Patiala
25. 2008 (December) Lucknow
26. 2010 Gujarat

The Bar Council of India now decided to hold International moot Court Competition in place of National Moot Court from the year 2011 onwards.
1st BAR COUNCIL OF INDIA INTERNATIONAL MOOT COURT COMPETITION

The 1st Bar Council of India International Moot Court Competition is an attempt by the Bar Council of India, to foster interest in the area of International Arbitration. The BCI intends this competition to be an annual event, garnering participation not only from institutions across India, but internationally as well. The competition invites law students across India and beyond, to engage with contemporary issues relating to international investment, which will be an area of overwhelming significance for countries such as India, which is witnessing a large influx of foreign capital in recent times.

The Bar council of India Trust has been organising its national level Moot Court Competitions about 26 years and has received good response nationwide. In this regard, the Bar Council of India has decided that the Bar Council of India Trust would conduct the 1st BCI International Moot Court Competition in association with KIIT University, Bhubaneshwar at, Odisha in the month of February, 2011. It was further decided that leading universities (National as well as International) should be invited to participate in the Moot Court Competition.
BAR COUNCIL OF INDIA (BCI)

The Bar Council of India is an apex body for the entire legal profession constituted under the Advocates Act 1961. It has 21 members including the Attorney General and Solicitor General who are ex-officio members. Each of the State Bar Council which is elected by the Advocates on the roll practising in that State, has one representative elected from amongst the members of the State Council in the Bar Council of India. Certain States which have common High Courts have jointly one member in the Bar Council of India.

Among the functions of the BCI are regulating enrolment of new members to the Bar, enforcing discipline and standards of ethics for the members of the profession, promoting welfare of advocates and maintaining standards of legal education in consultation with Universities teaching law for discharging these functions it has constituted several committees which meet in Delhi and outside as often as required. Rules have been formulated under powers conferred by the Advocates Act and are enforced through the State Bar Councils. The funds of the BCI come from its share of the enrolment fee collected from advocates by the State Bar Councils. The office of the BCI is located in Delhi in its own premises.

As an independent body representing the second largest legal profession in the world, the Bar Council of India commands great respect and influence within the professional circles in India as well as outside.

MEMBERS OF THE BAR COUNCIL OF INDIA

1. Shri Gopal Subramanium,
   Solicitor General of India & Chairman, BCI
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    - Karnataka
16. Shri Apurba Kumar Sharma
    - Assam, Nagaland, etc.
17. Shri Vijay Bhatt
    - Uttarakhand
18. Shri Biri Singh Sinsinwar
    - Rajasthan
19. Shri Rajinder Singh Rana
    - Delhi
20. Shri Manan Kumar Mishra
    - Bihar
21. Shri Satish Abarao Deshmukh
    - Maharashtra & Goa

Shri J.R. Sharma
Officiating Secretary
THE BAR COUNCIL OF INDIA TRUST (BCIT)

The Bar Council of India Trust was created by the Bar Council of India in 1974 as an educational and research foundation with the object of establishing one or more model law schools, organizing legal aid to the poor, publishing law books and law reports and promoting welfare of members of the profession. Since 1980 the Bar Council of India Trust has launched a number of programmes designed to promote higher standards in legal education and in the legal profession. The finances for these activities come from the interest accrued on the original sum transferred by the Bar Council of India to the Trust in 1974. The Bar Council of India Trust is managed by a five-member Board of Trustees elected for four years by the Bar Council of India from amongst the members.

The Bar Council of India Trust publishes a quarterly Journal, called the Indian Bar Review of which more than 1000 copies are circulated among regular subscribers in the profession and outside. This Journal caters to the academic and professional interest of the legal community. It has also published books on Constitutional Law, Legal Profession, Legal Education, Taxation Law, Criminal procedure and a number of titles under the pre-law programme of the new 5-year pattern of legal education.

