

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

END SEMESTER EXAMINATION: WINTER 2019-'20

APRIL 2020 (5TH YEAR)

1. Clinic II: Professional Ethics ©
2. Adjudication of Socio-Economic Rights (E)
3. Advanced IP Law (E)
4. Advanced Tax Laws and GST (E)
5. Artificial Intelligence and Law: An Interface (E)
6. Biotechnology Law (E)
7. Corporate Taxation (E)
8. Gender & Law (E)
9. Indirect Tax Laws (E)
10. Information Technology Law (E)
11. International Finance (E)
12. International Refugee Law (E)
13. Law and Economics (E)
14. Privacy, Law of (E)
15. Secularism and Law (E)
16. Securities Law (E)
17. Sports Law (E)
18. Women and Criminal Law (E)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
Online LL.B End-Semester Examination – Winter 2019 – 10th Semester – 2015 Batch

Adjudication of Socio-Economic Rights

Full Marks: 50

Time: 4 Hours

Instructions

1. All questions are compulsory
2. This is an online examination.
3. Students are required to complete the exam by the scheduled hour and **upload the same on Google Classroom as Word Attachments.**
4. Students working on Office-Libre or Open Office or any other software must save the file in a Word Compatible Format. **Submission of answers in any other format shall not be considered for evaluation**
5. **Students are directed to not write their names, roll number or any personal identifier in the word file, except for on Page 1 of the document which must be in the format specified below:**

FORMAT FOR FIRST PAGE OF THE ANSWER-FILE

NAME:

ID NO.:

DATE:

TIME:

SUBJECT:

[TO BE FILLED BY THE ACADEMIC SECTION]

CODE NO.:

[TO BE FILLED BY THE FACULTY AFTER EVALUATION]

Question No.	Marks [Figures]
1	
2	
TOTAL	

6. The file must be named in the following format: ASER_Your ID Number. So for a student with ID Number 216162: ASER_216162
7. **Any submission after the stipulated deadline shall be automatically segregated by Google Classroom and not considered. Therefore, students are requested to stick to the specified time.**
8. **Students shall be responsible for uploading the correct version of the answer-file. Any failure on their part to upload the right file shall lead to their answer-file being excluded from evaluation.**

ALL THE BEST

Questions

1. “Since constraints on available resources considerably complicate judicial review of state action towards enforcement of socio-economic rights, socio-economic rights should, at best be, considered as aspirational constitutional directives and not as justiceable rights.” – Does this assertion overstate the complexity of judicial review of the allocation of resources for enforcement of socio-economic rights? Please substantiate your answer with appropriate examples.

[20 Marks]

2. The State of Aazaadia, a constituent of the Federal Republic of Andheria, seceded from the republic after a peaceful independence movement. The Constitution of Aazaadia contained, inter alia, the following significant provisions:

Preamble

We, the people of Aazaadia—

HONOURING those who heroically struggled to bring freedom and justice to our land:

PROUD of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation:

RESPECTFUL of the environment, which is our heritage, and determined to sustain it for the benefit of future generations:

COMMITTED to nurturing and protecting the well-being of the individual, the family, communities and the nation:

RECOGNISING the aspirations of all Aazaadians for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law:

EXERCISING our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution:

ADOPT, ENACT and give this Constitution to ourselves and to our future generations.

The Chapter on Fundamental Rights contained, inter alia the following provisions:

Part 1—General Provisions relating to the Bill of Rights

Section 19. (1) The Bill of Rights is an integral part of Aazaadia’s democratic state and is the framework for social, economic and cultural policies.

(2) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.

- (3) The rights and fundamental freedoms in the Bill of Rights—
- (a) belong to each individual and are not granted by the State;
 - (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
 - (c) are subject only to the limitations contemplated in this Constitution.

Section 20: (1) The Bill of Rights applies to all law and binds all State organs and all persons.

(2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

(3) In interpreting the Bill of Rights, a court, tribunal or other authority shall promote—

(a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and

(b) the spirit, purport and objects of the Bill of Rights.

Section 21:

(1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

(2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Section 23.

(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

(4) The State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.

Section 22. (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

(a) the nature of the right or fundamental freedom;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and

(e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

Section 23: (1) Every person has the right—

(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;

(b) to accessible and adequate housing, and to reasonable standards of sanitation;

(c) to be free from hunger, and to have adequate food of acceptable quality;

(d) to clean and safe water in adequate quantities;

(e) to social security; and (f) to education.

(2) A person shall not be denied emergency medical treatment.

(3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependents.

Centre for Social Justice (CSJ), a civil society organisation filed a petition before the newly established Constitutional Court of Azaadia, asserting that more than 4 million residents of Azaadia suffered from malnutrition. It argued that this was a violation of Article 23 of the new Constitution. Consequently, it argued that the Government was mandated by Article 23 to guarantee at least a minimum of 5 kilograms of rice per household per month so that 2100 calories could be guaranteed to every person. It also argued that this duty extended to Andherians who had remained in Azaadia and had been consequently rendered stateless. Based on this, the CSJ requested the court to direct the Government of Azaadia to initiate distribution of 5 kgs of rice per household and issue a structural injunction to this effect.

In view of the fact that this was the first case under the Constitution of Azaadia and there were no established precedents, the Chief Justice of the Constitutional Court of Azaadia has asked you to write a note appraising the tenability of the claims forwarded by CSJ with reference to approaches taken by other Constitutional Courts around the world. Please advise. **[Marks 30]**

Advanced Intellectual Property Law

Full Marks 50

Time : 4 Hours

Note:

A. Answer both the questions, each question carries 25 marks

1. Sahara India a Tourism company is quite popular for its hotel and tourism services in India. The company is having its branch in Kolkata which is equally famous for its services. The Kolkata branch of the company has named one of its lounges in the name of 'Darjeeling' the famous geographical indication from Eastern India. The Tea Board of India which is holding the geographical indication protection for 'Darjeeling' tea has instituted infringement suit against Sahara India for alleged violation and infringement of their registered geographical indications. Sahara India contends that geographical indication protection is available only for products and not for services. They are using the name 'Darjeeling' for one of their lounges in their Kolkata unit which is part of their services. Further, it was argued that; geographical indication protection does not entail the owner from stopping others from using the name of the indication for different purposes which is not connected to the registered purpose of the geographical indication. Identify the issues involved in the litigation and address the same in the light of principles of protection of geographical indications as enshrined under the International law and Law in India on geographical indications. (1*25=25)

2. Fuel is a famous beverages company which sells its popular brand of Vodka in India. The company has come out with a new Vodka brand with “lemon flavor” which the Company intends to release into the market in May, 2020. Earlier, a conference of international beverages and Vodka producers was hosted by the International Beverages Association, at London during the last week of February, 2020. In which popular Vodka brands such as ‘Smirnoff’, ‘Fuel’, ‘Absolute’ have participated. There were discussions, debates and presentations with regard to various activities of different vodka companies including new Vodka brands that will be released into the market by the various participants who are into Vodka business. In the conference, Fuel Company which sells its popular Fuel brand Vodka made a presentation regarding the research work that it has undertaken for introducing new “lemon flavor Vodka” brand. It was also mentioned that the “lemon Flavor Vodka” will be released into the market in May, 2020. Off late in the first week of March, 2020, Smirnoff announced that it is going to release new “lemon flavored Vodka” into the market in April, 2020. The Fuel Company thinks that their formula of new “lemon flavored Vodka”, which is their trade secret, has been copied and misappropriated by the Smirnoff Company during the said conference. The Fuel Company wants to institute infringement suit against Smirnoff Company for alleged misuse of their trade secrets. Advice the Fuel company on how to go about in enforcing their trade secrets pertinent to the “lemon flavor vodka” brand with the help of established principles, norms and the decided case laws on trade secret protection. (1*25=25)

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Advanced Tax Laws & GST

Full Marks: 50

Time: 4 Hours

Question 1

The assessee wants to prefer an appeal against this assessment order. Kindly guide him the appropriate authority where the appeal can be filed and also draft the statement of facts and grounds of appeal for the same.

