

**AMITY
NATIONAL
MOOT COURT
COMPETITION
2016**

MOOT PROBLEM

1. The Democratic Republic of Ebony is a fully democratic State with twenty different provinces, and is commonly considered to be a ‘Unitary State with a Federal Bias’, having a Central Government along with a Central Legislative Parliament, and with separate Legislatures and Executive Bodies for each and every Province. However, the Republic, as it exists today only came into being in the year 1950, when eight of the twenty Provinces, all of whom were under the colonial yolk of the erstwhile kingdom of Lumos, broke free from the savage rule of their past masters and decided to come together under a single Flag/Banner, abolish their respective monarchies, and form a single unified Democratic Republic with a reasonable division of powers between the Central and Provincial Governments. Today, the Kingdom of Lumos is a shadow of its former self in terms of the influence it can exert in international affairs, whereas the Democratic Republic of Ebony is one of the fastest developing nations in the world, commanding the interest of investors worldwide, though it is yet to command any serious influence in world affairs.
2. However, this unification did not come easily, and it was only on the determined efforts of a few select persistent and unrelenting individuals leading the campaign for freedom and unification that the monarchies of the remaining provinces were finally persuaded to give up their power and seat of authority. However, as part of the bargain, they were allowed to retain all their royal immovable and movable assets, and consequently, many of them today are among the richest families in the Democratic Republic of Ebony.
3. Four of the provinces (and erstwhile royal kingdoms before unification) are the Province of Thelesalonica, the Province of Scion, the Province of Thalai and the Province of Malay.

4. The history of the Royal Family of Thelesalonica dates back to the early decades of 18th century, but the most well known King of the dynasty always has been Lord King Big Bilzerian, who was the Monarch at the time of the unification of his Kingdom with the Republic and consequently, became in charge of all the affairs of the family and was looking after all the businesses run by the Royal Family. Lord King Big Bilzerian though being a benevolent and jovial king was known for his extravagant lifestyle, his flamboyant nature and his indulgence in the various luxuries of life.

5. King Igusthus was the head of the Royal family of the Province of Scion, and he had three daughters namely Princess Khloe, Princess Kourtney and Princess Kim. Princess Khloe was the eldest, followed by Princess Kourtney and thereafter Princess Kim. All the sisters were married off to King Big Bilzerian during his lifetime one after the other.

6. Consequent to these nuptials, the Bilzerian family in the year 1945 was blessed with four Princes and one Princess from the all three of the wives as described below:

From Queen Khloe were born Prince Dumas and Princess Dumagoli. Later on, Prince Drago and Prince Drakshin were born from the marriage of King Big Bilzerian with Queen Kourtney. Lastly the marriage of the King with Queen Kim resulted in the birth of Prince Ray. The reason Prince Ray was so named was because Queen Kim refused to accept the suggestion by the Royal priest that the names of all the Prince and Princesses should start with the letter 'D' else they would bring misfortune. As she was adamant in this demand, the King had no choice but to relent. However, this resulted in differences arising between King Big Bilzerian and Queen Kim, with the ultimate result being the decision

to give Prince Ray up for adoption to King Dueta of the Royal Family of Thalai, who being issueless himself, was more than happy to adopt Prince Ray and always treated him as his own and used to constantly comment that he would be the sole heir to his entire wealth.

7. With the efflux of time the Princes and the Princesses grew up and Princess Dumagoli was married into the Royal Family of Dakshin and gave birth to Princess Duma. In the year 1977, Prince Ray fell in love with Princess Carlen of the Province of Malay, who subsequently gave birth to a Prince and Princess who were named Prince Wild Bilzerian and Princess North Bilzerian on the advice of Queen Kim.
8. One of the most well known properties of the Royal Family of Thelesalonica to which they continued to retain full title after the unification was the Bilzerian Fort and Palace which is one of the major tourist attractions of the Province of Thelesalonica. The Fort is described to exude an unmistakable sense of history and is often described as an architectural masterpiece that transcends time where grandeur and excess is celebrated and savored in equal measure.
9. After the demise of their father Lord Big Bilzerian, the management and administration of the estate of the Royal Family of Thelesalonica came under the control of King Dumas, King Drago and King Drakshin. In the year 1981 all the brothers decided to bring up a business by establishing a Company to which their former residence would be leased and would be converted into a Heritage Hotel wherein the general public would be allowed to visit the Royal Fort and stay as their guest but of course at a price which was affordable by the lucky few. Pursuant to this collective decision, the residence of the blue blood Family was rightfully leased by the Family to the

Company set up by the Promoter brothers which came to be known as the “Royal Retreat Group of Hotels Resorts and Palaces Pvt. Ltd.” (hereinafter referred to as the Company)

10.The Belzerian Fort and Palace, now renamed as the “The Belzerian Royal Retreat” was advertised as “a stay that offers a Palace so exclusive which is still retained with rich textures, opulent furnishings and exquisite objects d’art. One is actually allowed to partake in a wealth of experiences that resound with the memories, luxuries and extravagances of a bygone era that luckily, has not entirely disappeared.”