The Trust jointly with the Bar Council of India has established a Law University at Bangalore called the National Law School of India University. The Trust organises a series of summer workshops for advocates under its continuing education scheme which help updating of knowledge and skills and promoting specialisation in professional services. A number of volumes of reading materials on Constitutional Litigation, Criminal Advocacy, Labour Adjudication, Tort Litigation, Human Rights Advocacy etc. have been produced to support the continuing legal education effort which is now being undertaken by the State Bar Councils as well.

Under a scheme of training and fellowship, a number of junior advocates are selected every year and provided placement with seniors for professional advancement. Annual inter university moot court competition is sponsored by the Trust to improve the quality of professional education and to promote skills of advocacy.

BOARD OF TRUSTEES OF THE BAR COUNCIL OF INDIA TRUST

Shri Ashok Kumar Deb                     Managing Trustee
Shri Daulat Ram Sharma                   Associate Managing Trustee
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Shri C.S. Kandpal                        Secretary Incharge
KIIT Law School, KIIT University, 
BHUBANESWAR, ODISHA 

About the University 

About KIIT & KISS 

KIIT University, as a 'Centre of Excellence', has been shaping and redefining the horizon of higher education in India as well as abroad. In pursuit of quality education, KIIT University has always maintained high standards in every sphere including student intake, faculty recruitment and infrastructure facilities. This temple of learning is continuously striving to ignite and deepen the culture of learning with a humanistic & cosmopolitan outlook.

KIIT University has active partnership in various national and global educational bodies like AIU (Association of Indian Universities), IAU, UMAP, IAUP, ACU and IIE. It has opened up wider opportunities for student and faculty exchange, collaborations in research & development (R&D) and exchange of ideas through conferences and seminars by inking MoUs with more than 50 International Universities and institutes of repute.

The Kalinga Institute of Social Sciences (KISS), a home for about 12,000 tribal children from Kindergarten to Post Graduation with provisions for free education, accommodation, food and health care, is renowned as the biggest Residential Tribal Institute in the world. As a sister organization, KISS speaks of a great philanthropic endeavour of the KIIT family and reflects the humanistic vision of its Founder, Dr Achyuta Samanta.

About KIIT School of Law 

KIIT School of Law was established by KIIT University in 2007 to meet the growing demand for legal professionals in the wake of globalization and rapid expansion of India's economy. Academic programmes of KIIT School of Law are recognized and approved by the Bar Council of India (BCI), the apex body regulating the legal education in India. The Law School offers 5 years integrated degree programmes in B.A.LL.B., B.B.A.LL.B and B.Sc.LL.B with Honours courses. In addition to these three integrated degree programmes, it also offers LL.M and Ph.D. At present, KIIT School of Law is the only law school in India having specialized Honours courses in Business Law, Constitutional Law, Crime & Criminology, Intellectual Property Law, Taxation Law and Human Rights Law. KIIT School of Law has adopted teaching methods of International standard.

KIIT School of Law has a dedicated campus of its own with dynamic and dedicated faculty members, an efficient Director, and a large team of budding lawyers. The School is fortunate to have the guidance of Prof. N. L. Mitra, former Director, National Law School of India University, Bangalore who is the Chairman of the Advisory Committee of this School. Prof. J. Martin Hunter, a Barrister at the Essex Court Chambers, London and the Professor of International Dispute Resolution, Nottingham Trent University and an
expert on international arbitration is another guiding force behind the development of KIIT School of Law. In addition, this School gets immense support from many eminent personalities in the field of legal education for its holistic growth. KIIT School of Law has collaboration with the leading international law education consortiums including the International Association of Law Schools, Washington, USA and Asia-Pacific Association of Law Schools, Australia.
# MEMBERS OF THE ADVISORY COMMITTEE AND APPELLATE TRIBUNAL OF
1st Bar Council of India International Moot Court Competition, 2011