(2+4+4=10 Marks)

Assessment Order

The assessee has filed the return of Income for A.Y. 2020-21 on 29/09/2020 declaring total income of Rs 23,73,530. The case was selected for limited scrutiny assessment and accordingly the assessee was issued and duly served with notice u/s 143(2) of the I.T. Act, 1961. Thereafter, the assessee was also served with notice u/s 142(1) of the Act.

In compliance, A/R of the assessee appeared from time to time along with the books of accounts and supporting documents which are examined. The case is discussed and heard.

Issue related to the instant assessment are discussed below:

Issue No 1: office maintenance charges: The assessee has claimed expenses of Rs 3,07,815 on account of this head of expense. In this regard the A/R of the assessee has filed a chart showing expenses on this head. As per the chart the assessee has claimed maintenance charge on account of two building. Vikrant commerce house owners Association Ltd and Neelkamal flat owners association.

Maintenance charge paid with respect to commerce house owners association Ltd, is the premises from where the assessee run his business, whereas Neelkamal flat owners association is a residential property, not a commercial premises. The A/R of the assessee was asked to file the trade license in respect of Neelkamal flat owners association, but failed to do so.

Therefore a sum of Rs 1,83,176 that was claimed on account of office maintenance against Neelkamal flat owners association, is disallowed for not being used for the purpose of business and added back to the total income of assessee.

Issue no 2: T/L Maintenance charge: the assessee has claimed expense of Rs 8,97,768 on this account. On perusal of the ledger account of this head of expense, it is found that assessee has claimed expense on payment made to the parties.

Similarly, assessee has paid a total sum of Rs 98,723 during the period from 01/04/2019 to 31/03/2020, by cash and cheque to M/S xyz exports and failed to deduct tax.

As the assessee has claimed expense in its profit and loss A/c and failed to deduct tax, the A/R of the assessee was requested to explain as to why as per the provision of section 40(a) (ia) of the Act, out of total claim of Rs 8,97,768 expense of Rs 4,06,550- {Rs 3,07,827 + Rs 98,723} should not be disallowed.

The A/R of the assessee stated that due to ignorance of the assessee the mistake was happened and requested to consider the matter. The assessee explanation in this regard is not acceptable and therefore sum of Rs 4,06,550 is disallowed u/s 40 a (ia) of the act and added back to the total income of assessee.

Issue no 3: T/L running expense: Under this head, the assessee has claimed expense of Rs 54,08,286 but most of the expense is claimed on the basis of debit vouchers and therefore the Genuity of such expense could not be established.

Therefore, 0.5% of such expense that arrives at 2,70,414 is disallowed and added back to the income of the assessee.

Question 2 (4 marks)

An assessee is charged Rs 100000+GST from ABC private limited company for consultancy services(GST @ 18%). Discuss the following :-

- (a) TDS implications
- (b) GST obligations
- (c) Income of the assessee and net amount payable by assessee in cash
- (d) Amount of Input Tax credit available

Question 3 (2*5=10 marks)

A) Does the Settlement Commission have jurisdiction to entertain an application made under section 245C (1) in respect of a case covered by chapter XIV-B (Search and Seizure Case)

B) A, non-resident made an application to the Authority for Advance ruling on 2.07.2019. in relation to the transaction proposed to be under taken by him. On 31.08.2019, he decides to withdraw the said application. Can he withdraw the application of 31.08.2019?

Question 4

Specify with **reasons** whether the following acts can be considered as (i) Tax Planning (ii) Tax management, (iii) Tax Evasion (2*6= 12 marks)

- (i) Mr. P deposited Rs 1,00,000 in PPF account so as to reduce his total income from Rs 5,90,000 to 4,90,000.
- (ii) SQL Ltd maintains register of tax deduction at source effected by it to enable timely compliance

- (iii) An individual tax payer making tax saving deposit of Rs 1,00,000 in a nationalized bank.
- (iv) A partnership firm obtaining declaration from vendors depositors in form no. 15G/15H and forwarding the same to income- tax authorities
- (v) A Company installed an air conditioner costing Rs 75,000 at the residence of a director as per his terms of appointment but treat it as fitted in quality control selection in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation.
- (vi) RR Ltd issued a credit note for Rs 80,000 as brokerage payable to Mr ramana who is the son of the managing director of the company. The purpose is to increase the total income of the Mr. ramana from 4,20,000 to Rs 5,00,000 and reduce the income of RR Ltd correspondingly

Question 5

Determine taxable value of supply under GST Law with respect to each of the following independent services provided by the registered persons. Please specify the reasons if a particular head is not included in the taxable value of supply (1*4 = 4 marks)

Particulars	Gross amt charged
Fees Charged for yoga camp conducted by a charitable trust registered u/s 12AA of Income tax, act 1961	50,000
Amount charged by business correspondent from banking company for the services provided to the rural branch of the bank with respect to savings bank account	1,00,000
Amount charged by cord blood bank for preservation of stem cells	5,00,000
Amount charged for service provided by commentator to a recognized sports body	5,20,000

Question 6

Mr. X has a total income of Rs 12,00,000 comprising of his salary income and interest on fixed deposits. Compute his taxable liability and also discuss the steps for filing his return online. (4 marks)

Question 7

M/s XYZ is a firm liable to tax @30%. The following are the particulars furnished by the firm for A.Y. 2020-21 (6 marks)

	Particulars of Total Income	Rs
1.	As per the return of Income furnished u/s 139(1)	50,00,000
2.	Determined u/s 143(1)(a)	60,00,000
3.	Assessed u/s 143(3)	75,00,000
4.	Reassessed U/s 147	95,00,000

Can Penalty be levied u/s 270A on M/s XYZ? If the answer is affirmative, compute the penalty leviable u/s 270A.

Artificial Intelligence and Law: An Interface

Full Marks: 55

Time: 6 Hours

Answer all the following questions within the word limits prescribed.

Q.1. Wheddon Futures, Inc., a private company incorporated in the United States of America, has been manufacturing robots of varying degrees of sophistication for household tasks, industrial assistance and the like for over a decade. The company is now planning to focus on spending more for R&D in the field of artificial intelligence (AI), so that the robots that they already manufacture may be equipped with next generation AI, and also new AI can be created not only to supplement the products already manufactured by the company, but also to assist in the very manufacturing process itself. A subsidiary of the company, Halo, Inc., is also going to be launched soon to focus on generation of AI that has military capabilities and can be used by the US government (from whom the company expects to get a lucrative contract in the near future) in multiple capacities in the battlefield. One of the directors in Wheddon's Board, however, is concerned with certain legal, ethical and practical ramifications of both of these new developments, and has approached you (in your capacity as the resident techno-legal expert and counsel) to secure an opinion about:

(a) The possible differences in terms of legal culpability of the company when it comes to the robots and AI that it creates in light of the difference in embodiment and the ability to directly influence the world around them; and

(b) The potential arguments for and against developing any form of strong AI capable of deployment in the battlefield and whether relinquishing such development might make any sense in the short and long run.

