

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

QUESTION PAPERS: END SEMESTER EXAMINATION WINTER 2018-'19

MARCH-APRIL 2019

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THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 6th Semester – 2016 Batch

ADMINISTRATIVE LAW

Full Marks – 70

Time Allowed: 3 hours

Instructions:

- Students are allowed to consult Module
- Answer all questions
- Kindly use relevant materials, cases and statutory provisions in support of your answer
- No clarification can be sought in the exam hall

1. Mr. Tolan joined the Indian Administrative Service (IAS) in the year 1982. He was a Class-1 Health Officer in the Department of Public Health, Govt. of India. As per the Service Rules, his order of retirement would be until December 31, 2018 when he would have attained the age of 60 years. In June 2006 when he was 50 years of age, he was served with an order the text of which is as follows-

‘Whereas the Government is of the opinion that it is necessary in public interest that you, Mr. Tolan, Health Officer Class I working as District Health and Family Planning officer at Tiruchanapalli, should retire from service with effect from the 15th August, 2006.

Now, therefore, as required by Civil Service Rules, you are hereby given 3 months notice that you shall be retired from service with immediate effect thereafter’.

Based on the aforementioned order, Mr. Tolan contended that ‘The order vitally affected his right to continue till the age of superannuation, i.e. 60 years. Further, with the prospect of becoming the Head of the Department, the order should have been passed only after giving him an opportunity having regard to the principle of *Natural Justice*

Examine the validity of the compulsory retirement order passed against Mr. Tolan. Also, advise Mr. Tolan on his future course of action. **6 marks**

2. Central University of Aurangabad has been established by the Government of India through an act of parliamentary. In order to cater to the accommodation crisis of a girl's hostel, the university general council took a decision to construct the same. Accordingly, the Registrar of the university invited bids by notifying in various newspapers spread across the State. Company A, B and a few others submitted tenders for the construction of the girl's hostel. Company A's tender was the lowest but the contract went to 'B' whose tender was higher than that of 'A'. Company A's tender was rejected because his experience was limited to executing small works; Company 'A' had never executed a work of such a magnitude and its past performance was not satisfactory. On the other hand, B's performance had always been satisfactory. Company 'A' alleges that such a determination, on the basis of past performance, amounted to blacklisting it and this was done without giving the Company an opportunity of hearing to enable it to contradict its past performance. Hence, Company 'A' claimed that it ought to have been given a hearing before its tender was rejected. Therefore, the University's actions amounted to giving favorable treatment to company 'B'.

Decide the validity of awarding the contract of tender in favour of company 'B' and to what extent is Company 'A' claim justifiable under the law. **6 marks**

3. The Executive Engineer, P.W.D., Government of West Bengal invited tenders for construction of an over bridge at Chingrighata. After the bidding process, P.W.D issued a letter of acceptance in favor of one Construction Company named, N.K Banerjee & Sons Construction Ltd. But no formal contract was executed. The Company successfully completed the project within the time as desired by the P.W.D. After the completion of the project, a dispute started with respect to payment. The government alleges that the whole project carried out by the company was invalid for the following reasons –

- P.W.D Chief Engineer is not an authorized person to issue work permit;
- A formal contract was not signed as required under the law;

Based upon the above reasons, the Government decided to withhold the payment.

The dejected Contractor approached the NUJS Legal Cell for legal aid. Advise him on the validity of the Government's reasons. **6 marks**

4. In order to promote ease of doing business and attract investment in the State of Uttar Pradesh, the state has unveiled its new industrial policy which includes providing electricity at concessional prices. Accordingly, the UP State Electricity Board framed its tariffs vide notification dated 20.1.2012. By this notification: 33% tariff concession was allowed to the new industrial units for a period of five years from the date of commencement of the supply of the electricity. The above concession was initially valid till 20.01.2017.

Based on these incentives, Patanjali Organic Ltd., established industrial units in the township of Agra. The Company was about to start its production after executing an agreement with the UP Power Corporation as well as undertaking massive investments for infrastructure. After two years, the UP State Electricity Board by a notification dated 18.1.2014 reduced the concession given earlier from 33% to 17%. The reason cited by the Board was due to the shortage of coal in domestic market along with steep rise of international coal prices. The Board noted that coal was the primary resource for its thermal electricity generation.

Patanjali Organic Ltd. decided to move the Prayagraj High Court by way of a writ petition against the corporation. They contended that the subsequent notification is arbitrary and not permissible.

You are the Advocate General of Uttar Pradesh and have been asked to prepare the written brief for the UP State Electricity Board. **6 marks**

5. The SSR Bank of India has its Head Office in Kolkata and a Branch Office at Salt Lake, Sector III. Mr. Kania joined the service of the bank branch in Salt Lake on 1-9-1990 as a Peon and subsequently he was promoted to the post of Head Peon. In the year 2018, Mr. Kania was working as the Head Peon and at that time the Manager of SSR Bank received repeated complaints regarding his misbehavior with the clients of the Bank, its Officers and the other members of the Office Staff. In view thereof, the Manager of the bank

constituted a departmental inquiry, and served Mr. Kania a charge-sheet. After a detailed inquiry into the acts of misconduct of the delinquent employee, the Inquiry Officer found Mr. Kania guilty. Acting on the said findings of the Inquiry Officer, the Disciplinary Authority again issued a show-cause notice calling upon Mr. Kania to show why the punishment of dismissal should not be imposed upon him. After a detailed consideration of all the relevant facts and provisions of the Bank rules and regulations, the Authority came to the conclusion that the Mr. Kania was guilty of committing acts of misconduct. The Disciplinary Authority discharged him from service with effect from 31st March, 2019.

Having been aggrieved by the findings of the Disciplinary Authority, Mr. Kania approached you for advice for challenging the order of discharge. **6 marks**

6. The Lokpal Committee appointed Justice PK Yadav as the Lokpal under the Lokpal and Lokayukta Act, 2013. Justice Yadav received a complaint from Mr. Krunal Kant, a public spirited citizen, alleging corruption against Class I bureaucrat, Mr. Pandey who was serving as the Cabinet Secretary. In exercise of his powers, Justice Yadav asked for a report from the CVC, Mr. JK Abdullah. While providing the Lokpal with the report, Mr. Abdullah seeing the urgency of the action directed the CBI Director, Ms. Vaid to initiate an investigation against Mr. Pandey. Justice Yadav, seeing this action as an extension of the CVC's powers decided to pass an order removing Ms. Vaid from her post as CBI Director. Justice Yadav justified his decision on the basis of having superintendence over the CBI in his position as the Lokpal.

Ms. Vaid aggrieved by the order approached you for advice. Discuss all legal issues raised by the factual matrix in light of relevant case laws and statutory provisions.

6 marks

7. Comment on the legality, propriety or validity of each of the action/ decision taken by the public servant or administrative authorities concerned, in the following cases:

3 x 5 = 15 marks

- a. District Magistrate, 24 Parganas, directed the Sub Divisional Magistrate, Bidhan Nagar, to promulgate a curfew around the Institute of Leather Technology Campus.

- The SDM accordingly imposed the curfew in response to the direction given by the DM without applying his mind. **3 marks**
- b. The Home Ministry of the State of Kerala instructed the Superintendent of Police (SP) not to allow Mr. Madhavan, Member of Right Wing Activist Group to hold an election rally in support of his political party in the District of Kannur in Kerala. The SP refused to carry out that arbitrary order. Following this, The Home Ministry immediately transferred him out of district. **3 marks**
- c. The Vice- Chancellor, Kolkata National University constituted a Library Committee consisting of three teachers, Prof. A, Prof. B & Prof. C for selecting books to be prescribed as text books for the students. One of the books put up before the Committee was authored by Prof. B. However, he did not take part in the deliberations of the committee when his book came up for consideration. The committee ultimately recommended 30 books including the book of Prof. B. **3 marks**
- d. The UP Legislative Assembly passed a Statute for taking over a private institute named after its former Prime Minister. The Act also provided for the termination of the services of its employees. In pursuance of these provisions, the Government terminated the service of all the employees of the institution. **3 marks**
- e. A few students of MRI University had gone for picnic. After returning from the picnic, a few girl students wrote a complaint to the university alleging that they were harassed by one boy Mr. X. As a result of the complaint, the University authorities conducted summary proceedings, after hearing from girl students in the absence of Mr. X. Thereafter, Mr. X was suspended from the University until further inquiry. The university constituted inquiry committee headed by the senior most officer of the University. Inquiry committee completed the hearing of all the girls students in the absence of Mr. X. Mr. X was not allowed to cross examine the witnesses against him. However, all the documents relied on were submitted to Mr. X. After the completion

of the inquiry, based on the findings, disciplinary committee of the University expelled Mr. X from the University. **3 marks**

8. Choose correct answer to the following: **1 x 4 = 4 marks**

A. Which one of the following statement is true

- i. Executive instructions cannot have retrospective effect at all.
- ii. Executive instructions cannot be issued without specific enabling provisions in the statutes
- iii. Executive instructions can have retrospective effect, if authorized by act or statute.
- iv. Executive instructions can have a retrospective effect, if not authorized by Act or Statute but have fair, just and rational.
- v. All of the above.
- vi. None of the above. **1 mark**

B. Rule of Law in Indian context connotes:

- i. Supremacy of Judiciary.
- ii. Supremacy of law of the law of land and legal spirit.
- iii. Equality and equal protection of laws.
- iv. Supremacy of Parliament.

Answer by using the codes

Codes:

- A. (i) and (iii)
- B. (iii) and (iv)
- C. (ii) and (iv)
- D. (ii) and (iii) **1 mark**

C. Which judgment of the Supreme Court has blurred the distinction between quasi-judicial and administrative action:

- i. Maneka Gandhi v. Union of India.
- ii. Harla v. State of Rajasthan.
- iii. A.K Kraipak v. Union of India.
- iv. A.K Gopalan v. State of Mysore
- v. All of the above.

1 mark

D. Writ of Mandamus will not lie against

- i. Parliament.
- ii. President of India.
- iii. Public Corporation.
- iv. Courts and Tribunal.
- v. All the above.

1 mark

9. Write Short notes on any **three** of the following:

3 x 5 = 15 marks

- a. Distinguish between directions and rules.
- b. Error of law on the face of record.
- c. Laches in filling a writ petition.
- d. Discretionary relief.
- e. Public participation in Administrative decision making as a step towards good governance.
- f. Gram Panchayat's autonomy in protecting the environment vis-à-vis administrative interference.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

Advanced IP Law

Full Marks – 50

Time Allowed: 3 hours

Note:

A. Answer any **Five questions** in total. All questions carry equal marks

B. Read the questions as it is, no clarifications can be sought

1. “Heritage Mysore” is a Tourism company which is quite popular for its hotel and tourism services across the country. Heritage Mysore is having a branch at Bombay where in, it has named the lounge of the hotel as “Mysore Sandal”. The said lounge of the hotel became famous and there has been very good business for the hotel. As a complement to the customers who pay the bill of 5000 rupees and above, the hotel is giving “Mysore sandal soap” as a token of respect and gift.

Whereas, Mysore Sandal Soaps Ltd is a public limited company which has established business across South Asia. The company has registered “Mysore Sandal Soap” with Geographical Indications Registry as a unique detergent product made from pure “sandal wood” originating from the region of Mysore. Having noticed the use of name “Mysore Sandal” by Heritage Mysore hotels in its branch at Mumbai, Mysore Sandal Soaps Ltd intends to initiate infringement proceedings against Heritage Mysore Hotels for violation of their geographical indication.

Heritage Mysore contends that they are using the name 'Mysore Sandal', but they are neither selling Mysore sandal soaps nor any other similar product. Further, it was argued that; geographical indication protection does not entail the registered owner from stopping others from using the name of the indication for different purpose which is no way connected to the registered purpose of the geographical indication.

In this background of the case; identify the contextual issues involved and address the same in the light of principles of protection of geographical indications Law. Decide whether infringement proceedings intended can be successfully instituted against Heritage Mysore? Support your response with the help of decided case laws. (1*10=10)

2. Debate on the role of the TRIPS agreement in restructuring and advancing the canopy of intellectual property laws in India. It is argued that under the influence of the agreement member nations have not only amended the intellectual property laws in their domestic spheres but have restructured the canons and cantors of their respective intellectual property laws. In this regard, highlight the role played by the TRIPS agreement in advancing the canopy of Intellectual property Laws in India with special emphasis on the scope of 'subject matter of protection' under patents and trademark laws in India. (1*10=10)

3. Mahindra Motors Ltd is an established Company in the Indian Automobile Market. The company is coming out with "Mahi 2020" a new Car which is going be released to the market in the year 2020. Indian Cricket Icon, Mahendra Singh Dhoni (MSD) who is popularly known as "Mahi" has been signed in as the brand ambassador of the new car. The Company in its unit at Indore, Madhya Pradesh working on the design and making of the car. Since, automobile market is not only influenced

by the efficiency but as well by the outlook of the product, the Company has assigned the task of designing the outlook of the car to ' Outlook Motor Company,' Surat which is known for its best innovation in shape and outlook of the products. In this regard; Outlook Motors has supplied Mahindra with the artistic sketches of the design they have developed on the basis of the description given about their new Car. Mahindra Company impressed with the artistic sketch of the outlook design of the car intends to protect the same. Later, once the design is applied and used on the Car, Mahindra intends to seek industrial design protection before the Design Controller in India. Give your opinion to Mahindra about how the artistic sketch on the outlook design of the care could be protected before it is applied and used on the industrial goods. (in this case new Mahi 2020 Car) Advice Mahindra on how the actual design of the outlook of the car could be protected once it is applied on the new Car with the help of decided case laws. (1*10=10)

4. It is argued that Indian plant varieties and farmers rights Act is more advanced than most of the similar systems around the world. In this regard most of the countries which are rich in terms of biological resources are considering the Indian plant varieties and farmers rights system as a role model in terms of encouraging intellectual endeavors of breeders, while balancing the same with the community interests and farmers rights. Besides, developing nations consider the plant varieties system in India to be more driven towards the protection of community rights. In this back ground analyze the salient features of Indian Plant Varieties Protection system and their significance in the agrarian economies like India. (1*10=10)

5. Absolute is a famous beverages company which sells its popular brand Vodka in India. The company has come out with a new Vodka brand with 'apple flavor' which the Company intends to release into the market in

February, 2020. A conference of international beverages and Vodka producers was hosted by the International Beverages Association, at Tokyo during March 15-18, 2019. 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, Absolute Company made a presentation regarding the research work that it has undertaken for introducing new Apple Flavor Vodka brand. It was also mentioned that the Apple Flavor Vodka brand will be released into the market in February, 2020. Off late on 25th March, 2019 Smirnoff announced that it is going to release new apple flavored Vodka brand to the market in January, 2020. The Absolute Beverages Company thinks that their formula of new Apple Flavored Vodka, which is their trade secret, has been copied and misappropriated by the Smirnoff Company during the said conference. The company wants to institute suit against Smirnoff Company for alleged misuse of their trade secrets. Advise the Absolute Company on how to go about in enforcing their trade secrets with the help of decided case laws.

