



Surana & Surana & Shaastra IITM Intellectual Property Law MOOT COURT

Problem Statement Clarifications



# Clarifications

I. Specifically mention the names of petitions and respondents in two writs. Whether Frugal Company, Mr. Brave Mathews are parties to the dispute by name or as part of state itself?

I believe that an important role for the participants is to identify the parties involved correctly, and not have them mentioned in the problem statement itself. Therefore, I would recommend against making the composition of parties public.

A reading of paragraph 17 makes the identification of parties easy. The first writ petition has Ms. Dawson as the Petitioner and the Union of India, the Data Protection Authority, Mr. Brave Mathews and Frugal (running Chirkut) as Respondents.

The second writ petition has PUHR (Petitioner) and the Union of India and the Data Protection Authority as the Respondents. One may also add the Ministry of Information and Technology since that is the Ministry which is responsible for tabling the Bill in Parliament.

II. The moot problem nowhere mentioned ISSUES of the writs. Kindly provide the issues. Else, guide us on what to be included in issues.

The broad issues have been identified in the form of questions of law that the Court has to look into. One of the factors which will set the more competent teams apart from the rest, is the identification of relevant sub-issues.

III. There are two writs as mentioned in the moot problem. Then whether to make the petitioner's memorial with two petitioners and respondents memorial with two respondents? Both the cases are separate, how can it be represented in two memorials only i.e. two petitioners or two respondents in a single memorial? There would be one memorial each for the petitioner and respondents side, then how to argue on two different cases at the same time?

This is a simple procedural / administrative issue. Several moot courts require diversified issues on behalf of different petitioners, to be included in one memorial. I recommend the submission of one memorial each, on behalf of the Petitioner(s) and the Respondents.

# Clarifications

At the time of advancing arguments, one may simply identify that he is representing the “Petitioner” or the “Respondents” and proceed with submissions on issues of fact/law. I understand that there may be a break in narrative continuity. However, this break is rather minor, since the issues involved flow easily from the first writ to the second.

In other words, while the first writ petition argues the violation of one’s right to privacy and touches upon the info made available under the ADHAAR scheme and Chirkut; the second writ petition advances this theme on a constitutional basis and challenges the vires of the Smart City Policy and the collection of data under this policy and the ADHAAR scheme (using which Mr. Matthews looked into Ms. Dawson’s personal information in the first place).

IV. While arguing as a petitioner whether to argue on behalf of Ms. Dawson and PUHR separately or simultaneously? Similarly to argue on behalf of the frugal company, government and Mr. Frugal Company separately or simultaneously?

This question is not framed very well and therefore, I may be interpreting it differently than what was intended by the author of the question.

In my experience at mootings, Judges can ask students to argue any random issue from their memorial. Therefore, there is no hard and fast rule, in my opinion, on how to argue and whether one can mix and match their issues.

I would weigh in on the side of the students and leave it up to them to advance arguments on whichever issues they are comfortable arguing. One has to bear in mind that a really good round of arguments does not leave time to address each issue/sub-issue in detail.



# Clarifications

V. What is the jurisdiction of the case. Whether the constitution of India, laws, rules, Acts prevalent in India are applicable to the case? If yes, whether to change the name of the citations such as high court, supreme court judgements to be referred in accordance the dummy name of the state provided in this case?

All laws are pari materia with India. No need to change citations.

VI. What type of Bluebook citation to use? 19th or 20th?

20th.

VII. Are all the statutes pari materia to Laws of India?

Yes.

VIII. Can we challenge maintainability? As it is at final stage hearing?

No.

IX. The writ petitions filed in the SC are to be clubbed or has to be taken separately as two different issues?

They are clubbed petitions having (more than two) separate issues. Since the issues arise out of a common set of facts, the Supreme Court has given them a hearing on the same day, and will address each issue in the same judgment.

X. Apart from the two writs filed do we have to frame more issues?

Not necessary. One is free to add issues apart from those identified in paragraph 21 of the problem.



# Clarifications

XI. What is the Extent of Maintenance of “Chirkut” by Frugal (percentage of stake between the Government and the Frugal after the transfer)?

For the purpose of this problem, one may proceed on the basis that Frugal and in turn Chirkut is completely government owned.

XII. Is there any difference between “Official Page” [para.3] and home page [para.13] concerning Chirkut Platform?

Yes. The official page in para 3 refers to the personal page /profile of the founders of Chirkut. Home page is the front page of Chirkut’s platform and may publish notifications on behalf of the platform, the government agency running it etc.

XIII. The exact modus operandi to make a post on the home page of “Chirkut”.

Not necessary to be delineated for the purpose of this problem. One is free to come up with arguments on this aspect, if they think it advances their case on the issue of “intermediary liability” under s. 79 of the IT Act.

XIV. Whether challenge to nationalization of Frugal is a part of the writ petitions.

No. But one may use any argument that they think is relevant to their case. No bar on any issue, as long as it can be covered under the five questions identified in paragraph 21.