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| 1. | Shri Ashok Kumar Deb,  
*Managing Trustee*,  
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*Associate Managing Trustee*,  
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INTERNATIONAL MOOT COURT COMPETITION

Rules for the conduct of the competitions

1. Definitions:
   1.1 Administrator means the Bar Council of India Trust or any person/persons appointed to administer the Competition by the said authority.
   1.2 Advanced Round means the final round, semi-final round or the quarter-final round of the competition.
   1.3 Bench Memorandum means the memorandum of law, issues and authorities concerning the competition problem prepared by the Administrator.
   1.4 Competition means the 1st Bar Council of India International Moot 2011.
   1.5 Memorial means the written submissions of each team, submitted according to these Rules.
   1.6 Problem means the problem of the competition released by the Administrator.

2. Interpretation:
The interpretation placed upon these Rules by the Administrator shall be conclusive. The decision of the Administrator regarding the application of these Rules shall be final.

3. Participation and Eligibility:
   3.1 All universities recognised by the Bar council of India (in India and foreign countries) are eligible to participate in the Competition. Each participating university may send one team to the Competition.
   3.2 A team must have a minimum of two members and a maximum of three members. At least two members of the team must be designated as speakers. Only those members designated as speakers will be permitted to put forth oral arguments in the Competition. In case a speaker is unable to argue in the Oral Rounds because of any reason, and the Team has no other designated Speakers, the Administrator may allow a Team Member who is not a designated Speaker to argue in the Oral Rounds.
   3.3 Team members must be on the current roll of the institution which they are representing and must be students of the LL.B. (or equivalent) programme. Students pursuing their Masters degree in law or any post-graduation degree in law are not eligible.

4. Assistance to Teams from non-members and/or external sources:
   4.1 Every Team must research and write its Memorial without the assistance of non-members.
   4.2 The Bench Memorandum shall be confidential at all times. Any Team found making use of the Bench Memorandum shall be disqualified.
   4.3 In preparing its Memorials, no Team may incorporate arguments or other information from the Memorials or oral arguments of other Teams.
5. **Clarifications to the Problem:**
   5.1 Teams may request for clarifications to the Problem. All requests for clarifications must be emailed to Sri C.S. Kandpal, Secretary-Incharge, Bar Council of India Trust by 31st December, 2010. The Clarifications will be issued by 15th January, 2011.

6. **Anonymity of Teams:**
   Teams must not reveal their university or country of origin or names of the participants anywhere in the Memorial or in the course of the Oral arguments. On registering, Teams will be allotted a registration number. In the Memorials and during the oral arguments, the Team must be identified only by the registration number.

7. **Registration:**
   Each Team must register with the Bar Council of India by emailing a completed Registration Form to Sri C.S. Kandpal, Secretary-Incharge, Bar Council of India Trust. Registration must be completed by 31st December, 2010. At the time of Registration, every team must designate a “Team Contact” and provide the contact details of the “Team Contact”. Notice to the “Team Contact” shall be deemed to be notice to the Team concerned.

8. **Memorials:**
   8.1 Each participating Team must prepare one Claimant Memorial and one Respondent Memorial. All Indian teams must mail 4 copies of each memorial to “Sri C.S. Kandpal, Secretary – Incharge, Bar Council of India Trust.” The Memorials must reach the Bar Council of India no later than by 20th January, 2011.
   8.2 All Memorials must be in English.
   8.3 All Memorials must be printed single side on A4 size paper sheets, with equal margins of at least 1 inch on all sides. The text font should be Times New Roman size 12 for the main body, and Times New Roman size 10 for the footnotes. The main body must be in 1.5 line spacing. The footnotes may be in single line spacing. Character spacing should not be condensed.
   8.4 The Memorial must contain the following parts, and only the following parts:
      (a) Cover page;
      (b) Table of Contents;
      (c) Table of Abbreviations;
      (d) Index of Authorities;
      (e) Statement of Jurisdiction;
      (f) Questions Presented;
      (g) Statement of Facts;
      (h) Summary of Pleadings;
      (i) Pleadings/Arguments Advanced;
      (j) Conclusion/Prayer for Relief.
8.5 The Cover Page of each memorial must have the following information:
   (a) The Team Registration code in the upper right-hand corner, followed by a “C” for the Claimant Memorial, or an “R” for the Respondent Memorial. For example, Team 555 would put the code “555C” in the upper right-hand corner of its Claimant Memorial;
   (b) The name of the Tribunal before which the proceeding are being conducted;
   (c) The year of the Competition;
   (d) The name of the case;
   (e) The Title of the Memorial (either “Memorial for Claimant” or “Memorial for Respondent”).