(1*10=10)

6. Write short note on any four of the following: (2.5*4=10)
- A. Customary IPR
 - B. Functional Designs
 - C. Gene Fund
 - D. Terminator technology
 - E. Copyright Piracy in Designs

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 6th Semester – 2016 Batch

ALTERNATIVE DISPUTE RESOLUTION

Full Marks – 65 marks

Time Allowed: 3 hours

Instructions:

(1) Students are allowed to carry the Bare Act of Arbitration and Conciliation Act, 1996 without commentary.

(2) Justify your answer with reasons and relevant case laws.

1. There is an ongoing Mandir (Temple) – Masjid (Mosque) land dispute case in Kolkata. To resolve the dispute the Court ordered a court-monitored mediation to arrive at a "permanent solution" to this politically and religiously sensitive issue. However, in the past, mediation was used many times to find out the solution for the dispute, but no success was achieved. Many Hindu religious sangathan (groups) however, is still opposing to mediation in the matter, terming it a futile process, which in the past also did not elicit any favorable outcome.

You are appointed by the Court as one of the mediators.

(a) Do you think this dispute is fit for mediation? State reasons. [5]

(b) What will be the approach from your side to resolve this dispute through mediation?

[5]

2. A and B entered into a contract for the construction of a school in New Town, Kolkata. The payment of money is to be made to B (the contractor) in two installments. The second installment has to carry an interest of 18% on the principal amount of the first installment if not paid within 30 days of the due date. A is unable to pay the second installment within the stipulated time. A dispute arose as to the payment of money between the parties and the parties enter into an arbitration agreement. A initially takes part in the arbitration proceedings initiated at the behest of B. However, later he

challenges the validity of the arbitral agreement on the basis of undue influence and wants to move to the civil court having jurisdiction. For legal assistance A approaches you.

(a) Can A take such a plea and move to the court?

(b) Is there any remedy available to A in this case? [2 + 3 = 5]

3. (a) Rohan and Rakesh both are Indians. They entered into a contract which has an arbitration clause to resolve all disputes arising out of the contract. They choose London as the seat of arbitration.

Can two Indian parties choose a seat of arbitration outside India so as to escape the application of Indian laws? [3]

(b) Briefly mention Indian Public Policy Rule with regard to Arbitral awards based on leading Supreme Court Judgments. [7]

4. (a) Can any communication or admission made by a party during the conciliation proceedings be relied upon in a subsequent criminal case? [5]

(b) Arun and Bob are from two different Countries, India and Sri Lanka respectively. They want to draft an arbitration clause to be incorporated in the contract between them for resolution of future disputes.

What are the guidelines for drafting International Arbitration Clauses? [5]

5. Write Short Notes: [3 x 5 = 15]

(a) Mandatory Pre- litigation Mediation in Commercial disputes

(b) The Arbitration and Conciliation (Bill), 2018

(c) *Omnia Prius Experiri, Quam Armis, Sapientem Decet*

6. Difference between: [3 x 5 = 15]

(a) Lok Adalat and Permanent Lok Adalat

(b) Litigation and ADR

(c) Arbitrator and Emergency Arbitrator

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

Biotechnology Law

Full Marks: 50

Time Allowed: 3 hours

Note:

A. Answer **Any Five** questions. All questions carry equal marks

B. Read the questions as it is, no clarifications can be sought.

1. “Ingenuity shall receive liberal encouragement” is a statement that indicates the philosophy of Patent Law in the USA. Comment on the statement in the light of the approach of the US Supreme Court in its classical decision in the celebrated case of “*Diamond Vs Anandha Chakraborty*” while analyzing its outcome. Comment on ‘whether everything under the sun made by man is patentable’?
(1 * 10=10)
2. Monsanto has produced a “genetically engineered tomato” with qualities such as high shelf life, rich in nutrition values; from one of its research laboratories in New York, USA. The government of USA has given permission for its field trials which have proved the worth and potency of the engineered tomato. The Federal Government of USA has allowed the Monsanto Company to market the said tomato to be available for the consumers in the country. Aiming at the big consumer market in India, Monsanto intends to market the

same in India and sought permission from the government of India. The government of India is skeptical about the safety and consumer acceptance of the said tomato in India. The department of agriculture, government of India has formed a committee comprising of experts from the fields of agriculture, horticulture, consumable foods and law to look into the matter. Advise the committee about the technical and procedural requirements for granting marketing approval to genetically modified 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. Detail the requirements to be fulfilled to ensure public interest involved in regulating genetically modified organisms in the light of decided case laws. (1 * 10=10)

3. In the context of human rights, biotechnology is perceived to be standing in both ways in terms of helping in ensuring certain fundamental human rights and at the same time being a platform for facilitating violation of certain other human rights. In this respect, biotechnology is considered to be both beneficial and as well detrimental. Therefore, it needs to be regulated with caution and objectivity towards providing benefit to larger segments of the society while controlling its adverse effects. In this background place your arguments with analysis in support of biotechnology as to have been promoting the cause of human rights in helping us for ensuring right to food and right to health. Support your answer with suitable case laws and illustrations. (1 * 10=10)

4. It is well known that biotechnology research and development banks on the biological resources and rich biodiversity. Biotechnology research and

development depends on availability of natural genetic and biological resources. Accordingly, the regions rich in biodiversity are considered crucial for the growth of biotechnology industry. 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 Tech Company, USA has produced a genetically engineered wheat crop. The engineered crop is said to have been produced by using a wheat crop grown in the region of Punjab, India while fine tuning its characteristics and nutrition features. The Gene Tech Company collected samples of wheat crop in the Punjab region of India and developed the same in its research laboratories in California and successfully tested the field trials in California and other selected regions of USA before marketing the same in USA. Punjab wheat growers association raised concerns of use of Indian biological resources by the Gene Tech Company and complained to the National Biodiversity Authority, Government of India. National Biodiversity Authority finds that no permission was taken by the said US Company before using wheat crop samples from India. Decide the matter in the following manner:

(1 * 10 = 10)

- a. Identify the issues and concerns involved in the above matter after deeper understanding of the facts
 - b. Address the issues in the light of decided case laws while highlighting the established norms and practices involved there in.
5. Novartis Company has produced pain killer tablets by using the hormone produced by an identified gene in the pregnant women's body which produces such hormone at the time of delivering the baby. The said hormone

relaxes the body of pregnant women who has labored in delivering the baby. It perhaps kills the pain and relaxes the body of pregnant women. Reading the properties of such hormone and having identified the gene which produces such hormone, Novartis started commercially producing the said protein which is being used in producing pain killer tablets. Many NGO's and Human Rights Activists have raised concerns about the violation of ethics, morals and public order in the said endeavor of producing pain killers. It was contended that such an act would grossly violate the society's ethical and moral standards and disturb the public order. Decide the matter in the light of Ethics and Morality in the context of biotechnology research. Support your answer with the help of decided case laws while highlighting Indian social standards in this regard. (1 * 10=10)

6. Write short notes on any four of the following; (2.5 * 4=10)
- a. Copyright for biotech innovations
 - b. BT Cotton fiasco in India
 - c. Reproductive cloning
 - d. Second Generation of Biotechnology
 - e. Biotechnology Regulatory Authority of India

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

B.A./B.Sc. LL.B., SECOND YEAR (4th SEMESTER) END-SEMESTER EXAMINATION (WINTER 2018-19) (BATCH 2017)

LAW OF CIVIL PROCEDURE

Maximum Marks : 70

Time : 3 Hours

General Instructions

- A. This question paper consists of a total of 8 printed pages, including the annexure. Ensure that your question booklet has all 8 printed pages.
- B. Candidates are expected to rely on the question paper as it is. No clarifications may be sought. If you are making any assumptions when answering a question, clearly state what those assumptions are. It goes without saying that incorrect/invalid/impossible assumptions cannot be made.
- C. Candidates are allowed to consult any and all written, printed or photocopied materials of their choice while attempting this examination.
- D. The length of your answer is not a consideration for marking. Writing a long answer will not fetch you more marks. Focus on bringing out the relevant legal principles & the reasons for your answers. An answer that dwells on irrelevant aspects will invite negative marking as it will be treated as an indication of lack of clarity of concepts.
- E. Since this is an open book examination, *merely* reproducing the statutory provisions or statements from the slides or other sources will not fetch you any marks.

Question 1

(40 marks)

Travel Services Provider Pvt. Ltd. is a company incorporated in Bangalore and its business is running of a “mobile app” and a Website named “Oho Rooms”. Oho Rooms is a platform through which travelers can book hotel rooms at competitive prizes. The company was incorporated in 2010 and it experienced steady growth and is currently valued at Rs.100 million.

The reason for the study growth of the company was its innovative use of technology to mine data and make offers that are tailor cut to meet the expectations and needs of each individual customer. In the beginning, the company invested large amounts of money (close to Rs. 30 million) for the purpose of subsidizing the hotel fares and hence significant discounts (up to 60%) were offered to potential customers. Owing to such huge discounts, a large number of persons used Oho rooms to make their hotel bookings. Further, each user was also encouraged to give reviews of the hotels that they had stayed in to give feedback about the quality of services they had received. To make a booking, a user had to make an “account” on the website/app, where a set of details such as name, age, occupation, location, mobile number, e-mail address etc. had to be provided. Oho rooms had also entered into contracts with various search engines, e-mail service providers, social networking sites and mobile phone companies (collectively hereinafter called “third parties”) all of which was also collecting user data. Using the data that was

provided to Oho by the user at the time of registration, use (i.e. scanning through different booking options, looking at previous reviews, the actual bookings made and reviews given after use) and by aggregating the other details gathered from third parties, Oho was able to make a detailed profile of each individual user. This data was then aggregated to make general predictions concerning the likely preferences and interests of people belonging to different social groups (such as religion, caste, occupation, age, gender, ethnicity, nativity etc.). This metadata could then be used to predict various things like the kind of hotels that the customer had a preference for, the prices that he was willing to pay, individual likes and dislikes of the customer (regarding food, ambience etc.), the nature of the hotels preferred and the time of the year during which different social groups would travel and would need hotels. This data (hereinafter called “user data”) formed the backbone of Oho rooms as they could send targeted advertisements and provide targeted offers suitable to the needs of each customer. Similarly, such profiling was used to develop data concerning the employees of the company and accurate predictions could be made concerning the efficiency, loyalty and expectations of its employees (hereinafter called “employee data”). Due to such use of technology and data, Oho was able to capture the market for hotel booking services in a short period of time and reach a high net worth. Further, it is predicted that by 2025, its value would touch Rs. 250 Million.

Huber Inc. is a transportation network company based out of SF, California and its principal business was a mobile app by the same name which provides taxi aggregation services to its users. The company has been a huge success and wished to expand its business into other domains. It had started a food delivery app by the name Huber Eats, which was another success and the company now wished to enter into Hotel booking services through a website/app. For this purpose, to commence this business operation in India, it had, in December 2017 set up Huber Hotel Bookings Pvt. Ltd, a company incorporated in New Delhi (hereinafter “Huber Hotels”). Initially, they developed a website and an app named “Huber Rooms” along the lines of Oho Rooms and start its business by offering attractive discounts. However, Oho Rooms had already captured most of the market and had a distinct advantage over any other new player because of the vast data in its possession. Huber, hence, quickly realized that it was impossible to compete with Oho Rooms. Huber hence decided that it was more practical and feasible to try and acquire the business that Oho was running. With this objective, Huber approached the promoters of Oho in June 2018 with an offer to buy the entire business of Oho at Rs. 250 Million.

The promoters of Oho Rooms was interested in the offer as it offered an instant sum of Rs. 250 Million. Further, the promoters of the company were unhappy with the cash flow in their business as there was a recession looming and their cost over heads were ever increasing on account of increased taxes, regulatory costs and other expenses. The promoters of Oho was in fact secretly worried that their business was crashing and was more than happy to sell it to Huber at the offered price. Oho and Uber hence entered into negotiations to work out the specifics of the take over and entered into a written “term sheet” on 1.11.2018, signed by the authorized legal representatives of both the parties, for the purpose of facilitating the transaction. The term sheet essentially stated:

- i. that both the parties had agreed to enter into negotiations for the discussing and facilitating the acquisition of the business of Travel Services Provider Pvt. Ltd. by Huber Hotel Bookings Pvt. Ltd. that both the parties shall negotiate in good faith for this purpose and that the negotiations will be held at Hyderabad.

- ii. that Travel Services Provider Pvt. Ltd. shall provide true user data, employee data and financial statements concerning its business to Huber Hotel Bookings Pvt. Ltd. for facilitating the evaluation and “due diligence” before actual acquisition of business.
- iii. That if any disputes arise in the course of negotiations, only courts in Bombay shall have jurisdiction to entertain them.

In terms of this, on 1.1.2019 Oho had shared its user data, employee data and financial statements with Huber. All of this information was shared in a pen-drive and there were security features built in where by the data could not be copied or removed from that pen drive and can only be “viewed”. Meanwhile newspaper reports emerged on 15.2.2019 that the Board of Uber Inc. had formally resolved to acquire the business of the company Travel Services Provider Pvt. Ltd.

On or about 1.2.2019, the promoters of Oho rooms had started to observe that a number of its best rated employees had started to resign and they gathered information that these employees who resigned were joining Huber at better employment terms. By 10.3.2019, about 40% of the employees of Oho had resigned and it was rumored that most of them had joined Huber. Further, the promoters of Oho also observed that Huber Hotels had begun an aggressive marketing campaign with huge discounts being offered. Oho also noticed that there was a significant drop in the number of people who were using their platform. It was learned by the promoters of Travel Services Provider Pvt. Ltd. that many of their app/website users had received e-mails from Huber concerning promotional offers that were better than what Oho was offering. On 15.3.2019, the CEO of Travel Services Provider Pvt. Ltd. received a letter from Huber Hotel Bookings Pvt. Ltd. stating that they were withdrawing from the plan to acquire Oho Rooms as on a proper evaluation of the financials, it was concluded that the business model followed by Oho Rooms was not a viable one in the medium and long terms and that they were fundamental flaws in the architecture of its operations.

The promoters of Travel Services Provider Pvt. Ltd. believes that Huber Hotel Bookings Pvt. Ltd. had used the user data and employee data that was shared during “due diligence” to target their best employees and all their customers and lure them into their platform. They also believe that the entire negotiation was nothing more than a ruse to obtain data and it was only an exercise in bad faith. They are quick to realize that if something is not done soon, Huber will destroy the business that they had painstakingly set up over many years. The promoters of Travel Services Provider Pvt. Ltd. wishes to file a suit with the following reliefs : (1) a prohibitory injunction restraining Huber Hotel Bookings Pvt. Ltd. from using the user data and employee data that was shared with them on 1.1.2019 in any manner (2) a mandatory injunction commanding the return of the pen drive on which data was provided (3) Compensation to the tune of 15 crores for the illegal theft and use of the data by Huber Hotel Bookings Pvt. Ltd. They also seek an inter-locutory injunction restraining Huber Hotel Bookings Pvt. Ltd. from using the “data” provided to them pending the adjudication of the suit or transferring the data or the pen drive to any third parties.