Draft a memo discussing both of these issues and the legal and technical theories and arguments supporting your opinion. (Word Limit: Maximum 1000 words) (10x2=20 marks)

Q.2. In the light of intelligent computer systems using various machine learning techniques such as artificial neural networks in order to develop and improve upon their capacity to solve real-world problems and generate solutions for the same, Freedom from Exclusion, a non-governmental policy body, has tasked you with writing an opinion about the potential discrimination that may result from such design and techniques and the linkage of such discrimination with errors and bias involved posing a set of serious challenges. Write such an opinion, involving references to multiple sectors and highlighting the possible legal use to which the doctrine of disparate impact may be put to mitigate such discrimination and cope with such challenges. (Word Limit: Maximum 900 words) (15 marks)

Q.3. Explain the following issues in brief, referring to suitable real-world scenarios and legal authority as applicable: (Word Limit: Maximum 250 words for each) (5x4=20 marks)

- (a) Applicability of the Cheshire Cat Model of legal personhood to AI Robotics.
- (b) The various choices faced by Crash Algorithms embedded in self-driven vehicles and the consequences of such choices.
- (c) Placement, permeability and persistence –the three dimensions of privacy when it comes to usage of AI-powered devices in spheres private and public.
- (d) The various market conditions conducive to algorithmic tacit collusion and legality of such collusion.

Biotechnology Law

Full Marks: 50

Time: 4 Hours

Note:

A. Answer both the questions, each question carries 25 marks.

1. Monsanto which is an US based company has produced a “genetically engineered tomato” with qualities such as high shelf life, increased nutritional values, long preservation capacity and such other traits. The engineered tomato is produced from Monsanto research laboratory at Bangalore in collaboration with its Indian subsidiary Mahyco India. The government of USA has given permission for its field trials which have successfully proved the features and qualities of the engineered tomato after which the same is allowed to market and is made available for the consumers in USA. Aiming at the big consumer market in India, Monsanto intends to market the engineered tomato in India and sought permission from the government of India. The government of India is little skeptical about the safety and consumer acceptance of the genetically engineered tomato in India. Government of India referred the matter to the Genetic Engineering Appraisal Committee (working under the aegis of Ministry of Environment, Ministry of Agriculture, Ministry of Science and Technology and Ministry of Food) for its opinion. Advise the committee about the technical and procedural requirements for granting marketing approval to genetically engineered tomato under the established legal norms. Analyze the mechanism set forth for assessing the environmental risks concerned with genetically modified crops/foods, while balancing the trade interests involved there in.

(1 * 25=25)

2. The regions rich in biodiversity are considered crucial for the growth of biotechnology industry as biotechnology research and development depends on availability of natural genetic and biological resources. Accordingly. Countries like India are considered as rich in biodiversity and there have been number of plant, animal and such other living species with rare, unique qualities and features. Meanwhile, Gene Watch Company, Germany has produced a genetically engineered 'wheat crop'. The engineered crop is said to have been produced by using a wheat crop grown in the Indian sub continent after engineering and fine tuning its biological characteristics and nutritional features. The Gene Watch Company collected samples of wheat crop from the region of Haryana in India and developed the same in its research laboratories in Hamburg and successfully tested the field trials in Hamburg, Frankfurt, Heidelberg, Munich and other selected regions of Germany before marketing the same in Germany. The engineered wheat crop has become a huge success not only in Germany but across Europe. Indian has been exporting wheat since decades to number of European Countries. Off late it has observed that wheat exports to Europe from India have been decreasing. While analyzing the situation it is found that genetically engineered wheat crop developed by Gene Watch which has garnered market across Europe is the region for decreasing of wheat export from India to Europe. Upon further inquiry it was found that wheat crop samples from Haryana were used in the production of genetically engineered wheat crop without obtaining any permission from government of India. In this regard, Haryana wheat growers association raised concerns of bio-piracy of Indian biological resources by the Gene Watch Company. There made a petition to the National Biodiversity Authority, Government of India on the misuse of Indian biological resources. In the context of "Bio-piracy and Bio-prospecting" decide the matter in the following manner:

- a. Identify the prominent issues involved in the matter
- b. Address the issues in the light of decided case laws. (1 * 25=25)

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Clinic II: Professional Ethics

Full Marks: 30

Time: 6 Hours

THIS IS A TAKE-HOME OPEN-BOOK ONLINE EXAM.

EXAMINEES ARE PERMITTED TO REFER TO ALL AVAILABLE SUPPLEMENTARY MATERIALS.

HOWEVER, THE FOLLOWING REQUIREMENTS ARE TO BE **STRICTLY** ADHERED TO:

- THE STIPULATED TIME-LIMIT FOR ONLINE SUBMISSION OF ANSWERSCRIPTS IS NOT TO BE EXCEEDED UNDER ANY CIRCUMSTANCES.
- ANY FORM OF CONSULTATION INTER SE EXAMINEES IS STRICTLY PROHIBITED.
- IN THE EVENT THAT ANY TWO OR MORE SETS OF ANSWERSCRIPTS ARE FOUND TO BEAR SIGNIFICANT RESEMBLANCE – APPROPRIATE PENAL STEPS WILL BE TAKEN AGAINST **EACH** SUCH EXAMINEE.

LIST OF RELEVANT LEGISLATIONS

- (i) The Royal Farmaan of Jehangir, 1615
- (ii) The Charter Acts of 1726 & 1755
- (iii) The Bengal Regulating Act, 1773

- (iv) The Bengal Regulation VII of 1793
- (v) The Crown Regulation XXVII of 1814
- (vi) The Bengal Regulation XII of 1833
- (vii) The Legal Practitioners' Act, 1846
- (viii) The Legal Practitioners' Act, 1853
- (ix) Indian High Courts Act, 1861
- (x) Pleaders', Mukhtars' & Revenue Agents' Act, 1865
- (xi) The Legal Practitioners' Act, 1879
- (xii) The Legal Practitioners (Women) Act, 1923
- (xiii) The Legal Practitioners (Fees) Act, 1926
- (xiv) The Indian Bar Councils Act, 1926
- (xv) The Constitution of India
- (xvi) The Legal Practitioners' Bill, 1959
- (xvii) The Advocates' Act, 1961 (and The Bar Council Rules framed thereunder)

ALL QUESTIONS ARE COMPULSORY

Q1. As future legal practitioners and flag-bearers of the institutional ethos: “युक्तिहीने विचारेतु धर्महानि प्रजायते” (*Yuktiheeney Vicharetu Dharmahaani Prajayate*) – how self-sufficient do you feel is the legacy of Indian jurisprudence in defining the nature of the present day lawyer/advocate’s professional ethic?

... (15)

Q2. Justice V.R. Krishna Iyer had, in *Bar Council of Maharashtra v. M.V. Dabholkar* [AIR 1976 SC 242], expounded upon the “Canons of Professional Conduct” wherein he had observed:

*“The rule of law cannot be built on the ruins of democracy, for where law ends, tyranny begins. If such be the keynote thought for the very survival of our Republic, - the integral bond between the lawyer and the public is unbreakable, and the vital role of the lawyer depends upon his probity and professional lifestyle. Be it remembered that, **the central function of the legal profession is to promote the administration of justice.**”*

If the practice of law is thus a public utility of great implications, and a monopoly is statutorily granted by the nation, - it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of social justice”.*

*[EMPHASIS ADDED]

- Elucidate the implications of the above with vis-à-vis delineating the contours of Ss. 35 & 49(1)(ah), (c) of the Advocates’ Act, 1961 read with Chapter II (Sections I, II, III & IV) of the Bar Council of India Rules;
 - Justify your views with suitable rationale culled from the various illustrative case studies and substantive philosophies (derived from both, eastern & western schools of thought) – as discussed in class;
 - Put forth your own considered opinion as to how best the underlying essence of the above sentiments (*i.e.*, **NOT** limited to the specific points of “self-advertisement” and/or “solicitation”) – may be constructively applied to the Profession, given the vagaries of the present milieu.
- ... (15)

Corporate Taxation Laws

Full Marks- 50

Time- 4 Hours

i. Attempt any four questions.

5+7.5=12.5

1. There has been changes in the rules for determination of residential status of company i.e. from ‘control and management test’ to ‘place of effective management test’. Critically examine the statement in the light of provisions under Income Tax Act with the help of judicial developments and statutory provisions.