8.6 The Index of Authorities must list all the authorities cited in the Memorial. The Index must indicate the page number(s) and/or the paragraph number(s) of the Memorial in which the authority is cited.

8.7 The Statement of Facts must contain a concise statement of the relevant facts of the dispute. As far as may be, the Statement of Facts should be limited to the stipulated facts and legitimate inferences which can be drawn from those facts.

8.8 The Summary of Pleadings should contain a summary of the substance of the arguments, and should not be merely a reproduction of the various headings and sub-headings of arguments.

8.9 All legal arguments must be limited to the Pleadings/Arguments Advanced, section of the Memorial.

8.10 Length: The total length of each Memorial should not be more than 40 A4 pages. The Pleadings/Arguments Advanced, section should not be more than 20 A4 pages.

8.11 Footnotes may not include any substantive pleadings, examples or any text than the citation itself. Substantive footnoting is strictly prohibited. As far as may be, a consistent format of citations must be followed.

9. Oral Arguments:

  9.1 Each Oral Round shall, subject to the discretion of the Judges, consist of 90 minutes of arguments. The arguments shall be in English. The Claimant and the Respondent shall be allotted, subject to the discretion of the Judges, 45 minutes each. 2 members from each team shall make oral presentations in each round. Each team may allocate its 45 minutes between the 2 speakers and the rebuttal/surrebuttal as the case may be. No single speaker may argue for more than 30 minutes, including the time spent on rebuttal/surrebuttal. No Team may reserve more than 10 minutes for rebuttal/surrebuttal. The rebuttal/surrebuttal has to be done by one speaker only; it may not be divided between the two speakers. Surrebuttal cannot be claimed as of right; whether to grant a surrebuttal or not is a matter entirely at the discretion of the Judges.

  9.2 In the Preliminary Rounds, each round will be judged by a Panel of 2 Judges. 3 or more Judges may judge each of the Advanced Rounds.
10. **Competition procedure:**

10.1 The Competition shall consist of Preliminary Rounds and Advanced Rounds. Each team shall argue in 2 Preliminary Rounds – once as Claimant and one as Respondent. The Advanced Rounds shall consist of three knock-out rounds – the Quarter-Finals and Semi-Finals.

10.2 Preliminary Round Orals: Each Orals Judge in the Preliminary Round will adjudge each speaker for 100 marks. Each judge will thus adjudge each team for 200 marks. The team with the higher marks on a particular Judge’s score-sheet will be the winner of that Judge’s score-sheet. If the winner on a particular Judge’s score-sheet is ahead of the other Team by a margin of 10 points or more (on the particular Judge’s score-sheet), that Team will be awarded 3 Round Points by that Judge and the Team which has lost on that Judge’s score-sheet will be given 0 Round Points by that Judge. If the margin of victory on a particular Judge's score-sheet is less than 10 points, the winning Team will be awarded 2 Round Points by that Judge and the losing Team will be awarded 1 Round Point by that Judge. In case of a tie between the two Teams, each team shall be awarded 1.5 Round Points by the concerned Judge. Thus, each Judge can award up to 3 Round Points. There will be 2 Orals Judges; thus, every Preliminary Round will have 6 Round Points allotted to the orals.