XV. Do we need to consider that the transfer of Frugal to the government and its nationalization as irrefutable facts of the moot proposition?

Yes. Please do not stress so heavily on the legal connotation of “nationalization” and whether the legal definition of this phenomenon marry well with the facts of the case. Consider it a simple case of the company being completely taken over by the Government.

XVI. Did Mr. Mathews post in his Chirkut account’s home page?

No. On Chirkut’s official page, which contains posts and publications by the Government and the Data Protection Authority.

# Clarifications

XVII. Did the Government use the information available in Chirkut to implement the smart city project at the Paradise City?

Yes. At least the problem suggests that the Government has used it, and it certainly intends to do so. However, it is the “collection of information” which forms the core of the issue(s) involved, and not the use of it.

XVIII. Should we consider the information available in Mr. Brave Mathews post on Chrikut and the reply given by Ms. Dawson through an open letter as indisputable facts of the case?

Yes.

XIX. The moot proposition doesn't have any relevance with Intellectual Property Law, is the problem connected with IP Law in any sense?

Yes, it IS connected with IP Law in quite a few ways. For instance, the right of one's personality and one's privacy (including informational privacy) are issues of IP, especially when they are asserted against an individual and not the State. The same issue also has a constitutional essence in the form of Article 19 and Article 21.

XX. Whether the Petition filed by PUHR is in the nature of "PIL" or Writ Simpliciter. In other words, whether it is numbered as PIL or WP?

This is best left to the discretion of the participants, though technically the petition (if described as a public interest litigation) be written as WP (PIL) No. \_\_\_\_\_ of 2018.

XXI. Whether the social media platform maintained by Frugal Ltd. is end to end encrypted?

One can argue that it is. However, facts are silent on this and participants may use this argument to bolster their case.

# Clarifications

XXII. Frugal Ltd. has been used in the proposition which leads us to believe that Frugal is a public entity and not a private entity because as per Companies Law, 2013, a private entity has to suffix pvt. Ltd. in front of its registered name. Is it intentional or just an error? Pointing towards paragraph 4, where it's written that, "The Govt. Of Oceania proceeded to nationalise Frugal Ltd..." the nationalisation of a public entity is not possible because the very meaning of 'Nationalisation' is converting a private entity into a public one. And seeing the minimum requirement of Board of directors and members of a public entity which the proposition has not shed its light upon, the take over by the Govt. could not have possibly happened and use of Frugal's software by the Govt. is infringement of their patent as the state never acquired ownership in the company.

Patents are not related to this issue and one cannot assume that Frugal has "software patents" and the State is not really does not automatically infringe a patent merely because a takeover was completely safe & sound (legally speaking). For instance, the government could have very well secured a license to use a patent instead of purchasing it.

However, it is irrelevant to the dispute. As stated earlier, one may proceed on the simple basis that the Government has taken over Frugal and all its operations are now "those of the State".

XXIII. Whether the privacy policy of Frugal Ltd. authorized the transfer of sensitive personal information when a change of ownership takes place voluntarily or under the operation of law?

Technically, the privacy policy being spoken of, will be that of Chirkut and not Frugal Limited. The Privacy Policy (if one is stretching this argument) will have to be in sync with the provisions of the Data Protection Bill 2018 and other applicable law.

Facts are silent on this and one may assume that nothing is foul about Chirkut's privacy policy.



# Clarifications

XXIV. When the management was handed over to Government, whether they adopted the privacy policy of Frugal or any fundamental changes have taken place, if so, whether it was made known to the users?

No fundamental changes. Please read the response to this question along with that to q. 23 above for better context.

XXV. Whether the users of Frugal Limited were given an opportunity to withdraw/delete their personal information before nationalization?

Not a specific opportunity, in terms of everyone being intimated that one can withdraw / delete information on account of the nationalization. However, the option of deleting info or withdrawing one's account is always present to users.

XXVI. With regard to the collection of information prior to the ordinance, is there any specific source through which they were collected?

Information on Chirkut was collected online, through consent. Biometric information in ADHAAR cards was collected at the time of registration under the ADHAAR scheme.

XXVII. Specifically what has been challenged in the below line:

"Collection of Information (including assimilation of personal information collected prior to November 01 2018 by the Data Protection Authority). Also what the term "assimilation" means in the above line?"

What has been challenged is the act of inclusion of biometric information (for the purposes of the Smart City Project) which was collected prior to the ordinance coming into force and mandating that all collection of information is to be performed strictly in accordance with the Data Protection Ordinance. This is also what the term assimilation implies in the context of the statement above.





# Clarifications

XXVIII. Whether collection of information and assimilation of personal information was done by the data protection authority?

Yes. Once the Ordinance came into force.

XXIX. Are the biometric scanners placed in Government platforms or private platforms or both? (with ref. para 8).

Both.

--Clarified by Mr. Siddhant Chamola (Author of the Problem Statement)--