11.The venture was a runaway success and the reputation of the high standards maintained by the Company with the brothers acting as Promoters and Joint Managing Directors spread like wild fire and the family reaped a fortune which it continues to do so till date.

12.Later in the year 1983, on the request of their Step Mother Queen Kim the brothers decided to add another Promoter Joint Managing Director to their business being none other than their own cousin King Ray with an amendment to their Articles of association with the insertion of a new clause being Clause 11 which read as under:

“ on the death of any Promoter Director or on any Promoter Director going out of the Company on account of any legal disability, the shares of the deceased or the outgoing Promoter Director shall, from his so dying or ceasing to be a Promoter Director, stand transferred to the Company in the interim, and thereafter the same shall be transferred to the estate or the legal representatives of the deceased or outgoing Promoter Director as the case may be who shall be

entitled to the share of the deceased or outgoing Promoter Director as held at the time of such death or resignation.”

13. In the year 1986, due to differences arising within the Royal family, a Partition Suit was filed before the Original side of the High Court of Thelesalonica amongst the family members of the Royal Family of Thelesalonica seeking a partition by metes and bounds. During the course of the Suit, the validity of the adoption of Prince Ray and his right of inheritance also came under dispute and the same is also being contested and the Suit is presently pending.

14. Being the youngest and most like his father, King Ray was more interested in his wine and women rather than investing his time in the family business. Furthermore, owing to serious differences arising between King Ray and Queen Carlen and an irretrievable breakdown of marriage, King Ray of Thalai divorced Queen Carlen who went back to the Province of Malay along with her children North Bilzerian and Wild Bilzerian in the year 1990. However, even though King Ray was occupied in his flamboyant lifestyle, he now and then tried to contact his children which was steadfastly resisted by Queen Carlen and this ultimately led to King Ray developing a dislike towards his children as well.

15. That late in the year 1997 King Ray succumbed to ill-health brought upon him by virtue of a life of unlimited enjoyment of the most sinful pleasures available. After his death Prince Wild Bilzerian and Princess North Bilzerian filed a case for Succession being Succession Case No. 413 of 1998 before the District Court of Thelesalonica seeking one third

share in the estate of King Ray along with Queen Kim. In the very same succession case King Dumas filed an Impleadment Application and objected to the Succession Certificate.

16. That in December 2005 Queen Kim while cleaning the room of King Ray and arranging his personal documents found a Will dated 23.06.1996 wherein King Ray had stated:

“My Dear Mommy,

As you are aware, I have not been keeping too well. I telephoned North and Wild but as usual they refused to speak to me. I am very disturbed by the children’s attitude, no doubt influenced by their mother. I know that Carlen will try to grab my property through the children.

Therefore on my demise, I hereby disinherit my children North and Wild from getting/claiming any part of my estate. I hereby bequeath all my movable and immovable properties and assets to you only.

My signature is witnessed by the two signatories below

Love always”

17. That in the Month of May 2006, The Royal Retreat Group of Hotels Resorts and Palaces (hereinafter referred to as the Company) received a letter from Queen Kim requesting transmission of all the shares standing in the name of late King Ray in her favour in view of the Will dated 23.06.1996 and she further filed an Application before the District Judge of Thelesalonica being Probate Petition No. 72 of 2006 on the basis of the aforesaid Will. However, the Company in its Annual General Meeting decided that in light of the dispute regarding the estate of late King Ray and the civil cases pending in

the Testamentary Jurisdiction of the District as well as High Court of Thelesalonica, any person requesting for the transmission of shares of late King Ray would be required to produce the evidence by way of appropriate title through a Probate, failing which the Company would not transfer the shares in dispute to any individual.

18. The Company communicated the same to Queen Kim and thus expressed its difficulty in transmitting the disputed shares in favour of Queen Kim or any other claimant till a proper Probate was passed by the Court of competent jurisdiction. On 08.05.2009 during their visit to the Province of Thelesalonica, the grandchildren of Queen Kim entered into a Settlement Deed with her before the District Court with regards to the share in the property of King Ray, wherein it was agreed that the assets would be divided equally in a one third share amongst themselves and thus accordingly obtained a Succession Certificate on the very same day.

19. Queen Kim expired in late 2009 due to natural causes. Thereafter upon her death, Prince Wild Bilzerian moved an Application before all the Courts wherein a dispute was pending an Application for Substitution as her Legal Heir along with his sister Princess North. At the same time, similar Applications were also moved by the rest of the family members claiming that they were the legal heirs of Queen Kim.