10.3 Memorials: Every Memorial will be evaluated by 3 Memorial Judges for 100 marks each. The scores of the Memorials of the opposing Teams in the Preliminary Rounds will be arranged in ascending order and compared. The highest score of one Team will be compared against the highest score of the other Team; the second-highest score of one Team will be compared against the second-highest score of the other Team; and the lowest score of one Team will be compared against the lowest score of the other Team. In each comparison, the team with the higher score will be awarded 1 memorial Round Point. If the teams are tied in a particular comparison, each team will be awarded 0.5 memorial Round Points for that comparison. Thus, in all, 3 Round Points will be allotted to the Orals.

10.4 Match Winner: The match winner will be determined on the basis of the Total Round Points. Total Round Points shall be the sum of the 6 Oral Round Points and the 3 Memorial Round Points. Thus, in each match, there shall be a total 9 Round Points. A team with 5 or more Total Round Points will be adjudged the winner of the particular match.

10.5 Illustration:
Assume that in a preliminary round, Team X is paired against Team Y. Team X gets Oral scores of 150 on Judge 1’s scoresheet and 160 on Judge 2’s score-sheet. Team Y gets Oral scores of 149 on Judge 1’s score-sheet and 150 on Judge 2’s score-sheet. On Judge 1’s score-sheet, Team X is the winner by 1 point. Judge 1 will therefore award 2 Round Points to Team X and 1 Round Point to Team Y. On Judge 2’s score-sheet, Team X is the winner by 10 points. Judge 2 will therefore award Team X 3 Round Points and Team Y 0 Round Points. Adding the Round points...
awarded by Judge 1 and Judge 2, Team X will have 5 Round Points and Team Y will have 1 Round Point in the oral rounds.

Further assume that Team X's Memorial scores on the 3 judges' score-sheets are 90, 85 and 80 respectively; while Team Y's Memorial scores and 95, 80 and 75. In this case, Team Y will win the highest comparison, while Team X will win the other two comparisons. Therefore, Team X will be awarded 2 Memorial Round Points and Team Y will be awarded 1 Memorial Round Points. The Total Round Points for Team X will be 7; while the Total Round Points for Team Y will be 2. Team X will be adjudged the winner of this match. 10.6 8 teams from the preliminary rounds will qualify for the advanced rounds (quarterfinals). These 8 teams will be decided on the basis of the Total Round Points scored in the 2 preliminary Rounds; with the teams with the higher Total Round Points being preferred. In case of a tie on the Total Round Points, the win-loss record will break the tie; with the team with more wins being preferred. If the tie still persists, the actual points scored out of 1400 (800 oral points [200 each Judge for the two rounds] plus 600 memorial points [300 for Claimant Memorial and 300 for Respondent Memorial]) will be used to break the tie.

10.6 The Advanced Rounds shall be knock-out rounds. In the quarter-finals, the team with the highest Total Round Points shall be paired against the team with the 8th highest Total Round Points; the team with the 2nd highest Total Round Points shall be paired against the team with the 7th highest Total Round Points; the Team with the 3rd highest Total Round Points shall be paired against the team with the 6th highest Total Round Points; and the Team with the 4th highest Total Round Points shall be paired against the team with the 5th highest Total Round Points. The 4 winners will proceed to the Semi-Final Rounds. The 2 winners from the Semi-Finals will proceed to the Final Round.