12.5

2. “The parliament is revisiting the corporate tax burden by reducing the tax rates and phasing out or/and rationalising tax incentives under income tax law in India. Therefore, to simplify and rationalize the corporate tax burden; time has come to reconsider the MAT provisions under Income Tax Act or to scrape the income tax Act provisions sofar it is applicable to corporate; and to enact, adopt and enforce the separate corporate taxation Act based on the ‘book profit’ concept.” Do you agree with the statement? Substantiate your answer with the help of statutory provisions and suitable illustration(s)

12.5

3. Explain the concept of profit and investment linked incentives under Income Tax Act. Also, critically examine the conceptual differences as to tax incentives under chapter III (Ss. 10A, 10AA, etc) and chapter VIA, Part C (Ss. 80I, 80IA, 80IBA, etc) of Income Tax Act, 1961 with the help of decided cases.

4. What do you mean by corporate restructuring? Critically examine the income tax implications in case of amalgamation of companies. Refer statutory provisions and suitable illustration(s).

12.5

5. “The finance Bill 2020 has moved to classical way of taxation of dividend with the abolition of corporate dividend distribution tax however there are no changes as to tax on buy back of shares.” Critically examine the statement and its rationality in the light of general principles of taxation and provisions under income tax law.

12.5

6. Write short notes on **any two** of the followings-
- a. Mutual funds and income tax implications
 - b. Presumptive taxation
 - c. Double taxation and relief
 - d. Computation of ‘tax on capital gains from shares’

6.25+6.25=12.5

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Gender and Law

Full Marks: 60

Time: 4 Hours

All questions are compulsory and you have to answer all parts of the questions

1. Engage in a feminist re-reading of any **one** branch of law. In this context discuss

- a) the feminist theoretical perspectives and conceptual bases for reevaluating a particular branch of law using a gender lens.
- b) analyse using constitutional provisions
- c) critical analyses of statutory laws
- d) various case laws.
- e) You need to demonstrate using case laws if feminist and/or queer (wherever applicable) perspectives have enabled any significant shift/have been effective/used in judicial decisions over a period of time.

You are expected to use primarily Indian laws but you can cite cases from any other jurisdiction to argue or do comparative analyses, wherever applicable. 25 marks

2. Gender based violence has been addressed in criminal law in India from the colonial period. There are three ways of analysing the several laws addressing sexual violence on women and girls. The first is using a historical timeline – colonial to post colonial legislations. The second is using a lifecycle model of violence. The last comprehends legal reforms as a response to women’s rights/feminist critiques/queer rights claims. Critically analyse all laws relating to gender based and sexual violence using the three approaches and mapping the interconnections between them. 25 marks

3. Write short notes on any one of the following: 10 marks

- a. Relation between MTP and PCPNDT Acts
- b. Problematic of Sexual Consent of Minors as understood in legal provisions

Indirect Taxes Laws

Full Marks- 50

Time- 4 Hours

i. Attempt any four questions.

1. “The centre and state financial relations has gone under change with introduction of The Constitution (101st Amendment) Act, 2016. The amendment provides guarantee for compensating the states for losses suffered on account of introduction of GST. To mobilise the revenue for the compensation, the parliament has enacted the GST COMPENSTATION CESS ACT, 2017. In the very recent past, there has been delay and disruption in the release of compensation amount to the states impacting their ability of public expenditure.” Critically examine the statement and suggest measures for the GST compensation crisis.

12.5

2. The WBNUS Kolkata, a university offers various degree, diploma and certificate courses to Indian and foreign nationals. It carries on funded/sponsored researches, runs mess for students and also holds various moot and other competition, seminar, workshops, conferences with or without charges. Is The WBNUS liable for registration under GST law? Provide the legal advice based on statutory provisions. If the WBNUJS is not liable for registration, would you suggest for voluntary registration. Provide reasons.

12.5

3. What do you mean by intra State and inter-State supply? Critically examine the rules for determination of “place of supply of goods” with the help of statutory provisions and suitable illustration(s).

3+9.5

4. Answer followings-

- a. Fundamental rule of Valuation and treatment of discount under GST. Critically examine it with the help of statutory provisions and suitable illustration(s)
- b. Composition scheme under GST, who should opt it? Support answer with reasons.

7+5.5 = 12.5

5. Critically examine the meaning and concept of “supply” under the GST law with the help of statutory provisions and suitable illustration(s). Does street performances by an

artist where people pay voluntarily and free distribution of samples by pharmaceuticals company, amount supply under GST law? YES OR NO, Give reasons.

8.5+4

6. Write short notes on **any two** of the followings-
- a. Regulation of ITC under GST Law.
 - b. Time of supply under GST Law
 - c. Concept of 'Composite supply' and 'mixed supply - tax implications under GST Law *vis-a-vis* erstwhile indirect system.
 - d. Co-operative housing society and GST implications

6.25+6.25

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
Online LL.B End-Semester Examination – Winter 2019 – 10th Semester – 2015 Batch

Information Technology Law

Full Marks: 60

Time – 4 Hours

ANSWER ALL QUESTIONS

1. The Single Bench of Delhi High Court has granted global injunction against Facebook and Google in an online defamation case filed by Swami Ramdev and ordered for global take down of specified content. Facebook and Google have appealed before the Division Bench against such order. Offer argument for both side with analysis of growth of law on Jurisdiction in Internet and decide. 20
2. The Supreme Court of India declared Sec 66A of Information Technology Act unconstitutional. Examine consequences of declaring Sec 66A unconstitutional. Draft the proposed amendment of See 66A with justifications. 20
3. Spam e mails account for 70% of total email traffic over the Internet. Examine the existing legal regime on spam mail in India. Examine also whether legal regulation for spam mail will be more effective than technological regulation or administrative regulation, if there is any. Draft a proposed law addressing following issues – definition of spam mail, civil remedy / criminal remedy, mens rea, punishment, compensation, forum and exceptions. 20

International Finance

Full Marks: 50

Time: 4 Hours

Instructions: Students are to attempt five out of six questions. All questions are of 10 (ten) marks each.

1. Royal Bank of Finland (RBF) has approached Bihar National Bank (BNB) for a Syndicated loan or order to fund a metro project in a Tier 2 City by BHRC. BNB is acting as the Agent Bank. BNB starts the due diligence of BHRC. Other banks, too expressed an interest in joining the Syndicate. BNB fails to come across the point that one of the significant assets of BHRC is encumbered. BNB drafted a clause excluding liability. During this entire process, RBF started running into financial difficulties, and the majority of the burden of the loan had to be shifted onto the other participants. This fact was outlined in the Information Memorandum. Decide on the liability of both RBF and BNB.

2. *No Bank*, an *Obligor*, had taken a loan from *Divided Bank (DB)*. Soon after, DB apprehensive of bankruptcy, wants to sell the loans to an SPV- ARTIL. 5+5=10
 - a) Advise DB on the transaction. The original mortgage deeds have a Clause of permitting further Assignment. The Sale must comply with Section 58 of The Transfer of Property Act and The SARFAESI Act.
 - b) ARTIL wants to bundle the loans and sell them to investors. Advise them. The investors would “only” want Bonds with “AAA” rating. How is this to be achieved?

3. ATC wheels a company has availed of a syndicated loan where GJ Morgan is the lead/ Agent Bank. ATC had given some warranties in the Information Document regarding Statutory Compliances obtained, which later turned out to be false. Certain Statutory Approvals were pending, which the company was expecting in the near future to be cleared. These were ultimately never obtained.
 - a) Is this a case of negligent misrepresentation on the part of the Agent Bank? Can they be held liable for the same? Should the Lead bank have discovered the omission?

- b) ATC had put in a carefully worded disclaimer clause in the Information Document limiting liability in case of omissions. Can such a disclaimer extend to negligent misrepresentations?
- c) What was the relationship between the Syndicate banks and GJ Morgan? Was it reasonable for the Syndicate to act on the advice of the Agent Bank?