Answer the following questions :

- a) Which forum will have the territorial jurisdiction to entertain this suit? (5 marks)

- b) In the light of the provisions of the Digital Technology Use (Dispute Resolution) Act,2010 (*see annex*) can the civil court entertain this suit? (5 marks)
- c) Develop arguments opposing the grant of any temporary injunction (6 marks)
- d) By when will the suit be barred by Limitation? (5 marks)
- e) Travel Services Provider Pvt. Ltd does not in fact poses any solid evidence to show that Huber Hotel Bookings Pvt. Ltd had hired any of its employees at better terms and it is only an intelligent guess based on rumors and a few confirmed cases. Is there any manner in which Travel Services Provider Pvt. Ltd can obtain evidence on whether any of its employees were hired by Huber Hotel Bookings Pvt. Ltd? (5 marks)
- f) A person named Anton Chigurh, who was a user of Oho rooms read about the litigation in the newspapers. He was concerned about the manner in which the data that he had voluntarily shared with Oho Rooms was being transferred to Huber and was being used by them. Anton Chigurh has made an application to be impleaded in the said suit, stating that since the suit concerns use of data pertaining to him, he must also be heard. Chigurh prays that Huber be restrained from using or transferring any of the data pertaining to him. Oho is not opposed to his application, however, Huber is opposing it. Can Anton Chigurh be made a party to this suit ? (5 marks)
- g) During the pendency of the said suit Travel Services Provider Pvt. Ltd was fully wound up with all its assets, liabilities and business being transferred to Hola Rooms Pvt. Ltd. Can Hola Rooms Pvt. Ltd. continue prosecuting the suit? If so what steps are to be taken for that purpose? (5 marks)
- h) Assuming that the suit was decreed as prayed for. How can the decrees relating to prayers (1) and (2) be put to execution? (4 marks)

Note: For questions c -h, assume that the civil court can entertain this suit.

Question 2

(10 marks)

Vincent Vega has been residing at Bangalore since 1.1.2010 and he owns an ancestral property – a two storied house, located at Saritha Vihar in New Delhi. As such the house is locked up and no one resides there. Mr. Vega is the vice-president (operations) of a major Logistics Company and he barely finds enough time to sleep. Further, Mr. Vega has the responsibility of ensuring smooth functioning of the operations of the Company in Africa and Europe and hence he has to travel frequently and he is out of the country for most parts of the year. Owing to this, he has not been finding enough time to keep track of the maintenance of his house in New Delhi and the property is simply left under lock and key. since 1.1.2018 he was continuously travelling in Africa and Europe and he got back to India only on 1.3.2018. On reaching India, he decided to quit his job and retire to a peaceful life in New Delhi. Before putting in his papers, he decided to get his house in Delhi cleaned and effect some maintenance works. With these objectives in mind, he visited his house in New Delhi on the 15.3.2018. However, to his shock and surprise, he found that a stranger – one Jules Winnfield was living in his house. Apparently, Mr. Winnfield was living there since sometime in February 2005. He, had apparently managed to convince the owners of the neighboring plots that he had purchased the house from Mr. Vega.

Answer the following questions :

- (a) By what time will Mr. Vega's cause of action to evict Mr. Winnfield be barred by Limitation? (4 marks)
- (b) Assume that Mr. Vega managed to file a suit and obtain a decree of mandatory injunction for eviction, delivery of vacant possession, prohibitory injunction from committing any further trespass and costs. Mr. Vega then filed another suit against Mr. Winnfield claiming mesne profits for the period during which he was in wrongful possession of the House. Prepare an argument on behalf of Mr. Winnfield that the suit is not maintainable in law. (6 marks)

Question 3

(2 marks)

In the course of pleadings, the plaintiff required the defendant through the Court to answer certain interrogatories. The Court directed the defendant to answer the same after hearing the plaintiff and defendant in that behalf. On failure of defendant to answer the interrogatories, the Court struck off the defendant's written statement. The court then proceeded to examine the plaintiff and his witnesses in the process of adjudication of the suit. The defendant's counsel attempted to cross-examine the plaintiff after the plaintiff's examination in chief is recorded by the court. The plaintiff's counsel objected contending that on the striking of the defendant's defence, he (defendant) has no right to cross examine the plaintiff and his witnesses. Is the objection maintainable?

Question 4

(4 marks)

Narendra filed a suit against Rahul for recovering a sum of Rs. 5 lakhs due under a promissory note executed by Rahul in favour of him. Narendra also obtained attachment before judgment of Rahul's 2 acres of garden land and farm house. On the date of trial in the suit, the plaintiff had to begin to adduce evidence as the defendant had denied the plaint averments. The plaintiff and his advocate failed to appear before the Court on the date of trial. The court, therefore, dismissed the suit for default. The plaintiff filed an application under O. 9, R. 9 for setting aside the order of dismissal of the suit. The petition after contest by the defendant was allowed and the suit was restored after setting aside the dismissal order. Subsequently the suit was decreed for the entire claim of the plaintiff on merits of the case after the court adjudicated upon the same as per the procedure.

In the meanwhile, when the plaintiff's petition for setting aside the order of dismissal of the suit was pending adjudication, the defendant sold away his aforesaid garden land and farm house to Akhilesh by way of private sale. The plaintiff has put in an execution petition and has sought for sale of the garden land and farm house to recover the decree amount. What is the effect of Rahul's sale of the garden land and farm house to Akhilesh on the rights of Narendra to get the same sold in execution proceeding to recover the decree amount?

Question 5

(4 marks)

Naveen has filed a suit against Amit for declaration of title and prohibitory injunction restraining Amit from trespassing on his immovable properties. In the course of the trial of this suit, when Naveen was cross-examined by Amit's Counsel, he admitted that he was disposed from the suit property by Naveen about a week back and that he was no longer in possession.

Having realized that the suit as framed is not maintainable, Naveen has made an application for amendment of his plaint to convert the suit into one for declaration of title and consequent mandatory injunction for eviction and restoration of possession. Amit objects to the application on the grounds that it is highly belated and that it was changing the nature and character of the suit. Decide on the validity of Amit's objection. (4 marks)

Question 6

(5 X2 = 10 marks)

Examine how the following judicial orders/judgments/decrees passed by a court can be challenged before a superior forum:

- a) Refusal of 'leave to sue' under Section 92 of the Code.
- b) Dismissing an application under section 5 of the Limitation Act to condone delay in the filing of an appeal.
- c) Refusal of leave to serve interrogatories.
- d) A rejection of plaint on the grounds that there was no cause of action.
- e) Dismissal of an application to execute a decree by way of arrest and detention on the grounds that the judgment debtor lacked sufficient means to pay.

ANNEXURE

Relevant Provisions of the Digital Technology Use (Dispute Resolution) Act, 2010

(See Question 1)

Section 2 Definitions

"computer" means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

"computer data base" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

"person" means a legal person.

CHAPTER IX

PENALTIES AND ADJUDICATION

Section 43 Penalty for damage or unauthorized use of computer, computer data base etc.

If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network, —

(a) accesses or secures access to such computer, computer system or computer network in contravention of any agreement governing the same.

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) provides any assistance to any person to facilitate access to a computer, computer system or computer network or computer database in contravention of any agreement concerning the same

he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

Section 46 Power to adjudicate.

(1) For the purpose of adjudging under this Chapter whether any person has committed a contravention of any of the provisions of this Act there shall be an adjudicating officer.

(2) The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section.

(3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.

(5) Every adjudicating officer shall have the powers of a civil court which are conferred on the Cyber Appellate Tribunal under sub-section (2) of section 58.

58. Procedure and powers of the Cyber Appellate Tribunal.

(1) The Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

(2) The Cyber Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents or other electronic records;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;

(3) Every proceeding before the Cyber Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Cyber Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

61. Civil court not to have jurisdiction.

No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

CLINIC II: PROFESSIONAL ETHICS

Full Marks - 50

Time Allowed: 3 hours

EXAMINEES ARE PERMITTED TO REFER ONLY TO THE SUPPLEMENTARY COMPILATION PROVIDED.

PART I

Answer ANY 1 of the following:

(20)

Q1. As imminent legal practitioners and flag-bearers of the institutional ethos: “ युक्ति हीने विचारे तु धर्महानि प्रजायते ” (*Yukti Heeney Vichare tu Dharmahani Prajayate*) – how self-sufficient do you feel is the cumulative legacy of Indian jurisprudence – in defining the contours of the present day advocate’s professional ethic?

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** [emphasis added] 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”.*

Elucidate the various implications of the above with suitable philosophical justifications and appropriate practical illustrations.

PART II

Answer ANY 1 of the following:

(20)

Q3. Carrying the discussion forward from a salient point of observation made by the Bench in its majority opinion in *V.C. Rangadurai v. D. Gopalan & Ors.* [AIR 1979 SC 201] – what is your stance re: instituting mandatory *pro-bono* advocacy for all legal practitioners within the scopes of their individual capacity?

Justify with relevant theoretical, statutory and practical aids.

Q4. In his critical thesis “An Idea Of Justice” circa 2009, Sen argues against the eventual feasibility of the Rawlsian thought exercise, whilst emphasising on the necessity for appreciating the individual nuances of “न्याय” (*Nyaya*) and “नीति” (*Neeti*), which, he predicts, will culminate into “Justice”, but only when finely welded together.

Opine, with specific focus on the lawyer’s role in:

- (i) policy-framing exercises,
and
- (ii) serving as a conduit for the practical articulation, hence implementation of the same.

PART III

Answer ANY 2 of the following:

(5x2)

Q5. What are the core tenets of Aristotle’s *Nicomachean Ethics*? Do you feel that they retain any relevance for the good governance of a modern day polity? Elucidate.

Q6. The Kantian *Categorical Imperatives* may well be regarded to have birthed the logical and epistemological foundations of present day human rights litigation and public interest advocacy.

Do you agree with this assertion? State your reasons.

Q7. Does Kelsen's exposition of the *Grundnorm* contribute to the modern day lawyer's substantive appreciation and practical application of the Constitutional ethos?

Discuss with suitable illustrations, against the backdrop of the Hart-Fuller debate.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. WINTER SEMESTER 2018-19 08th SEMESTER EXAMINATION

COMPETITION LAW

Marks: 70

Time Allowed: 3 Hours

COMPETITION ACT, 2002, BARE ACT ALLOWED [WITHOUT COMMENTARY]

Use EU, US and Indian case laws as applicable, to substantiate your answers

(All Questions are Compulsory)

1. One of the recent developments in health care is the collection of stem cells from the umbilical cord and placenta of a new born child, which can be used for treating over 75 diseases. The umbilical cord blood and tissue is collected, processed and preserved through the innovative concept of stem cell banking. In India, stem cell banking was started in 2005 by Jio Life Sciences. As of today, there are 5 stem cell banks operating in India. Jio continues to enjoy very high ratings from customers and doctors, and has 35% market share in the market for stem cell banking in India, with operations throughout the country. The other four players Alpha, Beta, Gamma and Delta have market shares of 25%, 15%, 13%, and 12% respectively in India. Artemis Hospital is the largest hospital of Kolkata, located in Salt Lake. It provides various healthcare services, including gynecology and maternity. In 2015, Artemis Hospital entered into a contract with Jio for the service of stem cell banking. Under the terms of the contract, Jio, for a period of 5 years, was to provide stem cell banking services to the customers of Artemis Hospital. Artemis Hospital on the other hand, would provide the hospital facilities required for collection of the cord blood.

Mrs. Sharma, who was pregnant, visited Artemis Hospital for consultation in May 2016. She told the hospital that she had consulted with the stem cell banking service provider, Alpha, for collection of the cord blood during delivery. However, Artemis Hospital informed Mrs. Sharma that as per their contract with Jio, no other stem cell bank would be permitted to undertake stem cell collection services at Artemis Hospital. Further, the price at which Jio was providing the service in Artemis Hospital was almost 40% lower than the prices charged by other stem cell providers, including Alpha. Mrs. Sharma, being satisfied with the price offered, decided to opt for Jio and informed Alpha that she would not require its services. Alpha has now reported this matter to the CCI and is making the following allegations:

- (a) That Jio is a dominant player in the market for stem cell banking in India.
- (b) That the contract between Artemis Hospital and Jio is in the nature of exclusive supply.
- (c) That the contract between Artemis Hospital and Jio is in the nature of a tie-in arrangement.
- (d) That Jio is indulging in predatory pricing.

The CCI is directing you to investigate this matter. On the basis of the facts available, you are required to prepare a report, dealing with each of the allegations made, along with your conclusions and submit it to the CCI. Your report should be substantiated with case laws. **(4x5 = 20 marks)**

2. The Indian market for cars is fiercely competitive, with 20 car companies operating in the market and selling various models of cars, at different prices. In March 2018, Mr. Kajaria, a purchaser of a Honda car, has complained to the CCI that despite the car market being competitive, car manufacturers are restricting the supply of spare parts and diagnostics tools in the market, thereby creating a situation where the manufacturers, through their authorized dealers, became the sole suppliers of spare parts and after sales repair/maintenance services in India. This was allowing individual car companies to impose unfairly high prices on spare parts and repair/maintenance services for their cars. Further, since spare parts, diagnostic tools and technological information were not made available to independent workshops, the same was resulting in denial of market access to thousands of independent repairers.

The car companies however, are claiming that the restrictions imposed on dealers are necessary for maintaining the efficiency of their distribution networks. Moreover, if spare parts were sold directly in the aftermarket, car companies would not be able to protect their IP rights, or ensure quality and safety of the spare parts. This could encourage the sale of spurious/substandard spare parts. As regards repair/maintenance services, the car companies claimed that repairing of vehicles by independent workshops was not feasible in India, as independent workshops did not possess the required skill, or training, to carry out repairs of such sophisticated products. Further, and most importantly, this business model has been followed by car companies for many years, and the growth of the Indian car industry has been phenomenal in the last two decades. In fact the growth rate of the Indian car industry has surpassed that of Europe and US.

You are the DG entrusted with investigating this matter. Give an opinion on this matter focusing on:

- (a) The concept of “aftermarket” and the law on the same
- (b) The validity of exclusive distribution agreements and refusal to deal under Section 3(4)
- (c) Any other issue you consider relevant

(8+4+4+4=20 marks)

3. “The main argument against oligopoly is that the characteristics of the market (in which oligopolists operate) are such that oligopolists are interdependent on one another and may not be able to charge competitive prices.” In this context, discuss:

- (a) The concept of oligopolistic interdependence
- (b) Detection of cartels in such markets through circumstantial evidence, with the help of decided cases.

(5+10 =15 marks)

4. Discuss:

- (a) Leniency programmes in competition law, with the help of decided cases.
- (b) Price discrimination as an abuse of dominance

(10+5 =15 marks)

CONSTITUTIONAL LAW – II

Time Allowed: 3 Hours

Full Marks : 70

ANSWER ANY 2 QUESTIONS IN GROUP A. GROUP B IS COMPULSORY.