10.7 The Teams will toss in order to determine which side they will argue in the Advanced Rounds.

10.9 Advanced Round Judging: The Advanced Rounds may be judged by a panel of 3 or more Judges. The Memorial marks from the Preliminary Rounds will not be used to determine the results of the Advanced Rounds. Each Judge shall mark each Team on a scale of 100 marks. Each Judge will award 3 Round Points, on the same basis as the Oral Round Points awarded in the Preliminary Rounds. There shall be a total of 9 Oral Round Points in the Advanced Rounds; and the Team which secures 5 or more Oral Round Points shall be declared the winner. In case the Teams are tied on 4.5 Oral Round Points, the Memorial Round Points (calculated according to Rule 10.3) shall be used to determine the winner. In case the tie persists even after this, it shall be broken on the basis of the actual Oral Points secured in the particular Round.
10.10 Penalties: Not following the instructions regarding Memorials in these Rules will lead to Memorial Penalties. Memorial Penalties shall be deducted from the score of each of the 3 Memorial Judges. Memorial Penalties include the following:
(a) Delay in submission of Memorials – 5 marks for every day of delay;
(b) Use of incorrect font, font size, line spacing, page margins, page size – 5 marks for every page on which there is a violation;
(c) failure to include a specified part in the Memorial – 5 marks for every part;
(d) length of the pleadings or of the entire Memorial beyond the prescribed limit – 5 marks for every excess page;
(e) violation of anonymity – Disqualification. Violation of anonymity rules in the oral arguments will lead to disqualification.
(f) Scouting in any form will entail disqualification. Point deductions will be subject to a cap of 20 points per judge – in no case will a team be penalized more than 20 points per judge.
1. Mr. Prem Kumar runs a manufacturing unit of spare parts for multi utilities vehicles (MUV) at Noida, India. The manufacturing unit has been incorporated as Turbo Spares Pvt. Ltd (Turbo Spares), 90 percent shares of which are owned by Mr. Prem Kumar. Turbo Spares has developed a new technology that helps the engine to start even at sub zero temperature. The technology is known as Turbo Ignition.

2. Mr. Prem Kumar decides to market his new product in Scandinavian countries and he chooses Sweden to be the country, as Turbo Spares has a sister concern in Sweden, Turbo Spares (Sweden) Pvt. Ltd incorporated under Swedish law, 25 percent shares of which is owned by Mr. Prem Kumar. He enters into an electronic mail (e-mail) conversation with a leading Swedish MUV manufacturing company Folks-wagon which was referred to him by Mr. Anderson, an angel investor based in Switzerland. Mr. Anderson owns four percent of share of Turbo Spares Pvt. Ltd.

3. Mr. Smith is the Managing Director of Folks-wagon, he responded to the mail of Mr. Prem Kumar and invited him to Stockholm for further negotiations. A meeting on 2nd January, 2004 between Mr. Smith and Mr. Prem Kumar resulted into an agreement between both the parties. As per the agreement Mr. Prem Kumar’s Turbo Spares were to be send to Folks-Vagon three million units of spare parts in three parts containing one million parts on each delivery. Additionally, it was further agreed between them that Folks-wagon would pay $ 300, 000.00 per delivery. The first consignment was scheduled to be arrived at Goetberg port in Sweden on 20th March, 2004. The agreement is made between Swedish Turbo Spares and Folks-wagon.

4. Mr. Prem Kumar returned to India on 7th January, 2004. He doubled the capacity of the existing manufacturing unit to meet the
contractual obligation. The first unit was shipped on 1st March 2004 and was unloaded at the destination on 20th March, 2004 as per schedule. Accordingly, Folks-wagon released the first installment that was timely received by the Turbo Spares. Second and third delivery was to take place on 30th April, 2004 and 30th June, 2004.

5. When the Turbo Ignitions were being installed in the cars, test of the Turbo ignitions were conducted and it functioned pretty well. However, after Folks-wagon hit the market equipped with new technology, it started malfunctioning. The usual complaints received by the company was that engines started making heavy noises and became over heated with fumes coming out of it. Initially Folks-wagon sent its engineers believing that it is the fault on their part. A careful examination of the problem revealed that it was the installation of Turbo Ignition that was the root cause of malfunctioning of engine.