(All parts have an equal weightage of marks).

4. A Bank TBI has approved a loan to Sky Airways. However, before disbursement, TBI runs into financial difficulties. They decide to securitize the loan to raise the finances. What steps should the SPV take to raise funds? How will the funds be routed from the Investors to the Borrowers? Will the SPV be allowed to make a profit from this transaction? How will the investors be repaid? What will the recourse in case of default of the Borrower?

Draft a deed of Securitization where all the above issues are adequately addressed. The deed should essentially cover the Legal points of the Transaction between the SPV and the investors.

5. a) What is the difference between Asset Backed Securities and Mortgage backed securities?
- b) An Indian Bank funding a syndicated Loan in foreign currency wants to hedge the risk associated with currency fluctuations? Is it legal to do so under the current Indian laws?
- c) What is the Principle of Proximity in the case of Syndicated loans? Explain with case laws?
- d) What is the Principle of Reasonableness? Explain in the context of conducting due diligence on the Borrower.

(Each part consists of 2.5 marks).

6. a) How does a Bank become bankrupt? Explain in terms of the Balance Sheet risks of Non- performing assets (NPAs)? (You can draw a Balance Sheet if you feel that would explain it better). (3marks)
- b) Why would Investors want to invest in a portfolio consisting of NPAs? (2 marks)
- c) What is a sub-ordinated loan? Under what circumstances can it be provided? (2 marks)
- d) What is a “True sale” of assets from a Bank to an SPV? What are the implications of stamp duty of such a sale? (3 marks)

International Refugee Law

Full Marks: 50

Time: 4 Hours

Instructions

1. All questions are compulsory
2. This is an online examination.
3. Students are required to complete the exam by the scheduled hour and **upload the same on Google Classroom as Word Attachments.**
4. Students working on Office-Libre or Open Office or any other software must save the file in a Word Compatible Format. **Submission of answers in any other format shall not be considered for evaluation**
5. **Students are directed to not write their names, roll number or any personal identifier in the word file, except for on Page 1 of the document which must be in the format specified below:**

FORMAT FOR FIRST PAGE OF THE ANSWER-FILE

NAME:

ID NO.:

DATE:

TIME:

SUBJECT:

[TO BE FILLED BY THE ACADEMIC SECTION]

CODE NO.:

[TO BE FILLED BY THE FACULTY AFTER EVALUATION]

Question No.	Marks [Figures]
1	
2	
TOTAL	

6. The file must be named in the following format: IRL_Your ID Number. So for a student with ID Number 216162: IRL_216162
7. **Any submission after the stipulated deadline shall be automatically segregated by Google Classroom and not considered. Therefore, students are requested to stick to the specified time.**
8. **Students shall be responsible for uploading the correct version of the answer-file. Any failure on their part to upload the right file shall lead to their answer-file being excluded from evaluation.**

ALL THE BEST

Questions

1. The Federal Republic of Andheria was a multicultural, multiethnic democracy consisting of two dominant linguistic communities, Klingonese, who speak the language Klingon and Alandusians, who speak the language Alandus. Klingonese were 71 % of the population in the state of Klingonia and Alandusians were 62% of the population in the state of Alandusia. In total, Klingonese were 58% of the population whereas Alandusians were 39% of the population. The remaining 3 % were scattered across indigenes tribes.

After a bitter civil strife, the leading political parties of Andheria decided to partition the country on the basis of existing state boundaries and create newly independent states of Klingonia and Alandusia in 2016. The partition resulted in bloody killings of linguistic minorities in both the newly born countries. Klingonese were killed in Alandusia and Alandusians were killed in Klingonia in a uncontrolled bout of targeted killings. These led to a displacement of more than 4 million Klingonese from Alandusia and of 2.8 millions Alandusians from Klingonia in a span of 4 months after the partition.

On January 16th 2018, the new constitution of Alandusia was adopted.

Article 1 of the Constitution provided:

The Republic of Alandusia is one, sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism.
- (c) Supremacy of the constitution and the rule of law.
- (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Article 3 on Citizenship provided:

"(1) There is a common Alandusian citizenship.

(2) All citizens are—

- (a) equally entitled to the rights, privileges and benefits of citizenship; and
 - (b) equally subject to the duties and responsibilities of citizenship.
- (3) National legislation must provide for the acquisition, loss and restoration of citizenship."

Article 9 on Equality provided: "Everyone is equal before the law and has the right to equal protection and benefit of the law."

Article 10 on Human Dignity: "Everyone has inherent dignity and the right to have their dignity respected and protected."

Article 11 on Life provided: "Everyone has the right to life."

Article 12 provided for the following:

"12. Freedom and security of the person:

- (1) Everyone has the right to freedom and security of the person, which includes the right— (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial;

- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right—

- (a) to make decisions concerning reproduction;
- (b) to security in and control over their body; and
- (c) not to be subjected to medical or scientific experiments without their informed consent."

Article 20 provided as follows:

"20. Citizenship. No citizen may be deprived of citizenship."

Article 39 further stated:

"39. Interpretation of Bill of Rights.

(1) When interpreting the Bill of Rights, a court, tribunal or forum—

- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- (b) must consider international law; and
- (c) may consider foreign law.

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill."

Along with migration of Alandusians from Klingonia across the borders, Alandusia also faced a crisis of slow migration of people forced by frequent floods and rising sea-level in the neighbouring country of Jalongi. The rising tide of migration from Jalongi led to a growing demand for a citizenship verification exercise among certain sections of Alandusian society. A group called the National Defence League of Alandusia submitted a petition to the Ministry of Home Affairs with signatures of more than a million persons who demanded that a Register be created of citizens and those who were identified as non-citizens be detained in Detention Centres.

The Ministry of Home Affairs consulted the Attorney General of Alandusia and sought his advice. He opined that Alandus is a signatory to the Refugee Convention 1951. However, persons displaced from Klingonia or migrants from Jalongi could not be considered as refugees. The Ministry of Home Affairs as appointed you as a Special Rapportuer to prepare a Report outlining a comprehensive legal framework that can be adopted in light of the International Legal Obligations of Alandusia and Constitution of Alandusia to address the protection needs of persons displaced from Klingonia and Jalongi and residents in Alandusia. Please advise.

[Marks 30]

2. Republic of Azaadia passed a Refugee Status Determination Act 1996. Section 3 of this Act stated that "every person who is a refugee within the meaning of the Convention Relating to the Status of Refugees 1951 shall be eligible for asylum'.

Mr. and Mrs. Salamanca who were residents of the neighbouring country of Chappania married in 1974. They were rich land owners and owned several farms on which they grew coffee beans, bananas, and raised cattle and other livestock.

In August 1999, while he was visiting one of his ranches, a group of left wing guerrillas, Peoples' Liberation Tigers of Chappania (PLTC) threatened Mr. Salamanca, demanding money to support their efforts. According to his wife, Mr. Salamanca refused. PLTC representatives told him that they would kill him if he did not pay. Around the same time, Saul and Carlos, the two older sons of the couple, noticed that they were being followed when they drove to the University where they both studied as well as when they walked around campus. One day, Carlos received an anonymous call shortly after he returned home from the University indicating that the person knew that he had just returned home.

PLTC made good on its threats two months later. On November 9, 1999, Mr. Salamanca stopped at a bakery near his home. A man approached Mr. Salamanca from behind. When Mr. Salamanca turned around, the man shot him twice in the head, killing him. Mrs. Salamanca asked the government to investigate her husband's murder, but a local judge advised her that pursuing the matter could endanger her children.

In October 2000, a group of approximately 25 PLTC guerrillas approached Saul and Carlos when they went to pay the workers on one of the ranches. (The sons testified that they visited the ranches every two weeks on Fridays or Saturdays for this purpose.) The guerrillas asked if the brothers were Saul and Carlos and demanded \$20,000 from them. Saul testified that the guerrillas told them that they knew "all of our movements, everything we did, where we studied. That they knew where we lived and also about my [younger] brother." The guerrillas warned Saul and Carlos that if they did not "collaborate with them" they would "run with the same luck as our father."