GROUP A

1. a) In the wake of the #MeToo movement and serious allegations of sexual impropriety against several media personnel, the Parliament comes up with an amendment to the Press Council of India Act. The newly added provision aims at constituting a ‘Gender Equity Commission’ within the Press Council. This commission, a five member body, would consist of a retired Supreme Court Judge as the Chairperson, two members from the media nominated by the Press Council, and two members nominated by the Central Government. This Commission, vested with powers of a Civil Court including the powers of ordering search and seizure, would be the primary forum of approach for any media person who would face any act of sexual impropriety. Upon receipt of such complaint, the Commission would conduct an inquiry into the allegations, and if they would find any *prima facie* merit in the allegations, they are empowered by the newly introduced provision to pass binding directives including but not limited to, temporary suspension of the accused, and other such orders to the concerned organisation that the Commission deems fit. If the organisation refuses to take any action, the Commission would be empowered to even suspend the operations of the concerned media outlet. This provision would cover all types of media organisations, including print, electronic and online media. Of course, this provision would operate without prejudice to any right of the accused under the existing laws of the land to seek appropriate remedies, civil or criminal.
Immediately after coming into force of the provision, one witnessed a floodgates of complaints filed against a number of senior reporters and journalists, against whom very serious and immediate actions were taken by the Commission. However, independent commentators started noticing a scary trend in the events. They observed that most of such complaints were being made against journalists who have been critical about the present government in the recent past. The Commission, dubbed a “Kangaroo Court” by many, started being looked at as a governmental tool in getting even with a critical media, and a concealed effort of suppressing dissent, the “safety valve in a democracy”.
A group of media watchdogs decide to challenge the constitutionality of this provision, for being violative of *inter alia* Articles 14, 19(1)(a) and (g) and 21 of the Constitution. Critically evaluate the merits of their argument, with appropriate references to the context. (15)
- b) In the Triple Talaq Case, Nariman, J., while declaring instantaneous Triple Talaq to be unconstitutional, famously observes:

“The test of manifest arbitrariness [...] would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

Do you find these observations as a departure from existing tenets of the equality jurisprudence? Analyse, with suitable references to the context. (10)

2. a) In a scathing attack on the ‘essential religious practice’ doctrine, Suhrith Parthasarathy writes:

“This interpretation has allowed the court authority to determine for the people what their religious beliefs and practices, through a correct reading of their religious texts and customs, ought to comprise. Invariably, the determination of what constitutes an essential religious practice, therefore, amounts to a very particular form of moral judgment — a form of cultural paternalism that is quite antithetical to a liberal democracy.”

Analyse this observation with reference to the fact situation that follows:

Regulation 425(b) of the Armed Forces Regulations, 1964, which prohibits the growth of hair by Armed Forces personnel, except for “*personnel whose religion prohibits the cutting of hair or shaving of face*”, had been challenged by some Muslim personnel of the Indian Air Force. In course of the hearings, the Court asked Mr. Salman Khurshid, Senior Advocate appearing on behalf of the petitioners whether the Islamic scriptures mandate non-shaving of the beard, to which Mr. Khurshid replied that there are varying interpretations, one of which is that it is desirable to maintain a beard. Considering therefore that maintaining a beard is not within the Essential Religious Practices of a Muslim which could bring him within the ambit of the exception to Regulation 425(b), the Court observes:

*“The Air Force is a combat force, raised and maintained to secure the nation against hostile forces. The primary aim of maintaining an Air Force is to defend the nation from air operations of nations hostile to India and to advance air operations, should the security needs of the country so require. The Indian Air Force has over eleven thousand officers and one lakh and twenty thousand personnel below officers rank. For the effective and thorough functioning of a large combat force, the members of the Force must bond together by a sense of *Espirit-de-corps*, without distinctions of caste, creed, colour or religion. There can be no gainsaying the fact that maintaining the unity of the Force is an important facet of instilling a sense of commitment, and dedication amongst the members of the Force. Every member of the Air Force while on duty is required to wear the uniform and not display any sign or object which distinguishes one from another. Uniformity of personal appearance is quintessential to a cohesive, disciplined and coordinated functioning of an Armed Force.”*

In the backdrop of the existing ERP jurisprudence, explore the manner in which the Supreme Court uses this Doctrine in the case. Do you find any relevance of Suhrith’s ‘Cultural Paternalism’ allegation here? (15)

b) Explore how the Supreme Court of India has made significant efforts towards the progressive realisation of socio-economic rights. In doing so, analyse how the Court has used mechanisms like Continuing Mandamus in ensuring gradual fructification of such rights. Illustrate, citing example of any specific socio-economic right in question. (10)

3. a) In *M. Nagaraj v. Union of India*, the Supreme Court required the state to demonstrate the backwardness of SC/ST beneficiaries each time quotas in promotions were provided for under Article 16(4A), as evident from quantifiable data. Do you think this is an unwarranted importation, in view of the *Indra Sawhney* decision? Analyse, with reference to the constitutional developments, both on the floor of the Parliament and in the Supreme Court on this issue after the *Nagaraj* decision. (15)

b) Rule 49 of the Bar Council of India Rules, 1975 states:

“An Advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practice as an Advocate so long as he continues in such employment.”

A group of Law Teachers who are in full-time employment of different Law Schools and Universities, decide to challenge the constitutionality of the said rules. The Bar Council seeks to defend this rule on the ground that an Advocate’s full-time engagement as a salaried employee detracts him from his primary role as an Advocate. In this context, they refer to similar restrictions in some states on Doctors who are engaged as full-time Professors of Medical Colleges from carrying out private practice. Analyse the viability of the claim and the counter-claim, with reference to appropriate provisions and precedents. (10)

GROUP B

4. Write SHORT NOTES on **ANY FOUR** of the following topics: (5x4=20)

- a) Reading Down.
- b) ‘Proximate Nexus’ Test.
- c) Application of Doctrine of Eclipse to Post-Constitutional Law.
- d) ‘*Res Extra Commmercium*’ and Article 19(1)(g).
- e) Religious propagation versus Conversion.

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester Examination – 2nd Semester – 2018 Batch

CONTRACT-II

Full Mark: 70

Time Allowed: 3 Hours

It's an Open Book Examination. All sources can be used barring E-Resources. Usage of laptops/Mobile Phone or any other electronic device is strictly prohibited. Additionally any attempt to access Internet in any other way is strictly prohibited. Only Non-Annotated Bare Acts of Indian Contract Act, Partnership Act and Sale of Goods Act are permitted inside the examination hall. Read the question paper and go through the marks distribution carefully. No-Clarification will be provided during the Examination.

PART-A

Attempt any two of the three Questions given hereunder[25*2=50]

Solve the given problems by framing relevant legal opinion. Ensure that you only give relevant answers supported by relevant authorities (Cases/Academic Writings/Books). Also ensure that you identify the relevant legal issues.

Q.1Rakul visits her uncle after graduating in Commerce. She is in two minds as to the career option that will suit her best. Her Uncle Mr. Prakash Raj is a famous architect and has a firm which provides services that includes home décor, Office furnishings *et al.*Rakul requests her uncle to permit her to visit his office. Her Uncle has no objection. Rakul visits her uncle's office and is impressed by the kind of work that the firm is doing. She gets inspired and finally resolves her dilemma as to the best career option. After dinner Rakul and her uncle discuss the prospects of doing business in supplying furnishing materials, both for office and home purpose. Rakul's uncle encourages her to go ahead and start the business. Rakul however needs financial support to execute her idea. Her uncle suggests that Rakul can approach any National Bank for financing her business. Rakul does her own research and finds that PrabhuBhakt Bank has a scheme for promoting small and medium businesses. Rakul meets up with the manager of PrabhuBhakt Bank, Mr. Shiv. Mr. Shiv is enthused by the business ideas of Rakul.

Mr. Shiv encourages Rakul to submit a detailed proposal about the prospective business, the scope of the business, the expected turnover, the capital investment and other details. Mr. Shiv further prepares a checklist of the documents to be submitted by Rakul alongwith the business proposal. He insists that Rakul needs to find persons of sound financial standing, who are willing to back her project. Rakul calls up her uncle and requests him to back her business proposal. Mr. Raj is eager to help Rakul. However he wants to be sure that the risks are evened out. Mr. Raj,

being a seasoned businessman, does not want to face the entire brunt incase the project fails. Mr. Raj accordingly informs Rakul about his willingness to back her project. However he puts in the condition that Rakul needs to get few more people or organizations to back her project. Rakul starts a desperate search for backers. Eventually she ends up meeting her father Mr. Gadbad Ghayal. Mr. Ghayal hears out Rakul's plan and initially advises her against such adventure. However seeing how determined his daughter is, agrees to be one of the backers for her project.

Thus having got two people committed to back her project, Rakul drafts the business proposal and presents the same to Mr. Shiv. Mr. Shiv notes the name of the two persons, willing to guarantee Rakul's project viz. Mr. Prakash Raj and Mr. Gadbad Ghayal. Mr. Shiv calls each of them personally and informs them about the implication of being a guarantor. Mr. Prakash Raj clarifies that he has agreed to be a guarantor only upon the condition that another person/organization shall guarantee the project. Mr. Shiv informs Mr. Raj that Rakul has got her father to be her guarantor. Mr. Raj is glad to hear the same and informs Mr. Shiv that he is fine with the arrangement. Mr. Shiv then calls up Mr. Ghayal, who equally informs him about agreeing to the arrangement. Mr. Ghayal further requests Mr. Shiv to process Rakul's application at the earliest. Mr. Shiv assures that he will do all that is needed to process the application.

Mr. Shiv completes the documentation and sends the same to the legal department for vetting and processing. Mr. Kana, head of the legal department of the PrabhuBhakt Bank delegates the work to Mr. Ranjha. Mr. Ranjha is a law school graduate and has impressed his seniors with his legal acumen. Though unknown to all Mr. Ranjha is engaged to be married to Rakul. Mr. Kana hands over the papers to Mr. Ranjha for vetting and undertaking due diligence as to the viability of the project. Mr. Ranjha sees Rakul's name and is elated. He immediately calls up Rakul and informs her about the same. Rakul advises Mr. Ranjha to do the job sincerely and objectively. She does not want any favor. She insists that the project needs to be evaluated on its merit alone. Mr. Ranjha however is besotted in love and feels that he needs to do all to help Rakul. Thus while going through the papers and the documentation, he realizes that it will be in the interest of the PrabhuBhakt Bank to take additional collaterals. However Mr. Ranjha does not advise the same to his senior Mr. Kana. On the contrary he strongly recommends the project and advises that the Bank should sanction the same and grant the loan.

Mr. Kana directs Mr. Ranjha to draft the agreement on behalf of the Bank. Mr. Ranjha drafts the agreement. Some of its clauses are:

“1. The PrabhuBhakt Bank, as the first Party to this agreement accepts in principal to sanction a loan of rupees 80 lakh to Miss Rakul Ghayal, the second Party to this agreement....

7. The PrabhuBhakt Bank and Miss Rakul Ghayal have agreed that the loan will be paid off within a period of ten years from the date of signing this agreement....

10. The first gurarantor Mr. Praksah Raj and the second guarantor Mr. Gadbad Ghayal are absolutely and primarily liable to pay off the entire amount of loan....

13. As soon as Miss Rakul Ghayal defaults in payment of any one of the several EMIs the guarantors.....will pay off the entire loan within a period of fifteen days from the date of notice of default.....

18. The PrabhuBhakt Bank will forfeit the right to claim from the guarantors any payment of the loan amount, if the demand for the same is not made within seven days from the date of the default by Miss RakulGhayal.....

23. The PrabhuBhakt Bank declares as not having received from Miss Rakul Ghayal any collateral by way of security.....”

On 16th March 2019, the PrabhuBhakt Bank releases the entire amount of rupees 80 lakh and transfers the same to the account of Miss Rakul. The rate of interest to be charged is 14% p.a. Rakul gets to work and procures material to be supplied to her prospective clients. One such client is Mr. Bhola Ram. He is a well-known merchant in house hold furnishings. He contracts with Rakul for supply of the materials on the basis of the order placed by Mr. Bhola. Further it is arranged that Rakul will supply the materials on credit basis. Mr. Bhola accordingly places the order for 500 sofa set, 200 lamp shades and 300 carpets. The total cost of the materials so ordered amounts to rupees 20 lakh. Similarly other clients of Rakul place orders, some to the extent of 30 lakh rupees, other to the extent of 50 lakh rupees. In total the order received by Rakul is worth a crore. She is excessively happy.

Nevertheless in order to establish her base, Rakul in the case of all her clients, contracts to supply the goods on credit. By 1st July 2019, Rakul is able to meet all her commitments by supplying the goods to the clients. Unfortunately in each case, her clients have found that the materials supplied is not as per the description given in the catalogue. Rakul had, at the time of the contract, shown to each of her client the catalogue on the basis of which they placed their orders. Now when the clients are checking the materials, they find that there is substantial mismatch between the goods supplied and the description represented.

For Rakul this adds salt to her wounds since she has approached Miss Golcha Toddy for procuring the goods on credit. Rakul is forced to do the same to meet her commitment to her clients. She was in a position to procure goods worth rupees 60 lakhs through cash, but she had to go for credit in order to procure goods worth 40 lakhs. Miss Golcha is in good terms with Rakul's uncle Mr. Raj. She accordingly agrees to supply goods worth 40 lakhs on credit to Rakul. It is through this arrangement that Rakul is able to meet her commitment to her clients. To complicate things Rakul gets Mr. Ranjha to prepare forged documents. She represented to Miss Golcha, through the forged documents, that she is pledging her mother's jewellery as security for the credit.

Rakul adopted this desperate measure because Miss Golcha insisted on collaterals equal to the value of the credit before agreeing to sell the goods to Rakul. Since Rakul had no collateral of her own she consulted Mr. Ranjha. Mr. Ranjha suggested that forgery was the best option. Accordingly Rakul went along with Mr. Ranjha. Though Miss Golcha insists on physical possession of the jewelry but Mr. Ranjha convinces her to the contrary. Mr. Ranjha represents to Miss Golcha that having the papers was equal to having physical possession of the jewelry. Miss

Golcha is overpowered by the charm and intelligence of Mr. Ranjha and sells the goods to Rakul on credit.

The scenario now is really tough since Rakul's clients are refusing to pay the price claiming that the goods are defective. The clients are insisting on rejecting the goods and have made the same clear to Rakul. In the absence of any receipt of payment from the clients Rakul has defaulted in the payment of the first EMI of her loan. The PrabhuBhakt Bank has called a meeting of its board and have decided to issue notice of default. Unfortunately due to departmental delays the notice got to be served on the guarantors on the ninth day, from the date of default. On the other hand Miss Golcha has finally discovered that the documents are forged and she is seeking the advice of her lawyer. All the parties are weighing in their options as per the relevant law. **[(Issues=5+Identification of Authorities=5+Usage of Authorities=8+Legal Opinion=7)=25]**

Q.2Param, Jaish, Harpreet, Kiran and Mridul are partners in the Firm PJHKM and Co. (hereinafter called the Firm). The business carried out by them is buying of leather products from the wholesale market across India and to export the same. Each year the firm needs to apply for renewal of the export license. On January 2018, the Firm through Param and Jaish apply for renewal of the export license to the Ministry of Commerce. The Chief Secretary to the Ministry of Commerce on 15th January, approves their application. The license is granted and some of the clauses of the license are:

“2. The licensee Param and Jaish shall use the license strictly for the purpose of export of leather goods and nothing else...