20. That in the very same year Prince Wild and Princess North also claimed that Queen Kim vide her Will dated 10.05.2009 had bequeathed all her properties in favour of her two grandchildren and to no one else. Thus on the basis of the said Will a Probate Petition being Probate Petition No. 3983 of 2010 was filed before the District Court of the Province of Thelesalonica wherein all

the other members of the family raised objections challenging the authenticity of the said Will and claimed that the same was forged and fabricated.

21. Pending all of the above disputes inter - alia between the family members, all the above parties wrote to the Company seeking transfer of the shares of the late King Ray in their own name claiming themselves to be the legal heirs of King Ray. The Company, however, once again, pointing to the various disputes pending between the parties herein declined to transfer any shares unless conclusive proof or evidence by way of a Probate from a Court of competent jurisdiction was brought before it, clearly establishing a line of succession in favour of any of the Claimants declaring them to be the legal heirs of late King Ray.

22. Meanwhile on 01.09.2010, the High Court of Thelesalonica by way of an Interim Order ordered that both the groups before the Court i.e. her grand children as well as her step sons were her legal heirs. Aggrieved by the same both the grand children filed a Review Petition being Review Petition No. 76347 of 2010 which is currently pending adjudication.

23. That despite the above mentioned Interim Order stating that both the groups are the legal heirs of Late Queen Kim, the Company yet again refused to transfer the shares in favour of any party. As a result, the parties, dividing themselves into two groups, one comprising of the step sons and the other comprising of the grand children, moved Applications before the Company Law Board under Section 111 of the Companies Act, 1956 being C.P. No 34/111/2010, praying for the transfer of shares in favour of the respective

Applicants. Subsequently, in the year 2011 a Civil Suit was filed against Prince Wild and Princess North being a Suit for Declaration and Permanent Injunction, praying for a declaration that the alleged Will of the Late Queen Kim dated 10.05.2009 was forged and fabricated.

24. The Company Law Board vide its detailed Order dated 18.03.2011 held that it cannot while exercising summary jurisdiction under Section 111 of the Companies Act, 1956 decide complicated questions of fact and law which undisputedly arise before it where the title to the shares standing in the name of late King Ray is under serious dispute.

25. Aggrieved by the same the parties herein filed Company Appeals before the Hon'ble High Court of Thelesalonica wherein the High Court relying on the succession certificates dated 08.05.2009 held that they were documents which were *prima facie* proof of title of the Prince and Princess and the Company Law Board failed to appreciate the controversy in the correct perspective in light of the fact that the second group comprising of the step sons of late Queen Kim had no *locus standi* to challenge her Will and that the Order of the Company Law Board was bad in law thus Prince Wild and Princess North had a right to acquire the shares of Late queen Kim and Late King Ray and thus accordingly ordered for transfer of the assets and shares of late king Ray in their favor and further directed that necessary rectifications be made in the Record of the Registrar of Companies. The Hon'ble High Court also interpreted the will of late King Ray stating that the intent of the Testator had to be gathered from a wholesome reading of the document and the circumstances of the case. It held that the concern of the Testator was that his estranged wife should not grab his property through his children since both of them were minors at that point of time and were thus

under the influence of their mother. It also held that the Will in fact reflected the anguished state of mind of the Testator wherein he was unwell and had an urgent need to address the reckonings which were going on his mind, his desire being that his estranged wife should not be in a position to grab this property through the device of his children and he manifested his intent in an indirect way and further held that the alleged disputes which were pending adjudication appeared to be illusory and that there appeared to be no fraud or forgery thus a Petition under Section 111 was very much maintainable.

26. Aggrieved by the above findings and Judgement and Order of the Hon'ble High Court of Thelesalonica, the aggrieved group filed Special Leave Petitions before the Hon'ble Supreme Court of Ebony raising various questions of law, some of them being;

- A) Whether the High Court had rightly exercised its jurisdiction under Section 10F while hearing an Appeal against Section 111 of The Companies Act?
- B) Whether the High Court could have heard and decided various aspects and disputes pending adjudication in the courts below which were in the nature of civil disputes?
- C) Whether the High Court could have interpreted a will while exercising jurisdiction under Section 10F?
- D) Can a joint succession certificate be relied upon wherein one of the members to the very same certificate had expired?

E) Can probate proceedings be termed as lapsed on the basis of settlement entered into between some of the parties?

27. The Hon'ble Supreme Court was pleased to issue Notice and pass an Interim Order of stay of the Impugned Order. After completion of pleadings, leave was subsequently granted and the matter is now listed for Final arguments.