According to Saul, when he asked PLTC was doing this to his family, the guerrillas responded that it was because the Salamancas had more than so many others, their wealth based on exploitation of peasants, and had been able to study at the University. About a month later, Saul and Carlos fled Chappania for the Aazaadia.

Mrs. Salamanca remained in Chappania with her youngest son Juan, but PLTC soon focused its unwelcome attention on her. PLTC sent two letters to Mrs. Salamanca demanding payment; in the second letter, FARC threatened to kill Juan if she failed to do so. Mrs. Salamanca took the threats seriously and brought them to the attention of the local authorities, who unhelpfully responded that she should leave the country because there was no protection for her in Chappania. During this time, she removed Juan from school and went to live with her sister in a less affluent area of Caligutta, the capital of Chappania. About two weeks after receiving the letters, she sent Juan to live in the Aazaadia. Mrs. Salamanca stayed in Chappania until June 2001; during that time, she hid from PLTC and did not return to her home or the family's ranches. In June 2001, Mrs. Orejuela joined her sons in Aazaadia.

On being detected by the Ministry of Home Affairs of Aazaadia, the whole family applied for refugee status in pursuance of the Refugee Status Determination Act 1996. Please decide based on available information whether they would be eligible.

[Marks 20]

Law and Economics

Full Marks: 50

Time: 5 Hours

Answer Both Questions

1a) Business tycoon Mr. Gumbut has employed 20 ex service men, 10 of whom would be appointed as security personnel, while the rest were offered desk jobs. The field job involves life risk. A report by “The Republicans Express” media house showed that out of 1000 security personnel, on an average, three people die every year. People who chose the field job were offered a premium of Rs 500/month over the people who chose the desk job. The job contract was for 12 years.

How is “value of life” determined in this particular contract setting?

(All 20 ex service men were of the same rank). (10)

b) Mr. Gumbut, after buying his new Lamborghini accidentally killed a pedestrian. The CCTV footage conclusively proved that at the time of accident, the speed of his car exceeded the prescribed limit by a good 40 Km/hr. The district court held him strictly liable for the accident and ordered him to pay a compensation of Rs 2.5 crores to the deceased. The court, in its verdict, also referred to the higher salary given by Mr. Gumbut to his security personnel as a compensation for being exposed to life risk, as a proxy while determining the compensation. The next day, Prof. In Sen, an economist wrote an article in “The Radical” where he argued that the compensation is not “just”. Evaluate the professor’s argument in the light of Coase Theorem. (15)

2a) Explain the difference between temporal and cross-sectional adverse selection with respect to the insurance market. (5)

b) Using an illustrative example, show that low-risk individuals cross subsidizes high risk ones in a typical insurance market. (10)

c) How can an employment contract act as an efficient tie-in in this context? (10)

Legislative Drafting

Full Marks - 50

Time - 4 Hours

1. Prepare Amendment Bills on the following

(A) of section 13 of The Hindu Marriage Act, 1955

13. **Divorce- (1)** Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) has after the solemnization of marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition;;or

(ii) has ceased to be a Hindu by conversion to another religion;or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that petitioner cannot reasonably be expected to live with the respondent.

Explanation-

(iv) has been suffering from a virulent and incurable form of leprosy; or

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

(1A) Either party to a marriage, whether solemnized before or after the commencement of of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

- (i) That there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a degree for restitution of conjugal rights in a proceeding to which they are parties; or
- (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a degree for restitution of conjugal rights in a proceeding to which they were parties.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

- (ii) that the husband has , since the solemnization of the marriage , been guilty of rape, sodomy or bestiality; or
- (iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act,1958 (78 of 1956), or in a proceeding under section 125 of Code of Criminal Procedure, 1973 (2 of 1974) or under the corresponding section 488 of the Code of Criminal Procedure, 1898(5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or
- (iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the

marriage after attaining that age but before attaining the age of eighteen years.

Draft an Amended section 13 of the Hindu Marriage Act as part of the new legislation of Hindu Marriage Act 2020 in full narration of the section incorporating the following instructions:

- i. omit the word “voluntary” in clause (i) of sub-section 1
- ii. add the words physical as well as verbal abuse after the words “cruelty” in clause (ia) of sub-section 1.
- iii. Omit the word “not less than two years” and insert the words “more than one year” in clause (ib)
- iv. In the Explanation attached to clause (iii) “mental disorder” be defined as per Mental Health Act 1987.
- v. In clause (vii) of Sub-section 1 replace “seven years” and insert “five years”.
- vi. Both clause (i) & (ii) of Sub-section(1A) in place of “one year” insert “two years” or upwards.
- vii. In sub-section (2) clause (ii) add the word offences under POCSO Act 2013 after the words “rape”.
- viii. In Sub-section (2) clause (iii) add the words “ not paying Maintenance for two or more years ” be added after the words “for one year or upwards”; at the end.
- ix. Add two more points of amendment by addition of clauses which you think proper in the present socio-economic context and status of Indian women.

10

(B). 498A. Husband or relatives of husband of a women subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of women, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, “cruelty” means-

- (a) any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health(whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Draft an Amendment of section 498A of Indian Penal Code to include:

- i. cruelty to Men by wife and relatives of wife
- ii. mental agony of wife or husband as part of cruelty
- iii. preventing wife to accept any employment or continue in employment
- iv. Plea-bargaining as pre-requisite before awarding punishment
- v. There shall be minimum punishment of three years imprisonment and maximum five years of imprisonment.

The Draft shall be in full narrative form.

10

2. Apply Cood's Formula in the following provisions defining offences and prescribing punishments. Write full text in applying the formula. 5X2=10

(a) Section 15 of The Environment (Protection) Act, 1986

15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.- (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereafter, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

5

(b) Section 172 of Indian Penal Code

172. Absconding to avoid service of summons or other proceedings- Whoever absconds in order to avoid being served with a summons, notice or order, proceedings from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

Or, if the summons or notice or order is to attend in person or by agent, or to produce a document or an electronic record in a Court of Justice, with simple imprisonment for a term which may extend to six months or, with fine which may extend to one thousand rupees, or with both. 5

3. Draft a New Bill on Epidemic Diseases Act repealing Epidemic Diseases Act, 1897 observing the following Instructions:

i). Preamble

ii). Short title and extent

iii). Definitions

iv). Power of State Government to take special measures to combat dangerous epidemic diseases

v). Power of Central Government

vi). Penalty for violation of any provision of this Act or Regulation made under this Act . 20

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

Online LL.B End-Semester Examination – Winter 2019 – 10th Semester – 2015 Batch

The Law of Privacy

INSTRUCTIONS

1. Each question is worth 30 marks. Both questions are COMPULSORY. Full Marks = 60.
 2. Total Time = 5 hours.
 3. Answer briefly. Address the issues raised directly, do not meander. Refer to the readings taught in class to connect the issues to the theory.
-

ALL THE BEST.

1. The year is 2022. The population of the world has reached 8 billion.

In 2020, the outbreak of the COVID-19 pandemic created a global health crisis, which resulted in a million people dying all around the world. It took about a year to contain the spread of the disease, with almost half the population of the world being infected by the virus. Though a vaccine was invented and immunity built up against the disease, the scale of the situation exposed the lack of adequate healthcare infrastructure globally, and the need for effective preemption of diseases.