8. Param and Jaish will throughout see to it that the license is not abused..

10. The license is non-transferrable and non-assignable...

13. The licensee is personally responsible to abide by the obligations as mentioned in the license”

On getting the license the Firm enters into contract with M/s Cheeter and Co. (hereinafter called Cheeter) on 20th January 2018. Cheeter is an unregistered firm. The Firm too was unregistered at the time of forming the contract. Cheeter is in the business of supplying hide and leather products to its customers. The Firm is to buy from Cheeter 1500 tons of leather. The price is to be determined based on the market value of the goods at the time of delivery. The other clauses of the contract are:

“4.....[the Firm] and [Cheeter] agree that the risk of deterioration of the goods due to natural wear and tear shall be of the seller...

6. The parties further agree that the property in the goods will pass only upon the inspection, weighing and measuring of the goods at the go-down of the buyer...

9. That the buyer shall pay 70% of the price, as per the prevailing market rates, as on the date of unloading the goods at the buyer's go-down...

12. That the risk of loss of the goods, while in transit, will be of the buyer.....”

The Firm directs that the goods be transported through the Railways, from Delhi to Kolkata. The expected time of delivery is 11:00 am on 28th January 2018. Cheeter accordingly book the goods with the Railways on 21st January 2018 and hands over the receipt to the agent of the buyer at Delhi. The agent then transfers the railway receipt via courier to the Firm in Kolkata. The same courier is received by Harpreet on 22nd January 2018. As per the partnership agreement all the partners are to be in charge of the management of the affairs of the Firm. Further any one of the partners can sign and take decision on behalf of the Firm. On receiving the railway receipt Harpreet, calls up Mridul and both agree to put the goods into better use. Accordingly Harpreet rushes to the nearby PattaKhor Bank and pledges the railway receipt in lieu of rupees 50 lakhs as instant loan. The loan is sanctioned against the current account in the name of the Firm on 22nd January 2018.

On the same day in the evening at 6:00 pm, Harpreet and Mridul buy pashmina shawl, worth 50 lakh rupees from M/s. Sai Pani and pay the entire price in cash. This transaction is done without the knowledge of the other partners. On 23rd January 2018, Harpreet and Mridul contact Kiran and convince her to join in their plan. The three of them at 12:00 pm on the same day contract with M/s Firangi Sardar. As per the contract, the entire lot of pashmina wool in the go-down of the Firm is sold to M/s Firangi Sardar. The said sale takes place under the authority granted by the Government of India, Ministry of Commerce through the export license. The other terms of the said contract are:

“4. The sellers agree to transport the goods to the buyer via VideshYatra Charter who is to deliver the goods at the instruction of the buyer...”

8. The sellers agree that the buyer will pay the price only upon actual possession of the goods, as to be received from the Master of the ship...

10. The Shipment and Cargo charges are to be paid by the consignor.....”

M/s Firangi Sardar are based in Singapore hence the Ship of VideshYatra has to deliver the goods to the buyer at Singapore. For the said purpose the goods are loaded in the Ship Jalpari on 24th January 2018. Unknown to the sellers but known to the Shippers, Jalpari has problem in its engine. Further it had not been insured. Jalpari set for sail on 24th January 2018 however on 25th January 2018 it is caught in a severe storm at the middle of the sea. Consequently most of the cargo is lost. Eventually when Jalpari arrives at Singapore, M/s. Firangi Sardar finds out that goods worth rupees 35 lakhs is lost in the tempest.

M/s Firangi Sardar, on 26th January 2018 inform the Firm about the loss and also declare that they will not accept the goods. The three partners viz. Harpreet, Mridul and Kiran are in a fix since M/s Firangi Sardar has refused to pay anything for the goods and the same is rejected. On the other hand VideshYatra sends their demand notice of freight and other charges to the Firm. Param and Jaish, on 27th January 2018 finally get to know about the secret dealings of their partners. Both of them decide to retire from the firm and they do the same by giving notice of

retirement. The other three raise objection to the notice and there is a major showdown between the partners. Some of the terms of the partnership agreement referred to by both the sides are:

“6. The Firm shall do the business of exporting leather goods...

8. The Firm shall continue to do business notwithstanding the death or retirement of any partner/s...

11. The management of the business of the Firm shall be carried by all or anyone for all...

13. The decision taking power is vested in all or anyone for all....

16. Any act of the managing partner/s will be regarded as the act of the Firm...as done in the usual course of business of the Firm...

19. The Firm shall continue in business subject to the renewal of export license...

21. The export license issued in the name of partner/s shall be the property of the Firm....”

In the meanwhile on 28th January 2018, PattaKhor Bank sends their agent with the railway receipt to the Railway Station at Kolkata. As soon as the freight train arrives, the agent produces the railway receipt to receive the goods. The Railway official, peruse the railway receipt and searches for the cargo. Soon it is found that the cargo viz. the consignment of leather goods is missing. The Railway officer expresses his regret and plead helplessness. The agent of the PattaKhor Bank immediately informs his superiors about the loss of goods. The PattaKhor Bank takes a decision to seek legal advice as to the course of action against Railways. In the meanwhile a notice is issued to the Firm for immediate payment of the loan amount of rupees 50 lakhs.

This notice is received on 28th itself by the Firm. At the time the notice is delivered all the partners are present. Param and Jaish get to see the notice. They walkout of the office and straight way visit their lawyer. Mridul, Harpreet and Kiran feel disoriented in view of the unexpected turn of events. They too decide to seek legal advice. In the meanwhile VideshYatra through its lawyer are weighing in their options against both the consignor and consignee. M/s FirangiSardar are also looking at the possible legal options, if any, available to them. Finally Cheeter decides to take help of legal proceedings to recover the price of their goods. One cannot but forget the Ministry of Commerce. Their possible actions against the Firm is also troubling the partners especially Param and Jaish. **[(Issues=5+Identification of Authorities=5+Usage of Authorities=8+Legal Opinion=7)=25]**

Q.3KuchKuch is in the business of Commission Agency. KuchKuch is appointed as a Commission Agent by Hota. Hota instructs that KuchKuch is to buy goods for Hota and sell the same on behalf of Hota. The commission is payable on the profits earned upon sale of the goods. The rate of commission fixed is 5% of the profit earned per transaction. KuchKuch is also employed by Haai for the same purpose of buying and selling goods. In this case the commission is fixed at 6% of the profits earned per transaction. Neither Hota nor Haai are aware of each other or that KuchKuch is common agent for both.

Hota has instructed KuchKuch to buy 150 liters of palm oil for him and sell the same to Mr. Ajeeb Dastan. Further Hota instructed that KuchKuch will sell the same to Mr. Dastan without disclosing Hota's identity or existence. Hota also adds that KuchKuch will sell the said oil at a price which has to be 10% higher than the existing market rate on the date of the sale. Hota has also agreed to reimburse the price that KuchKuch will pay to buy the palm oil but only upon completion of the sale transaction with third party.

Haai has instructed KuchKuch to buy 150 liters of palm oil for him. Further he is to hold onto the goods and sell the same only on receiving further instructions from Haai. KuchKuch is instructed to sell the oil in the name of Haai. Haai promises to reimburse KuchKuch only on successful sale transaction with third parties. The selling price at which KuchKuch is instructed to sell is to be based on the market price prevailing on the date of sale.

On 1st January 2019 KuchKuch buys 300 liter of palm oil from Seth Sukhi Chand. The contract is governed by usual terms pertaining to such sale. Some of the terms are:

“3. The buyer and the seller agree that the oil will be delivered only on payment of price...

5. The seller is bound to weigh and test the quality of oil in the presence of the buyer...

7. The price of the oil is to be decided based on the prevailing market rates at the date of delivery to the buyer...

9. The buyer is to bear the risk of loss to goods at the time of transit...”

KuchKuch pays rupees 80000 for the 300 liters of palm oil which is 15% higher than the usual market rates. This price hike is due to the prevailing shortage in supply of palm oil. KuchKuch instructs that the seller is to deliver the entire quantity of palm oil to the go-down of Sirfira. Sirfira is the agent of KuchKuch and has been keeping goods for KuchKuch. Seth Sukhi Chand sends the entire quantity of 300 liters of palm oil by loading the same in a truck.

The truck is hired at the recommendation of KuchKuch. The charges for transportation are to be paid by Seth Sukhi Chand. The Seth has however informed KuchKuch that he will recover the transportation charges from him. On the other hand Sirfira is not informed about the quantity or the nature of goods to be kept in the go-down. Sirfira is instructed by KuchKuch to open the go-down gates as and when the truck carrying the goods reach the spot.

Mahinder Singh, the truck driver load the goods and starts the truck to reach his destination viz. the go-down of Sirfira. On his way he stops at an isolated spot to attend to nature's call. After he re-starts the truck, he takes four shots of country liquor. Finally around 1:30 am he reaches Sirfira's go-down on 3rd January 2019. At that time Sirfira's chowkidaar was sleepy. On hearing the horn he wakes up and opens the gate of the go-down. Since Mahinder Singh was feeling slightly drowsy and the chowkidaar couldn't care less due to sleep, the goods were unloaded without any testing.

On 4th January 2019, Sirfira visits the go down at 12:00 pm to check on the goods. At that time another chowkidaar is on duty. Sirfira gets him to open the gates and goes inside. He finds that more than half of the tin cans are perforated and oil is oozing out. Before he is in a position to

understand the situation, the new chowkidaar drops a lighted match stick. The consequences are devastating. Sirfira escapes with minor burn injuries but the entire go-down with all the goods is destroyed in fire. Sirfira is furious and informs KuchKuch of the loss and the injuries suffered due to the fault of KuchKuch. KuchKuch asserts that he has no liability and threatens Sirfira with legal consequences. Sirfira and KuchKuch are thus heading for a legal tussle.

Seth Sukhi Chand also gets to know about the incident and soon starts taking steps to recover the transportation charges. He has ended up paying a total of rupees 90000 that includes the transportation of the goods and remuneration for the driver. He is worried that KuchKuch might deny paying the same. He immediately rushes to his lawyer to find out the possible ways of recovering the charges. Additionally he sends a notice to KuchKuch demanding the immediate repayment of the charges. KuchKuch is in a belligerent mood, as evident from his dealings with Sarfira, so he ignores the demand notice. Thus Seth Sukhi Chand is looking at a legal tussle with KuchKuch.

On 5th January 2019, Hota seeks information from KuchKuch about the purchase of 150 liters of palm oil. KuchKuch falsely affirms that the said quantity of oil has been purchased. Hota instructs that the said oil needs to be sold to Mr. Dastan without any delay. KuchKuch promises to do the same. He finds that he has a stock of 100 liters of palm oil. In December 2018 KuchKuch had purchased the same for his personal use. Further for purchasing 100 liters of palm oil KuchKuch had to pay only rupees 15000. At the time the prices of palm oil were rock bottom and he thought it wise to buy a large quantity for re-sale in future.

KuchKuch delivers this oil to Mr. Dastan who is skeptical about buying 100 liters of palm oil since his requirement is 150 liters. KuchKuch informs that since there is scarcity of palm oil Mr. Dastan has limited choice. Mr. Dastan re-considers the point and agrees to buy the quantity offered. Some of the terms are:

“2. The seller Mr. KuchKuch and buyer Mr. Dastan agree that price of 100 liter palm oil will be determined as per the prevailing market rates...”

4. That the buyer will accept the goods only upon testing and weighing the quantity of the oil delivered...”

6. The buyer has an absolute right to reject the goods within seven days from the date of delivery..

8. The risk of transportation of the oil is of the seller....

10. The buyer has the right to claim refund of the entire price from the seller upon rejection of the goods...”

On 6th January 2019 KuchKuch personally delivers the goods to Mr. Dastan, who weighs and measures. Upon satisfaction Mr. Dastan allows the goods to be stored in his go-down. He pays the price as per the prevailing market rates, which on that date is rupees 90000. On the same day Mr. Haai seeks information about the purchase of 150 liters of palm oil from KuchKuch.

KuchKuch gives false information to him by stating that due to shortage of palm oil in the market he has been unable to buy the same.

KuchKuch on 7th January 2019 informs Hota that 150 liters of palm oil has been sold only for rupees 70000. He further fudges the record to show that the same was 10% higher than the market rates as prevailing on the date of sale. KuchKuch also presents a bill of rupees 40000, representing it to be the amount allegedly spent on purchasing 150 liters of palm oil for Hota. Hota believes KuchKuch blindly and reimburses rupees 40000. In addition Hota also pays his commission as per the terms of the agency agreement.

In the meanwhile Mr. Dastan has called in an expert and gets him to test the palm oil sold by KuchKuch. The expert reports that the 100 liters of palm oil was of inferior quality, worth rupees 40000 only. Further he also reports that the said oil has pollutants which amounts to 10% of the total quantity supplied. Based on this report Mr. Dastan on 10th January 2019 notifies KuchKuch about rejection of the goods. KuchKuch disputes the same and alleges that Mr. Dastan's only intention is to harass him. Mr. Dastan and KuchKuch are heading towards a legal tussle.

On 11th January 2019, both Hota and Haai discover the entire truth about KuchKuch. Haai is further agitated on learning that KuchKuch never did anything towards complying with the agency terms. Hota is furious since he discovers that throughout he has been fooled by KuchKuch. Independently both Hota and Haai are searching for adequate legal response. KuchKuch gets to know that his hidden scheme has been discovered. KuchKuch is however confident that his lawyer will surely find a way out. Thus KuchKuch is up for a legal battle with Hota and Haai. Evidently all the affected parties are searching for answers and solutions within the legal framework. **[(Issues=5+Identification of Authorities=5+Usage of Authorities=8+Legal Opinion=7)=25]**

Part-B

Answer the question using relevant arguments. Substantiate with relevant authorities (Cases/Academic Writings/Books). [20]

Q.4 a) Seema goes to a shop to buy five notebooks and two pens. The shop has lots of notebooks and pens. When will the sale be complete? **(4+6=10)**

b) Rohan, Raj and Rekha form a partnership to start a school for poor children. It is agreed that each of them will contribute equal amount of capital. Further it is also agreed that none of them will demand any profit. It was also understood that entire cost of running the school will be borne by the three of them equally. Additionally funding will be sought from Governmental and Non-Governmental Organizations. In the second year of its running, Rohan decides to quit from the partnership. He accordingly issues a notice and demands settlement of accounts. The others resist. How will the dispute be resolved? **(4+6=10)**

The West Bengal National University of Juridical Sciences

End Semester Examination Winter Semester 2018- 19

LLB Optional Course - Corporate Insolvency

Full Marks - 50

Instructions: Kindly write legibly and clearly

Time allowed 3 hours

Q.6 is compulsory of the rest attempt any 4. All questions carry equal marks.