6. Mr. Smith wrote an email to Mr. Sushil Kumar, Chief Executive Officer, of Turbo Spares (Sweden) Pvt. Ltd stating the problem in the goods delivered to him. Mr. Sushil Kumar directed the matter to Research and Development wing of the Turbo Spares in India. Initial studies conducted by them revealed the possibilities of the malfunctioning, however, there could be other components to the malfunctioning of the engine and for that they needed more time to come out with something concrete and conclusive. The snags that the R&D department could determine were taken care of and successful test was conducted on similar MUVs as Folk-wagon's. Thereafter, the second consignment sailed for the destination with the improvised Turbo Ignition.

7. The problem aggravated in Sweden to the extent Folks-wagon was forced to roll back all the cars from the market. Mr. Smith sent a fax to Mr. Prem Kumar stating that he has no option but to terminate the agreement. By the time the Fax was sent the second consignment from Turbo Spares, India had already arrived at the Goetberg Port. Mr. Smith refused to take delivery of the
consignment and insisted that it be sent back. Mr. Prem Kumar was 
intimated of the matter, he called Mr. Smith requesting him to 
accept the consignment and give it a shot, as technical snags were 
rectified, additionally he offered to take back all the Turbo Ignitions 
that were unused and repair those which had developed faults at a 
very nominal cost. He also informed that he came to know the 
matter only on receipt of the fax. Mr. Smith, however, would not 
budge and refused to discuss the matter with him any further.

8. Mr. Prem Kumar received a letter after few days from Folks-wagon 
asking for a return of first installment and a further damage of 
$1,000,000, in total a claim of $1,300,000.00. Mr. Prem insisted that 
contract must be enforced as there was no fault on his part and 
moreover, technical snags were rectified and he also offered repair 
and accepted all the unused goods.

9. This led to a dispute and Mr. Smith went on to refer the matter for 
the arbitration. Art.X of the agreement has the arbitration clause 
which is as follows,

“Any dispute, controversy or claim arising out of or in connection 
with this contract, or the breach, termination or invalidity thereof, 
shall be settled by the arbitration in accordance with the Arbitration 
Rules of London Court of International Arbitration, London. The 
arbitral Tribunal will consists of three arbitrators. The seat of 
arbitration shall be Singapore. The language to be used in the 
arbitral proceedings will be English.”

Mr. Anderson was appointed as the arbitrator from Folks-wagon 
and in response Turbo Spares (Sweden) appointed Mr. Ram 
Sethmalani as their arbitrator. Mr. Anderson wrote an email to Mr. 
Smith stating that he does not feel confident about the position as 
he has four percent of shareholding in Turbo Spares. However, Mr. 
Smith does not respond to this mail and continue with proceedings. 
The award was decided in the favour of Folks-wagon, the proper law
was determined to be Convention on International Sales of Goods, 1980.

10. Mr. Kumar filed a suit to set aside the award in the Court of Additional Judge of Noida pleading that arbitration between Folks-wagon and his company is not possible as arbitration stands terminated with the termination of main contract and that the tribunal was not properly constituted therefore it vitiated the entire proceedings. He also pleaded that Folks-wagon must perform the contract and accept the goods standing at Swedish Port. He also pleads that the Convention on International Sales of Goods, 1980 would not be the applicable law as the subject matter is not international sales as he was mere supplier of the goods and also the matter is not international commercial arbitration, as the agreement is between two Swedish companies. He further pleads that the Arbitration and Conciliation Act, 1996 is only applicable to international commercial arbitration and awards.

11. Folks-wagon also filed a counter complaint by pleading the court to grant an injunction so that Mr. Prem Kumar is restricted to sell, alienate or destroy the property of Turbo Spares Pvt.Ltd. It argues that an injunction can be granted under the Arbitration and Conciliation Act, 1996.

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## 1ST INTERNATIONAL MOOT COURT COMPETITION

### 9TH - 12TH FEBRUARY, 2011

#### PROGRAMME

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<td>04.30 p.m. to 05.00 p.m.</td>
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