The outbreak began from the People's Republic of Confewshun (hereinafter PRC), the most populous country in the world, where more than a fourth of the world's population resides. It began from 2 infected people in the first week, spreading to more than 100 in the third, and finally up to 1000 patients within the same month. This rapid growth lay bare the enormity of the crisis that confronted the nation, and the government responded by introducing a host of measures including the suspension of air-travel, complete shutdown of markets and institutions (other than essential services) and enforced curfews across large parts of the country. As part of these measures, surveillance and monitoring activities have been instated to track the virus infected carriers, and enable effective quarantining, through the provisions of the '*PRC Public Health and Safety Act, 2020*' (hereinafter, the Act). The provisions of the Act enabled multiple government departments to merge their functions into a single body, which was given unprecedented authority to handle the situation. Among the techniques adopted under the Act were the following:

- i. Monitoring Smartphones to track location of individuals, in conjunction with facial recognition through traffic cameras for immediate identification;
- ii. Obliging people to periodically register their body temperature and medical condition through a government-run mobile application;

- iii. Enabling people to identify suspected and infected corona-carriers in their vicinity, through the use of several government-run and private mobile applications;
- iv. Mandatory quarantine periods for those who came in close proximity to 'potential carriers', as identified by the health agencies;
- v. Identifying and imposing penalties on individuals for spreading unverified information on online messaging portals and social media.

The government claimed that these techniques, albeit draconian, were successful in arresting the unhindered spread of the disease and ensuring proper healthcare could be provided in a timely manner. In order to prevent future outbreaks and enable preemptive action, the government allowed the Act to remain operational even after the COVID-19 virus was neutralized.

- a. You are the empaneled advocate for an NGO called People's Liberties Forum (PLF). The organization seeks to challenge the constitutionality of the Act, and in particular, each of the measures adopted as violative of individual privacy, and allied liberties. Write a memo, advising them on the possibilities of success, if such a challenge were to be brought before the Supreme Court of PRC.

[30 marks]

- b. In addition to the above, the Ministry of Health has introduced a new legislation, titled '*The Epidemic and Other Diseases Prevention Act*' (EPA) which was passed by the PRC Parliament, amid opposition protests. The EPA mandates *inter alia* each citizen wear a government-issued 'health-tracker band'. This band must be worn at all times by the citizen, and taking it off without prior approval from the Local Health Officer is made a cognizable offence. The band tracks blood pressure, body temperature and heart-rate, among other key physiological factors round the clock, and continuously feeds the information to servers monitored by the Health Department. The purpose of this exercise is to preempt the spread of contagious diseases, and ensure that emergency healthcare facilities can be extended to those registering a spike in blood-pressure, for example, to prevent avoidable deaths.

Comment on the constitutionality of the EPA, in the context of biometric databases, with suitable examples. Does the possibility of preempting death outweigh the cost to individual autonomy, privacy and dignity?

[30 marks]

The Constitution and ordinary laws of PRC are in *parimateria* with India

-----THE END-----

Law and Secularism

Full Marks: 60

Time: 4 Hours

Attempt FOUR Questions. Question no. 1 is Compulsory.

Q. 1 Province X passed Province X Dalit Temple Entry Act. The Act Provided that every Hindu Temple shall be open to Dalits. Members of a particular sect argued before your Bench that their sect represents a distinct and separate religious sect unconnected with Hinduism, and as such, their temples are outside the purview of the said Act.

The members of the sect claimed separate status on four grounds. First, they argued that their *Guru*, the founder of the sect, considered himself the supreme God. Second, they argued that the temples of their sect cannot be regarded as Hindu temples since they worship their *Guru* and not any traditional Hindu deity. Third, they pointed out that they propagate the idea that worship any other God other than their *Guru* is a betrayal of faith. Fourth, they opined that there is a procedure of *Diksha* into their sect by which devotee assumes a distinct and separate identity.

- a) Decide this case by taking help of various judicial pronouncement by Supreme Court in which it dealt with the nature of Hinduism.
- b) Do you think that in its reformist zeal Supreme Court tried to subsume the multiplicity of beliefs, practices and doctrines of Hinduism under one omnibus term? **(10+ 5= 15 Marks)**

Q.2 Charles Taylor believes that there is truth in the claim that secularism has Christian roots but it is wrong to think that this limits the application of it to post- Christian societies. Discuss. **(15 Marks)**

Q.3 The first Amendment rests on the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. [**Justice Brennan concurring in Abington, 374 US 245**]

In the light of abovementioned comment explain the nature of American secularism with the help of prominent cases decided US Supreme Court on the nature of American secularism. **(15 Marks)**

Q.4 'Secularism is impossible as a credo of life because the great majority of the people of South Asia are in their own eyes active adherents of some religious faith. It is impracticable as a basis for the state action either because Buddhism and Islam have been declared state religions..... And it is impotent as a blueprint for the future because, by its very nature, it is incapable of countering religious fundamentalism and fanaticism.'
Discuss this abovementioned passionate hypothesis against secularism proposed by T.N. Madan. Also discuss the pitfalls of his hypothesis. **(10+5=15 Marks)**

Q.5 Discuss the arguments presented by Marc Galanter against D.E. Smith's survey of the relations between state and religion in India. Explain Galanter's view on Indian judiciary's take on Hinduism and secularism. **(7.5+7.5=15 Marks)**

Q.6 Write critical notes on any **two**: **(7.5+7.5=15 Marks)**

- a) *rex est imperator in regno suo* and *cuius regio, eius religio*
- b) First and Second threshold of French Secularism
- c) H.M. Seervai's critique of Supreme Court decision in *Rev. Stanislaus v. State of M.P.* (AIR 1977 SC 908)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
Online LL.B End-Semester Examination – Winter 2019 – 10th Semester – 2015 Batch

Securities Law

Full Marks – 50

Time – 4 Hours

Open Book Exam.

Examinees are free to refer to materials of their choice.

Answer both the questions

2 x 25 = 50 marks

1. With a view to encourage more investors to hold their securities in electronic/ demat mode, the Capital Market Regulator of India (hereinafter CMRI) issued a circular making the entry of investors to the demat environment (of holding securities), 'free', except from the applicable statutory charges. The purpose behind the issuance of such a circular by the CMRI, is that the CMRI found that depositories and their participants had been levying transaction charges on the beneficial owners (hereinafter BO) whenever these BOs transferred their securities from one depository participant (hereinafter DP) to another. However, these DPs did not levy any pecuniary charges on the investors for the closure of their demat account(s) by these investors. In other words, the circumstances were such that whenever an investor who was not satisfied with the services of a DP wanted to transfer all his securities/holdings in his demat account to another DP, the said transferor DP and the connected Depository levied the transaction charges on the investor(s). According to the CMRI, this was unfair and unreasonable, since it discouraged the investors to close their accounts and transfer their securities to other participants or depositories, if the investor is dissatisfied with services of the depository or the participant. The CMRI in its wisdom felt that the investors should be freed from bearing this cost or additional charges that were being levied on them by the depositories or their participants.

Accordingly, the CMRI, issued a circular conveying to the depositories and all their participants and also to the investors in general its decision that 'no charges shall be levied by a depository on its participant and consequently the participant shall not levy any charges on a beneficial owner when the latter (beneficial owner) transfers all the securities lying in his account to another participant of the same depository or to another depository'. It was made clear that the beneficial owners account with the transferee

participant and the transferor participant should be one and the same i.e. the two accounts should be identical in all respects. It was also clarified that in case the account with the transferor participant was a joint account, the account with the transferee participant should also be a joint account in the same sequence of ownerships. The depositories and their participants were advised to put in place necessary systems and procedures to differentiate between an account closure transaction and a normal share transfer transaction before the coming into force of the said circular so as to avoid any problems in the live environment and ensure smooth implementation of the aforesaid decision of the CMRI. The Depositories and the DPs were also advised to make suitable amendments in their relevant bye-laws, rules and regulations to implement the decision of the CMRI. A depository registered with CMRI challenged the said circular issued by the CMRI.