1. Discuss the priority of payment as provided under the IBC 2016. Justify the placement of crown debts.
2. Discuss the liabilities imposed upon Borrower once Resolution/Recovery/liquidation is triggered under IBC 2016 and compare it with the provisions of SARFAESI 2002.
3. Resolution under CIRP be considered as equivalent to recovery of debts due. Examine this statement critically.
4. Discuss the corporate rescue with the legal provisions of applicable laws.
5. Discuss the role and responsibility of various stakeholders in a resolution process
6. Write Short notes on any two: –
 - a. Moratorium
 - b. Fast track resolution process
 - c. Resolution Professional versus Insolvency professional.
 - d. CIRP

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 6th Semester – 2016 Batch

CORPORATE LAW – II

Full Marks – 60 marks

Time Allowed: 3 hours

Students are allowed to Carry a copy (Without commentaries) of The Companies Act, 2013 + SEBI (Insider Trading Regulations) + The SEBI Takeover Code + Page 131- 132 of the Module.

Section A

Please answer any five out of six questions: (10 * 5 = 50 marks)

(All questions are for ten marks each).

1. What are the agency problems that arise when Directors are appointed as Agents of a company? How are directors supposed to act in case of a conflict of interest between the company and then shareholders? Answer with reference to decided cases.

(5 + 5 = 10 marks)

2. Refer to the Articles of the Association provided. Are the appointment, duties and liabilities of directors in Consonance with the Companies Act? Review the same.

(10 marks)

3. Answer the sub-parts of the questions:

a) State the primary difference between oppression and mismanagement 'chapter (and not just 'provisions' under the Companies Act, 1956 and Companies Act, 2013 (2.5 marks)

b) State the primary difference between compromise and arrangement 'chapter' (and not just 'provisions') under the Companies Act, 1956 and Companies Act, 2013 (2.5 marks)

c) Do you think (state in brief) that the amendment brought by the provision allowing the class action suit is a step in the right direction towards ensuring that minority shareholders or the other 'stakeholders' of a company can file a case against a company's board carrying out its operations in a manner which is oppressive, prejudicial and amounts to mismanagement? (2.5 marks)

d) Under Section 166 of the Companies Act, 2013, it has been stated that " A *director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.*" This implies that stakeholders theory of corporate governance has been given some force under the Companies Act, 2013. If this is true, state in brief, how can 'stakeholders' (and not shareholders) file a case under the Companies Act, 2013 before the NCLT in case their interests are not taken care of by the directors as required under S. 166? Can they, the stakeholders, at all have a locus standi to enforce the rights granted under S. 166? (Hint: draw a relation between S. 166 and the provisions on oppression and mismanagement).

(2.5 marks)

- 4. What are the primary issues that arise in case of amalgamations and compromises? Why are takeovers are still termed as mergers before the NCLT? (8 + 2 = 10 marks)**
- 5. PRK Infrastructure acquires 21% stake in BRR Corp. They also have internal arrangements with other shareholders which allow them to appoint 3 out of 11 directors. Is the Mandatory Bid Rule triggered under the Takeover Code? Answer with reference to case laws. (10 marks)**
- 6. Analyses the Role of Independent directors. What constitutes “interest” in case of such directors especially in case of “related party transactions”? (7 + 3 = 10 marks)**
- 7. Write Short Notes on: (Any two) (5 * 2 = 10 marks)**
- a) Draft an Indemnity clause for a director’s bonafide mistake.**
 - b) Types of Winding up and Procedure before the Tribunal.**
 - c) Nominee directors and their appointment.**

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

CORPORATE TAXATION LAWS

Full Marks - 50

Time Allowed: 3 hours

- i. Any Bare Act and Bylaws including circulars without any commentary are allowed.
- ii. Calculator *simplicitor* is allowed.
- iii. Attempt **any four** questions.

1. 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+8.5=12.5

2. Critically examine the test for determination of residential status of company under Income Tax Act with the help of judicial developments and statutory provisions.

12.5

3. “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

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. Explain the concept of mutual funds. Discuss the income tax implications in the hand of mutual funds and unit holders with the help of statutory provisions and suitable illustration(s).

12.5

6. Write short notes on **any two** of the followings-
 - a. Corporate dividend distribution tax
 - b. Presumptive taxation
 - c. Corporate taxation– meaning and challenges
 - d. Double taxation and relief
 - e. Transfer pricing

6.25+6.25=12.5

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 6th Semester – 2016 Batch

DIPLOMATIC LAW

Full Marks – 70

Time Allowed: 3 hours

Instructions

- a. Please read the questions carefully.
- b. You are allowed only to carry the Bare Text of Vienna Convention on Diplomatic Relations, 1961.
- c. Answer the Questions Legally and Legibly.

I. ANSWER ANY FOUR OF THE FOLLOWING QUESTIONS LEGALLY, EACH QUESTION CARRY FIFTEEN MARKS (4 x 15 = 60)

1. It has been nearly 60 Years since the establishment of a regime governing diplomatic law. Has the *Vienna Convention on Diplomatic Relations, (VCDR) 1961* achieved the Object for which it was set out for by the International Law Commission (ILC) or whether VCDR has failed to meet the demands as envisioned by its drafters. Discuss.
2. The Institution of *Diplomatic Asylum* is a fine balance between matter concerning violation of the Right of Sovereignty of the host country and Function of the diplomat in protecting the individual. Analyze the concept of Diplomatic asylum in detail in light of progressive development of International Law.
3. *The Tehran Hostage Case, 1979* is arguably the sole contentious case in the docket of International Court of Justice to dwell extensively on the Jurisprudence of Diplomatic Law. Highlight the key issues discussed by the world court in the said case.
4. The Personal Inviolability of Diplomatic agent under Article 29 is touted as one of the oldest established rules of diplomatic law. Examine comprehensively the negotiating history, significance, relevance and subsequent practice of the said provision.

5. The Indian contribution to world diplomacy stems from the seminal literature of Kautilya's- Arthashastra, which presents a unique exposition on the *Art of diplomacy* and beyond. Examine.
6. *persona non grata* is certainly the most debated and interpreted provision under the *Vienna Convention on Diplomatic Relations, 1961*. Evaluate the critical perspectives on *persona non grata*.

I. WRITE SHORT NOTES ON ANY TWO OF THE FOLLOWING QUESTIONS, EACH QUESTION CARRY FIVE MARKS: (2 x 5 = 10)

7. Diplomatic Immunity under *Article 31 of the Vienna Convention on Diplomatic Relations, 1961*.
8. Immunity conferred to *Family Members of Diplomats under Article 37 of Vienna Convention on Diplomatic Relations, 1961*.
9. The Significance of *Preamble of the Vienna Convention on Diplomatic Relations, 1961*.

The West Bengal National University of Juridical Sciences

B.A/B.Sc LL.B (Hons.) End Semester Examination - Winter Semester 2017-18
(Batch 2017)

Economics II

Full Marks: 50

Time: 3 Hours

ALL QUESTIONS IN THIS PAPER ARE COMPULSORY

1a) “Central bank loses control on High Powered Money under fixed exchange rate regime.” Discuss using the Central bank’s asset-liability accounting framework. What is the role of Official Reserve Transaction in maintaining BOP equilibrium in this case?

(In this context, clearly explain the concepts of current and capital account surplus/deficit and furnish your answer with the mechanics of foreign exchange market). (5)

b) Country X has a flexible exchange rate regime. The Central bank of X decides to increase the Statutory Liquidity Ratio and the Cash Reserve Ratio. What will be the impact of this policy on

a) Market rate of interest. (4)

(Use Diagram for supply of and demand for high powered money to illustrate.)

b) FDI and exchange rate (4)

(Use Diagram to illustrate how these variables are impacted in the foreign exchange market.)

c) Inflation. (1)

d) Private Investment. (1)

e) GDP of X. (2)

(Use the IS-LM framework to supplement your answer.)

f) Aggregate consumption and savings. (2)

g) Exports. (1)

h) Imports. (4)

i) Current Account Balance. (1)

2) “In investigating the present economic system, classical economists introduce either explicitly or by implication such institutional and social assumptions as are necessary in order that **wages** take the form of money payments by employers to hired workmen. What lies behind this form, however, is derived from

the productivity theorems, which in themselves are **entirely empty of social content**. From this point, it is an easy and natural step to treat wages as marginal productivity of labour and to regard the relation between employer and worker as expressed in the actual wage payment as incidental and in itself of no particular significance. Thus in neoclassical welfare economics, the relationship between employer and worker is looked upon as a technical incident, subsidiary to the main fact of scarcity.

This understanding of central economic concepts like rent, interest, profit, capital etc. is borrowed from everyday language and the social content is drained off. It seems obvious that in this way, economists avoid a systematic exploration of those social relations which are so universally regarded as having a relevance to economic problems that they are deeply embedded in the everyday speech of the business world. And it is even more obvious that the basic point of view which modern economics has adopted unfits it for the larger task of throwing light on the role of the economic element in the complex totality of relations between man and man which makes up what we call society.”

~ Paul M Sweezy

a) In the light of the above statement, critically evaluate the classical macroeconomic philosophy and its key assumptions and conclusions. Relate it to the Ricardian principle of comparative advantage and gains from trade. (15)

b) How can we attribute capitalistic exploitation to the crisis of capitalism (Great Depression)? Give a Marxist Reinterpretation of the General Theory of Employment, Interest and Money written by John Maynard Keynes in this context. (10)

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester Examination – 2nd Semester – 2018 Batch

ENGLISH- II

Full Mark: 30

Time Allowed: 2 Hours

1. Answer any **ONE** of the following questions : (**1x10=10**) **500 words**
 - a) Trace the character of Josef K as he struggles with the inscrutable power of judiciary in Kafka's *The Trial*.
 - b) Write a critical summary of Francis Bacon's essay *Of Studies*.
 - c) Discuss T.S.Eliot's *Preludes* as a representative modern poem.
 - d) "Andrew Marvell's poem *To His Coy Mistress* is a dialectical argument formed in a tight syllogistic structure"- discuss with reference to this statement.

2. Explain any **ONE** of the following with reference to the context : (**1x5=5**) **250 words**
 - a) "But at my back I always hear/ Times winged chariot hurrying near:/And yonder all before us lie/ Deserts of vast Eternity"
 - b) "The court does not want anything from you. It receives you when you come and dismisses you when you go."
 - c) "For Natural Abilities, are like Natural Plants, that need Proyning by Study".
 - d) "The morning comes to consciousness/ of faint stale smells of beer/With all its muddy feet that press/ To early coffee-stands."

NOTE: Do not attempt the same text for Question 1 and 2

3. Attempt any **ONE** of the following: (**1x10=10**)
 - a) Write a CV with a covering letter to a renowned law firm seeking a summer internship.
 - b) Write a report on a recent lecture series event held in your university for the university magazine.

4. Attempt any **ONE** of the following: (**1x5=5**)
 - a) Write a Notice along with an Agenda for the next Cultural Committee Meeting in your university.
 - b) Jot down notes and write a summary for the given extract:

The film, in spite of its origin in the studio factory, is as capable as poetry and letters of achieving beauty and distinction; there is no aspect of human emotion which the sound film cannot present, and its qualities are equally well adapted to wit and humour. But unlike the novel, which is written by one man or the picture which is painted in

seclusion, the film is the result of conferences and staff-work in which, it might be thought, that the sensitive artist would become lost among a welter of executives. But this is not so. The twentieth century artist of the film-the director- is a man who combines sensitiveness with leadership, who can convey to his cameramen, his electricians, his scenic designers and builders, his costumiers and his property-men, the spirit of the film as a whole, and the sequence on which the money is spent in particular. The film is a co-operative art, but, as in all creative work, a single mind with a single purpose must dominate the whole. The names on the credit titles are the names of those who have served under the leadership of the director to create the unified composite achievements of the film. Behind every large- scale film there lies, therefore, the financial conferences, the staff-work of camera, lighting, sets, costumes, make-up and finally cutting together with the discussions of producer, director, scenarist, cameraman, editor and actors. Collectively they stand or fall. Many good films have been vitiated because the best interests survived the boardroom and the director was loyal to his own artistic conscience.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. Winter 2018-19 End Semester Examination (8th Sem)

Environmental Law

Full Marks - 70

Time Allowed: 3 Hrs.

Students are allowed to consult Module-5 of Environmental Law in the Examination Hall, consisting of bare provisions without comments

Answer question no.1 and any **three** from the rest.

No clarifications please

1. Write short note on any one: [10X1=10]
 - a. Legal issues in *Konkan Railway* case [AIR 1992 BOM 471];
 - b. Environmental issues in *DDA* case [(2009)8SCC582];

2. The Goa Marine National Park and Sanctuary lie along the lower lip of the Arabian Sea in the State of Goa covering reserve forests and territorial waters. Green Oil Ltd., India Iran Refineries Ltd. (IIRL) and Goa Port Co. Ltd., seek to lay pipelines to pump crude oil from a single buoy mooring in the Goa Coastal Line, a portion of the Marine National Park and Marine Sanctuary to their oil refineries in Margao District. On the basis of separate public interest litigation petitions filed by Goa Utkarsh Samity (GUS) and India First (IF) the High Court, by the impugned judgment, has held that IIRL may lay its pipelines but the others may not and has restrained the State Government from granting any more

authorizations and permissions for laying down any pipeline in any part of the sanctuary or national park. IIRL was allowed to lay its pipelines by the High Court, since permission to do so had already been granted to it by the State government and since no such permission had, according to the High Court, been granted to Green Oil, its application together with all pending applications were to be decided in accordance with what had been decided by the Court. This decision of the High Court has given rise to a series of Special Leave Petitions to the Hon'ble Supreme Court. The questions involved in these appeals are -- Can pipelines carrying crude oil be permitted to go through the Marine National Park and Sanctuary and if so, has Green Oil Ltd., in fact been so permitted? Please decide the case with the help of relevant legal materials. [20]

3. Agriculturists, who were affected by the acquisition of lands of different villages, filed a writ petition under Article 226 of the Constitution with a prayer that the appellant Odisha Industrial Areas Development Board (in short OIADB) be directed to refrain from converting the lands of the respondents for any industrial or other purposes and to retain the lands for use by the respondents for grazing their cattle. The agriculturists have filed a writ petition indicating that they are residents of villages and their lands are gomal lands (grazing lands for cattle) and also is part of the green-

belt in the comprehensive development plan and another land is reserved for the residential purposes. According to the agriculturists, if the entire land is acquired and an industrial area is developed, the villagers would lose the gomal lands, causing grave hardship to them as well as their cattle. It was also submitted that there would be an adverse impact on the environment of the villages as the industrial area increases. Their prayer in the petition was that the gomal lands and the lands reserved for the residential purposes in the green-belt should not be acquired and allotted for industrial purposes. Decide the case. [20]

4. A mining activity has been allowed in one of the national parks of the state of Kerala for the purpose of extraction of iron and manganese, which are of national importance. The National Park is declared within the protected forest and a part of it is also declared as sanctuary. From the National Park a massive river passes through, which is the only source of drinking water for the wild animals. The NGO, 'Protect Wild life', hereinafter, 'PW' filed a public interest litigation before the honourable Supreme Court for immediately stopping the mining activity which is not only affecting the natural minerals of the forest and National Park, by which span of life of most of the trees are being reduced, but also going to give a threat to the existence of River because the mining was

going on near the river. Decide the case with the help of relevant legal materials. [20]

5. A function hall 'KM' is situated between a well-known hospital for intensive care of heart patients and a secondary school. Quite often music bands are played in loud tones in that hall for quite a few hours on the day of any celebrations. The hospital patients complain of shock and ill-health, similarly, school management also complain regarding disturbance of pursuing study. The Hospital Management 'HM' and School Management 'SM' initiated complains to Pollution Control Board (PCB) and local Police Station (PS), but both could not initiate appropriate steps to control the health hazard of noise pollution. Meanwhile, the matter was published in local newspaper and a NGO 'Zero Noise' (ZN) filed writ petition under Article 32 of Indian Constitution before the Hon'ble Supreme Court to issue directions for controlling noise pollution. Decide the case with the help of relevant legal materials. [20]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 8th Semester – 2015 Batch

Equity and Trusts

Full Marks: 50

Time Allowed: 3 hours

This Examination is for **50 marks**. You are allowed to only carry unannotated and unmarked copies of the Indian Trust Act 1882.

Section A

20 Marks

This Section is compulsory

1. Tommy Shelby is a gang leader who operates out of Birmingham. Due to the dangerous nature of his life, he makes a will. He decides to make certain dispositions in his will some of which are in the nature of a trust. Tommy nominates as trustee his brother Arthur, who has recently returned from war and suffers from severe post traumatic stress disorder, to the extent that he has tried to commit suicide several times. As a second trustee he nominates his aunt Polly.

His will makes the following dispositions:

- a. To my brother Finn, I leave half of the 200 guns that that I have appropriated from the local arms factory, with the condition that he uses it to set up a training centre for arms dealers.
- b. 20 of these guns are to be held in trust for my sister, Ada. To my sister, I also leave life interest of my house, the remainder interest of which is to be used for the maintenance of her son. (At present, Ada is two months pregnant).
- c. The balance in my bank account is to be held in trust for those deserving young veterans of the War who truly need it, as deemed by the trustees.
- d. Any property that remains, can be used by my family for anypurpose that can possibly be considered desirable by my family.

While sitting at his local pub, Tommy comes to hear that there are certain conditions that determine the validity of testamentary dispositions through trusts. He comes to you, also a war veteran and a down on luck lawyer for advice. Advice Tommy on the validity of the trust with reference to both UK and Indian Law.

Section B

(10 x 2 = 20 marks)

Answer any two of the following:

3. Why are implied trusts imposed by the law? With reference to cases, discuss the continuing relevance of implied trusts in UK law.

4. The position of the trustee is an onerous one: Discuss in relation to duties, powers, liabilities and disabilities.

5. Are maxims of equity still relevant today? Discuss with reference to examples from both UK and Indian law. (In the interest of brevity, you can restrict your discussion to any four maxims.)

Section C

(5 x 2 = 10 marks)

Write short notes on any two of the following cases:

6. Paul v Constance

7. Tagore v Tagore

8. Barclays Bank v Quistclose Investments Limited

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester Examination – 2nd Semester – 2018 Batch

FAMILY LAW I

Full Mark: 70

Time Allowed: 3 Hours

All Questions Compulsory

No Bare Acts/handouts/notes Allowed

1. Air Force employee Mohammed Khalid (Sunni Muslim) in 2012 married to Rizwana according to Sunni Muslim law. Twin daughters were born in 2013. Rizwana found that Khalid, had deceitfully married her by concealing his two previous marriages, which she discovered within two years of their marriage. Rizwana found two dependant cards in her husband's bag issued by the Air Force which carried names and photographs of two women addressed as Khalid's spouse. When Rizwana sought a divorce, Khalid held that Islam allowed him to marry without divorcing his wives. When she asked him to divorce his previous wives, he pronounced triple talaq on her.
- i. Rizwana seeks your (Legal) expert advice.
 - ii. Discuss the present law and Apex Courts judgments in this aspect.
 - iii. Critically analyze the Ordinance on Talaq e bidat
 - iv. Who all are entitled to maintenance? Give reasons for your answer and support with case laws.

2.5+2.5+5+5=15

2. Write Short Notes on any three from the following:

5x3=15

- i. Mutual Consent Divorce under Islamic law.
- ii. Doctrine of *Factum Valet*.
- iii. Custody of Children under Hindu law
- iv. Custom as a source of Hindu Law

3. Rangali and Karan Singh were married in the year 1951 according to Hindu law. They were blessed with two children, daughter and son. Subsequently Karan Singh met Fiza and was attracted towards her company and finally in the year 1955 converted to Islam and married Fiza as per Islamic Law. At that time the daughter was 8 years of age and son was 6 years of age respectively from previous marriage. From Fiza he had one son. Rangali prosecuted Karan Singh for Bigamy. Discuss the validity of the Second Marriage and Legitimacy of Second Son. Suggest reform in the light of recent Apex Court judgment. Also discuss the law relating to determining who is a Hindu on whom Hindu law applies.

10

4. Discuss law with reasons and Supreme Courts Judgments on the validity of the following Marriages :
- a. Sonali was married to Ashis in the year 1990 according to Hindu law. Suhani was married to Ashwin in the year 1990 according to Hindu law. Subsequently son Kartik was born to Sonali and Ashis in 1991 and a daughter Kosha was born to Suhani and Ashwin in 1992. Both the couples got divorce in the year 2011. Ashish Married Suhani in the year 2015 and Sonali married Ashwin in the year 2016. In the year 2018 Kartik and Kosha got Married. Discuss the validity of marriage of all the three couples according to Hindu law.
 - b. Sahana and Amir Ali got married on 20th December 2018 according to Sunni law. Amir Ali approached Shobna, younger sister of Sahana, for Nikah. Sobhna agreed and subsequently they got married. Discuss the validity of marriage between Amir Ali and Shobna and give reasons.
 - c. Rahana was the daughter of Amir Ali. Amir Ali's father's sisters son Kasim wanted to marry Rahana. Rahana was married to Kasim according to Sunni law. Discuss the validity of the marriage. Discuss the position of law if parties were Hindu.
 - d. Abbas a Sunni Muslim marries Rose Marie a Sikh by religion according to Islamic law. Discuss Validity of Marriage and also rights and obligations towards such marriage.

5x4=20

5. A. Shanti, and Amartya, were married some time in 1999 according to Hindu Law. Two sons were born. On 12.4.2010, Shanti, on behalf of herself and for her two minor children, filed an application under Section 125 Cr.P.C. complaining of desertion and cruelty by Amartya. By order dated 3.4.2012 the learned Presiding Judge of the Family Court at Kolkata granted maintenance to the Shanti on the ground that she was not divorced by the Amartya and hence entitled to maintenance of 1200/- per month. However, maintenance at the rate of Rs.1150/- per month was allowed for two minor sons of the Shanti for the period during which they remained minor. Amartya wants to Appeal for revision of the amount of maintenance and seeks your advice. What is the present position of law?
- B. What difference it would make any if both the parties were Muslim?

5X2=10

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 8th & 10th Semester – 2014 & 2015 Batch

An Interface between Fantasy Fiction Literature and Law: Special Focus on Rowling's Potter-verse

Full Marks – 55

Time Allowed: 3 hours

Answer any five of the following questions. Provide suitable references and illustrations in support of your answer.

Q.1. “The absence of an understanding of the rule of law represents a fault line in the terrain of the wizard world on which the forces of chaos can apply maximum pressure.” Analyse this statement in the context of the legal framework of Potterverse and comment on the rule of law versus the rule of man debate in the same context. (11)

Q.2. Explain the role played by the rule of objective intent and exceptions to the same as a building block of the theoretical framework of the law of contracts and the manner in which this concept has been explored in the world of Potterverse. (11)

Q.3. “The central tenet of public-choice theory is that the best way to understand the actions of governmental actors is to assume they are primarily –or solely –motivated by self-interest.” Examine in the light of this theory the portrayal of the self-interested bureaucrat drawn by J.K. Rowling and the ways in which she has responded to the various defenses in favour of government and bureaucracy and to the critiques of public-choice theory. (11)

Q.4. Explore the supposed inconsistencies in the legal regime governing the British wizarding world as represented by the Three Unforgivable Curses, their ‘forgivable companions’ such as the Dementor’s Kiss or Memory Charms and the treatment accorded to the same under the reign of the Ministry of Magic. (11)

Q.5. Briefly examine William P. MacNeil’s position that throughout the Potterverse novels, J.K. Rowling has contributed to the pervasive presence in the setting, language and theme of the narrative of James Boyd White’s supposed ‘legal imagination’, thus helping the lawyers turn into privileged ‘implied readers’. Do so in the context of the Pensieve Trials, the various references of and allusions to rights and justice as jurisprudence’s dominant idioms and controlling value respectively in the novels and Rowling’s own legal experiences. (11)

Q.6. Analyse Rowling's notion of families and family life as visible through the lens of the dynamics between Harry Potter and the Dursley family and in the context of the public-private divide vis-à-vis State and family that liberalism speaks of. (5+6)

Q.7. "Rowling's Hermione is a strong, intelligent, thoughtful, compassionate female who is not only assisting the males with whom she has an interdependent relationship but also working to become her own agent as well as a catalyst for social change." Critically analyse this statement in the context of the various roles played and actions performed by Hermione Granger in Pottermore, along with brief references to her literary and mythological antecedents and the manner in which she contributes to a feminist reading of the Pottermore novels. You may use comparisons with other prominent female characters within and outside Pottermore if you so choose. (11)

Q.8. Using Sirius Black as a case-study, briefly elucidate the various factors that may contribute to the conviction of an innocent person in a court of law, as identified in course of *The Innocence Project*. Comment on the various similarities and dissimilarities between Black and the stereotypical profile of a wrongfully incarcerated individual. (7+4)

Q.9. Using the main ingredients of the Solow Growth Model namely population growth, investment in physical capital, education and investment in human capital and technological growth, comment on the state of the Potterian economy, its sustainability and its suitability as a model economy. (11)

Q.10. Can Dumbledore's Army be considered a logical response to a need for collective action within the walls of Hogwarts? Explain by examining the various problems surrounding collective action and James Scott's Everyday Forms of Resistance and whether the DA fits such forms and if so, to what extent. (11)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 8th and 10th Semester – 2015 and 2014 Batch

Film and Law

Full Marks: 50

Time: 3 hours

Part I

Answer any two (2) questions (20+20=40)

1. How would you draw the boundaries of a 'law film'. Elucidate the contextual, theoretical framework of a film and law course/sub discipline/. Drawing on Elkins, critically analyze the basic sets of propositions that he raises. Discuss the typical motifs of law films. Are there films where these motifs have been challenged?
2. Why do 'lawyer' films dominate the 'law films' genre? Do you agree that lawyer films constitute an 'implicit curriculum' of legal education (Elkins). What are the strategies and obstacles to 'reading' lawyer films?
3. 'Trial films cultivate support for the American system of law through its constitution of a specific viewing audience' (Silbey). Elucidate the statement and in this context argue if Indian films do the same that is help sustaining power and legitimacy of legal institutions and processes? Or are Indian films more critical of legal institutions? (You can use films from any Indian language)
4. Mainstream law films reflect social hierarchies and invisibilize/marginalize several constituencies. With reference to specific films in Indian/ Asian/ American/ European, discuss how the portrayals of two specific marginalized constituencies have shifted over time. 10+10

Part II

Answer any one: (10 marks)

5. 'Crime films reflect our ideas about fundamental social, economic and political issues.' (Rafter) Elucidate the statement. Are crime films law films? How does the viewer respond differently to criminality and the criminal in different crime films? (10 Marks)
6. Write Short Notes on Any two: (5+5 = 10 marks)
 - a) Subjectivities in Law films
 - b) Science, reason and belief in Law films
 - c) Adaptations (from book, true incidents, one language to another)
7. Do TV series have a more detailed representation of laws, legal systems and legal actors? Citing examples argue if sitcoms represent legal issues, dilemmas and marginalities better. (10 Marks)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

Gender and Law

Full Marks – 50

Time Allowed: 3 hours

Part 1: Answer two questions 20x2=40.

You can attempt either Q1 or Q2. No question is compulsory.

Complete one part and then go on to the other part. Any part can be attempted first. Marks will be deducted for mixing parts. Do not complete any part of the answer separately after attempting other questions.

1. 'Gender always involves social embodiment Gender relations from a particular social structure; refer to particular features of bodies and from a circuit between them. Bodily structures and processes do not constitute a 'biological base' that has social effects. Rather they constitute a bodily site where something social happens.' Feminist understanding of gender has developed much more since the sex- gender binary propounded by second wave feminism and has informed more nuanced understanding of constructions of masculinities, femininities, trans and queer identities. Using R.W.Connell, Judith Butler and Sylvia Walby (you are free to use any other theorists as well) explore the development of feminist thoughts on concepts of Gender, gender identities, Patriarchy and public private dichotomies which are the basic conceptual frameworks of gender and feminist studies. 20

OR

2. Discuss the various continuities, convergences, debates among feminist ideas and perspectives and explore how many feminist theories engage with questions of laws and legal reforms to address gender inequalities and oppression. (Use the works of Lorber, MacKinnon, Hartmann, Angela Harris, Simone De Beauvoir, Gayle Rubin amongst others to discuss the debates and issues raised by varieties of feminisms) 20

3. The feminist theoretical project in Law is reassessed in several ways by Joanne Conaghan, Sandra Harding, Carol Smart, Usha Ramanathan, Ratna Kapur, Nivedita Menon among others. Critically examine the feminist theoretical project in law which unearths the gendered perception of legal and social arrangements in seemingly gender neutral legal processes.

In this context also elaborate upon the critical analyses made by Indian and Third World feminist legal and social science scholars (Chandra Talpade Mohanty, Usha Ramanathan, Flavia Agnes, Janaki Nair, Ratna Kapur, Radha Kumar) on post colonial laws (labour, criminal, family laws) mapping the continuities and discontinuities on the ' woman question' in law. 10+10

4. Critically examine using an intersectional gender lens any two of the following mainstream legal discourses and practices and also suggest a feminist and queer reconstruction of the laws and legal education – family law, labour law, constitutional law, intellectual property law, criminal law, human rights law, corporate and financial laws. Use case laws to establish your arguments. 10+10

5. Violence studies and sexual violence literature in India uses an intersectional approach to understand systemic gendered violence. Examine the development of laws to combat sexual violence in India that has reflected partially the demands, concerns and critiques raised by feminist and queer politics. In this context map how initially gender bases/sexual violence laws reflected concerns of women (often married) but has now moved beyond the binary. 20

Part 2: Answer any one question: 10 marks

6. Intersectionality as reflected in Combahee River Collective and the National Federation of Dalit Women

7. Masculinities in Law

8. Sexual Rights and Sexual Citizenship is premised on struggles of challenging heteronormativity in law and society. Elucidate the claims of sexual citizenship made through legal interventions in the national and global contexts.