The Federal Depository of India Limited (hereinafter FDIL), a depository registered with the CMRI, is aggrieved with the aforementioned circular issued by the capital market regulator in India i.e. CMRI. FDIL is of the view that CMRI has no legal right to interfere with the charges levied by a depository, as the depositories have to bear a cost in order to provide depository services to the investors and it has every right to pass on these cost(s) in the form of charges to the investors who avail their services or who wish to exit/withdraw their holdings from a particular DP. Moreover, FDIL is also of the view that it is a depository registered as a 'for profit' company under the Companies Act, 2013 and the MOA and AOA of the FDIL, gives FDIL the right to determine charges, earn profits by levying and collecting charges from the DPs (who were in turn passing the charges to the investors). Hence, FDIL is of the opinion that the CMRI has over-stepped its own jurisdiction and has infringed the right of FDIL to freely price its services.

FDIL is exploring options to sue CMRI and to legally set aside the aforementioned circular.

In this regard, draft a detailed advisory note for your client i.e. FDIL on the following points. Make use of appropriate case laws and legal provisions in force in India to prepare the advisory.

- A. Whether FDIL would succeed in obtaining an order to set aside, the circular issued by CMRI. Give reasons for your answer.

12.5 marks

- B. Whether the Securities Exchange Tribunal (hereinafter SET), which acts as the appellate forum for securities disputes in India, has the authority to entertain an appeal from the order passed for or against the setting aside of the said circular? Give reasons for your answer.

12.5 marks

2. Alcon Pharma (hereinafter Alcon) is a biopharmaceutical company primarily engaged in bio-pharma product development. The company is listed on BSE and National Stock Exchange of India Ltd.

Mr. Arav is the Chairman and Managing Director of the company. He along with his family holds 37.31% as on March 31, 2017 which constitutes the Promoter Group of the company. The shareholding pattern of the company is as under:

Category of shareholder	Year ended March 31, 2012		Year ended March 31, 2011	
	No. of Shares	% to total share holding	No. of Shares	% to total share holding
Promoter Holding	55,57,178	38.06	55,72,178	44.93
Non-Promoter Holding	90,45,822	61.94	68,30,822	55.07
Total Share Holding	1,46,03,000	100.00	1,24,03,000	100.00

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received a reference dated May 19, 2015 from the Office of Commissioner of Customs, Central Excise and Service Tax against Alcon. Based on the investigation of the Commissionerate, it was observed that the books of accounts of the company was being tailored to a considerable extent and various fictitious transactions were recorded by the company in the name of Bio-IT Services to project a rosy picture of the company to its shareholders.

Pursuant to the aforesaid reference, a detailed examination was carried out by SEBI to ascertain whether books of accounts of company were manipulated by way of fictitious transactions to project a rosy picture of the company to the shareholders in 2010-11 and 2011-12.

As per the annual reports, the company derives revenue from Formulations (which include herbal as well as allopathic formulations) and Bio-IT services. The sales of the company for the years 2010-11 and 2011-12 is as under:

(₹ in lakh)

S. No.	Sales	2010-11	2011-12
1	Formulations	1760.31	1324.35
2	Bio-IT services	762.01	734.53
	Total	2522.32	2058.88

A summary of Profit and Loss accounts of the company for the financial years 2010-11 and 2011-12 is as under:

₹ (in lakh)	2011-12	2010-11
Sales- Formulations	1324.35	1760.31
Sales- Bio IT	734.53	762.01
Other Income	43.32	10.54
Total Revenue	2102.20	2532.86
Total Expenses	2073.79	2254.06
Profit/Loss Before Tax	28.41	278.80

The company has shown sales to various companies and well-known brands such as Fizer Limited, Clenmark Pharmaceuticals Limited, Merk Limited, Jhandu Pharmaceuticals, Klaris Life Sciences etc. as well as to various individuals. During inquiry/ investigation by the SEBI, these entities replied that after verification of their books of accounts and audited financial statements, they have not come across any services being availed from Alcon during the financial year 2010-11 and thereafter.

Additionally, the Managing Director of the company (i.e. Mr. Arav) and the statutory auditors of Alcon have also admitted before SEBI officials that the company received no funds from the majority of invoices. The statutory auditors confirmed this fact, vide their certificate dated January 31, 2017 which indicates that the company showed fake sales in 2011-12.

SEBI's examination found that the company resorted to creative accounting and misstated its financial statements in order to present a rosy picture of its affairs by overstating its sales to the tune of Rs.1072 lakh. As a result of this (misrepresentation), the prices of the shares increased in the secondary market, when the promoter sold off their stake in the company, around FY 2011 and FY 2012 (as reflected in the first table of this question).

To this, the company clarified that though Alcon provided clinical testing and trial services to the aforementioned well-known brands/companies, however, none of them acknowledged or paid Alcon for its services and hence the same may not reflect in the financial statements of these clients/companies. Also Alcon could not produce a copy of any email(s) or other written forms of communication that took place between Alcon and its client companies in order to corroborate the exchange of services leading to the aforementioned sale transaction between them. Alcon maintained that all the sale contract was verbal.

Assuming you to be the adjudicating officer of SEBI and applying appropriate provisions of law write a detailed reasoned judgment levying appropriate penalties (if any) on Alcon. Analyse each and every fact provided in this question. **25 marks**

Women and Criminal Law

Full Marks: 50

Time: 5 Hours

1. An 11 years old girl was repeatedly raped by a 13 years old boy for few months. The girl complained of stomach pain to her parents. When her parents took her for a medical check-up, doctors told them that she was pregnant. When her parents asked her, she told them what had happened. Thereafter, they filed a complaint against the boy.

(a) The father of the victim approached you to take the case. Advice him about the current legal position in this case. [5]

(b) Suppose the girl is 21 weeks pregnant and she does not want to terminate the pregnancy. What is the legal position in such case? [5]

2. Seema and Meena are best friends. Both are central government employees working in the same office. Due to complications in pregnancy and multiple miscarriages, Seema requested Meena for surrogacy and Meena agreed to be the surrogate mother.

In this fact scenario, who would be entitled to apply for maternity leave, whether the commissioning mother or the surrogate mother will get the maternity leave? Support your answer with reason and relevant case laws. [5]

3. X is the daughter -in -law of Y. X always causes physical abuse, verbal and emotional abuse to Y.

Section 2(q) in The Protection of Women from Domestic Violence Act, 2005 provides,

(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

Can Y file a complaint against X for domestic violence? Support your answer with reason and relevant case laws. [5]

4. A law intern (X) alleges sexual harassment by a judge (Y). Unfortunately, X was unable to substantiate the complaint or provide adequate proof. Now, the judge wants to take legal action against her.

Can X be punished for false or malicious complaint? [5]

5. Do we at all require the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, as we already have multiple legislations including Indian Penal Code, which provides specific provisions related to trafficking of persons?

Examine the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 and give your views regarding the Bill, mention criticisms (if any) and make necessary recommendations. Support your answer with relevant cases, law commission reports and any other document, which you deem, fit. [2+3+5 =10]

6. Technological revolution has resulted in the development of new forms of communication, such as internet, multi-media messaging, over-the-top (OTT) services and applications like Skype, Viber, WhatsApp, Chat On, Snapchat etc. Apart from benefits through these new forms of communication, it has also resulted into indecent representation of women on digital messaging platforms.

Keeping in mind these technological advancements, what amendments do you suggest to widen the scope of the existing law to prevent indecent representation of women through any media form? [5]

7. How the Code on Wages, 2019 is beneficial for women? [5]

8. Social media platforms like Face book, Twitter etc. have given stalkers a new weapon to victimize and harass others online.

Under Indian Penal Code, only a man can stalk a woman. This means that, the law is not gender neutral and the recourse is only for the woman. However, male and female stalkers do not differ in the sense that they are both harassing their victims and can be equally dangerous.

What is your view on the recourse available in cyber stalking cases, if the stalker is a woman, and the victim is a man? Do you suggest any amendment in the existing legislation? [5]