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester Examination – 2nd Semester – 2018 Batch

INDIAN PENAL CODE

Full Mark: 70

Time Allowed: 3 Hours

Students are allowed to carry bare act (without commentary) and customised case list

(Attempt All Questions)

No clarification may be sought during examination

INSTRUCTION

- The question paper consists of seven pages. Please ensure that your paper runs up to page no. 7.
- Read the question very carefully before attempting to write an answer.
- You may attempt question in any order (i.e; it is not necessary to maintain the chronological order).
- The answer number should be marked properly.
- Start new answer in a fresh page.
- Answers should be supported with the relevant provisions of IPC and decided cases. However, it is not necessary to copy the entire provision from the bare act. It is sufficient to highlight the essential ingredients of the relevant section of IPC. You may also substantiate your answer by formulating hypothetical examples. Preference will be given if decided cases are correctly cited. Marks may be deducted for wrong citation.
- There is no standard length of answer. You should endeavour to write to the point but there is no restriction in citing authorities – the more, the better. Ideally, you should check the marks allotted for an individual question before attempting so that you can frame your answer accordingly.

Question No. 1

[4 Marks x 8 Questions = 32 Marks]

Pick the best option with proper reasoning in the light of the IPC from the given choice in this section

****Please note that mark shall **NOT** be awarded if wrong reasoning/provision of IPC/decided case is applied even if the best option is identified.*

1. Mohini booked a cab at around 9.00 a.m for Rs. 500/-. On the half way of the journey, Mohini directed the driver to take through a particular route but the latter refused to go in that direction due to excessive traffic. The driver wanted to take different route but Mohini was not comfortable with it and kept on insisting for another route. The driver stopped the car and demanded half of the agreed fare from her but she was not willing to pay. She said she would pay only after reaching the destination. Thereafter, the driver started to drive in the route he was planning to take, and at that moment, Mohini jumped off the car and ran over by a bus. The bus was trying to overtake from the wrong side of the car. The bus didn't stop even for a moment after the incident. The driver of the car took Mohini to hospital. The doctor declared she was brought dead.
 - a) The driver of cab may be held liable for murder and the driver of bus may be held liable for causing death by negligence
 - b) The driver of cab may be held liable for culpable homicide and the driver of bus may be held liable for causing death by negligence
 - c) No one has committed any offence under the Indian Penal Code
 - d) Both the drivers may be held liable for death by negligence u/s 304A

2. Mohan and Monica have been married for ten years. Sohan, a childhood friend of Mohan, met with the couple on the occasion of marriage of Dhiraj, and since then he had been in regular contact with Monica through voice calls and emails. Mohan inquired Monica several times about the nature of communication but she used to get angry with the suspicious nature of her husband. Thereafter, Mohan warned Sohan to stay away from his wife but it was in vain. The situation continued for three years. Mohan was frustrated and depressed. He visited psychiatrist with his friend three times in a span of two months. On the day of the incident, Sohan was invited by Monica at her matrimonial home for a dinner. Three of them

were having dinner, and all of a sudden Mohan picked up the knife and stab Sohan several times. The victim succumbed to the injury and immediately after the incident Mohan straight away went to the police station and narrated the entire incident. He was arrested for the charge of murder and put on trial. In his defence, Mohan pleaded that he killed Sohan under an insane delusion on the belief that he had committed adultery with his wife. The psychiatrist opined in the court of law that two weeks before the incident Mohan was not in the fit state of mind. However, at the time of trial, Mohan was in his senses. The trial commenced after two months of the incident.

- a) The act of Mohan may be exempted on the ground of insanity
- b) Mohan may get the benefit of grave and sudden provocation
- c) The act of Mohan may be exempted on the ground of insanity as well as grave and sudden provocation
- d) Mohan may take the defence of irresistible impulse

3. Mr. Das was suffering from fever and headache. He visited the clinic of Dr. Mukherjee. The doctor checked the temperature of the patient and directed his compounder (assistant) to provide aspirin (tablet used for curing headache). The compounder gave a piece of tablet to the patient with a glass of water. The patient consumed the tablet but after few minutes he complained of sensation in his calf muscle. The doctor called his compounder and inquired about the medicine he provided to the patient. The compounder confidently said that he provided aspirin. Thereafter, the doctor asked the patient about the taste of the medicine and the latter complained of the bitter taste. The doctor understood that something was wrong because aspirin is tasteless. He immediately took his compounder to the rack of the medicine and asked him to identify the bottle from where he picked up the medicine. The compounder helped the doctor in identifying the bottle, which contained strychnine (a deadly poison). The compounder made a mistake because the colour and shape of the bottle of aspirin and strychnine were same. The doctor gave a stomach wash to the patient without wasting any further time. The patient was perfectly fine within a few minutes after the stomach wash.

- a) Both doctor and compounder will be held liable
- b) Only the compounder will be held liable
- c) Only the doctor will be held liable
- d) Compounder will be liable for attempt to cause murder but doctor will be liable for attempt to cause death by negligence

4. X and D were purchasing vegetables in the market and all of a sudden there was an altercation between them. D pushed X and the latter apprehended the former with a knife. D didn't retaliate. The local people gathered and separated them. After the incident, D went home and informed his three brothers – A, B and C. Thereafter, four brothers (A, B, C & D) went to the house of X to take revenge. All of them were carrying iron rods, and only D was carrying gun along with the iron rod. It was not within the knowledge of A, B and C that D was carrying gun as he concealed it underneath his clothes. They assaulted X with iron rods, causing injuries near the region of left rib, in the left leg, and in the forearm. Further, D took out the gun and pulled its trigger but after realizing there was no bullet, he hit X on the head from the butt (handle bar) of the gun. X died of shock.
- a) A, B, C and D will be liable for causing death of X due to common object by virtue of Sec. 149
 - b) A, B, C and D will be liable for causing death of X by virtue of Sec. 34
 - c) A, B, C and D will be liable for causing grievous injuries to X
 - d) Only D will be liable for causing death and A, B & C will be responsible for causing injuries
5. Two policemen, X and Y, are notorious for using third degree method for extorting confession from criminals. Their offices are in the same room. X arrested Q in connection with the offence of theft and extorted confession from him by apprehending him with dire consequences if he would not confess the crime. Y was doing official work in his desk but didn't interfere when X was apprehending Q.
- a) Y will be held liable for abetment
 - b) Y will be held liable for common intention
 - c) Y will be held liable for abetment by conspiracy
 - d) Y will not be held liable for any offence as he cannot interfere in the investigative process of the investigating officer of a case.
6. Mangal Pandey, a police officer, received an anonymous call on 25th May 2016 at around 7.00 p.m. The caller gave the information that few persons, armed with weapons, have gathered in a certain place near the highway, to attack the Chief Minister. Mangal Pandey, along with two constables – Ram Das and Shyam Das, reached the spot within half an hour and surrounded the suspected house. Mangal Pandey ordered Ram Das to fire one round.

Accordingly, Ram Das fired once from his rifle. Thereafter, the police party went inside the house and found one person dead and four persons were sitting in the sofa. An amount of seven million U.S. dollars and two kilograms of banned drugs were recovered from their possessions. A case is filed against Ram Das and Mangal Pandey for murder u/s 302.

- a) Both Ram Das and Mangal Singh can successfully plead that their acts are justified u/s Sec. 79 of the IPC
- b) Only Ram Das can successfully plead that his act is justified u/s Sec. 79 of the IPC
- c) Both Ram Das and Mangal Singh can successfully claim the benefit of 3rd exception of Sec. 300 for converting murder into culpable homicide
- d) None of the above

7. Mr. Hanuman, a public officer, was known for his honesty and hard work in the department. He has received almost all kinds of police medals given by the government to police officer for exceptional performance. People used to describe him as an institution of honesty. However, some people considered him stupid for not using the position for his personal gain. His dependents, wife (Gita) and three daughters, always complained about the ordinary kind of life he has given to them and often compared their standard of living with other police officers enjoying luxuries of life. Mr. Hanuman considered his wife and daughters as immature and never got irritated by their complaints. Gita always insisted his husband to buy bigger house and car whereas daughters placed demand for latest electronic gadgets such as mobile phones and laptops. The daughters were generally scolded by their friends for ordinary dresses and other valuables. On the occasion of marriage party, one of the daughters was humiliated by her friends, and she left the party, went back home and narrated the incident to her father. Mr. Hanuman was very upset with the behaviour of the friends of her daughter. Gita, having a post graduate degree in economics, explained to her husband that police officers get comparatively less salary in ever increasing inflation and are compelled to take bribes and use other unfair means for a decent standard of living. She further stated that the government was aware of illegal accumulation of money by public officer and it was one of the reasons for not increasing the salary as per the contemporary standard. She wanted to know the identity of any police officer apart from him who was not living on bribe. Mr. Hanuman replied that perhaps every police officer was involved in some kind of illegal gain. At that moment, Gita criticized the practice of her husband for providing the basis for acquiring self-proclaimed principle in becoming sole exception, leading to hardship of family members. Mr. Hanuman had no answer for that argument.

Finally, the wife referred the case of attack on the Parliament of India in which her husband was an investigating officer. She said that it was a good opportunity to earn money. Mr. Hanuman acted accordingly and took a bribe of one million dollar from the suspects.

- a) Mr. Hanuman, his wife and daughters shall be prosecuted for offences relating to bribery
 - b) Only Mr. Hanuman should be prosecuted for offences relating to bribery
 - c) The wife of Mr. Hanuman should be convicted for abetment
 - d) Mr. Hanuman should be convicted for bribery and his wife should be convicted of conspiracy
8. Eight persons had assembled in a residential house near a market place at around 2 0'clock in the midnight. Guns and some cartridges are recovered from them.
- a) May be convicted for preparation to commit dacoity
 - b) May be convicted for attempt to commit dacoity
 - c) May be convicted for criminal conspiracy
 - d) None of the above

Question No. 2

[12 + 10 + 10 + 6= 38 Marks]

1. Distinguish between the following [4 Marks x 3 = 12 Marks]
 - a. Right to Die & Right to Die with Dignity
 - b. Sudden Fight & Grave and Sudden Provocation
 - c. Defence of Necessity & Defence of Duress

2. Whether Raman has committed any offence in the following cases? If yes, discuss the offence/s. Cite relevant provisions and decided cases [5 Marks x 2 = 10 Marks]
 - a. Raman, aged about 25 years, Hindu by faith, married person, has been in friendly relation with Priya, an unmarried woman of 19 years. Raman proposed to marry Priya after six years of their relationship. Priya accepted the proposal during the subsistence of Raman's original marriage and they decided to marry under the Special Marriage Act. They affix one month notice for raising objection against the proposed marriage in the office of the Marriage Registrar, which is one of the

requirements of law. After two days, they applied for conversion to Islam. A male can have two wives in Islam.

- b. Raman has been enjoying possession of a piece of land and planted crops. Shyam claimed the ownership of the land through a civil suit. The case has been decided in favour of Shyam and the court declared that he is exclusively entitled for the land along with crops and other things attached to the land. Raman came to know of the judgement and immediately cut off the crops and sold it. Shyam entered the land to acquire the possession of land by virtue of the decision of court. He was carrying the copy of the judgement. Raman was present in the land and altercation took place between them. Initially, Shyam gently pushed Raman and the latter pushed him back, which makes the former slipped off, leading to minor injuries.
3. Briefly discuss five mitigating factors which are relevant for sentencing but may not be considered for determination of guilt. [10 Marks]
4. Discuss various circumstances where a person can commit theft of his own property. [6 Marks]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

INDIRECT TAX LAWS

Full Marks: 50

Time Allowed: 3 hours

- i. Any Bare Act and Bylaws including circulars without any commentary are allowed.
- ii. Calculator *simplicitor* is allowed.
- iii. Attempt **any four** questions.

1. Critically examine fiscal federalism and State autonomy in the light of The Constitution (101st Amendment) Act, 2016.

12.5

2. “Every supplier having the annual turnover exceeding the Rs. 20 lakh is liable to get registered compulsorily.” Critically examine the statement with the help of statutory provisions and suitable illustrations.

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. Explain the concept of input tax credit (ITC). Critically examine the condition for claiming the ITC under CGST Act, 2017. Also, whether the supplier whose supplies are chargeable under reverse charge, can claim ITC? Yes or no, critically comment.

2+6.5+4

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, amount supply under GST law? YES OR NO, Give reasons.

8.5+4

6. Write short notes on **any two** of the followings-

- a. Fundamental rule of Valuation and treatment of discount under GST
- b. Time of supply under GST
- c. Composition scheme under GST
- d. Composite and mixed supplies and tax implications under GST *vis-a-vis* erstwhile indirect system.
- e. Co-operative housing society and GST implications

6.25+6.25

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

INFORMATION TECHNOLOGY LAW

Full Marks – 70

Time Allowed: 3 hours

ANSWER ALL QUESTIONS

BARE ACT (WITHOUT COMMENT) IS ALLOWED

NO EXPLANATION SHALL BE OFFERED

1. Pritam, a seventeen year old boy pretends to be of eighteen year old and creates profile in a Matrimonial website by using his father's credit card. Pritam starts interacting with an eighteen year old girl, treating the website as dating website. Examine this situation and offer your comments. 10
2. A pirated song in MP3 format has been uploaded from one country, being held on a server in another country, being advertised for sale on the website of a service provider in a third country, being bought from another country and finally downloaded in another country. Does the court in each of these countries have jurisdiction to entertain the dispute in an infringement of the copyright in the song? Explain the issue of jurisdiction in this situation. 10
3. One website has published a defamatory statement about film star, Mr. Amitabh Bachchan. Considering worldwide reputation of Mr. Bachchan and worldwide accessibility of the website, Mr. Bachchan is looking for global injunction. Advice Mr. Bachchan regarding feasibility of such relief and any other relief in India if available. 10
4. Write a report on possible reliefs available today in India against spam mails. 10

5. A photograph depicting a six year old boy taking bath without clothes is available in a website which is accessible from India. Examine Sec 67B of Information Technology Act 2000 with special reference to this photograph. 10

6. One website, accessible from India illustrates methods of hacking with diagram. Government report indicates that numbers of instances of unauthorized access are increasing day by day. Examine liability of the proprietor of the website. 10

7. Examine whether hate speeches in Internet needs to be regulated and explain what are the ways it can be done. 10

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

Law of Insurance

Full Marks – 50

Time Allowed: 3 hours

Instruction to the Examinees

Examinees are allowed to refer to The Insurance act, 1938 and the Marine Insurance Act, 1963(without commentaries) during the examination.

This question paper is divided into two parts i.e. Part –A and Part-B.

Answer **both** the questions from Part-A and any **two** questions from Part-B.

Part –A

Answer both the Questions in this Part 2x15 = 30 marks

1. M/s Eastern Shipping Co. is the owner of a shipping vessel sailing in the sea. The sum insured for the same was Rs. 21,50,000/- on 14.12.2009. A total premium of Rs. 40,832.50 was paid for the period covering 14.12.2009 to 13.3.2010. The insurance was extended from 14.3.2010 to 13.6.2010 by paying an additional premium of Rs. 30,383/-.The said insurance policy was a valued policy.

It may be pertinent to mention that before issuing the policy the Surveyor (hereinafter referred to as ‘first surveyor’) appointed by the insurer thoroughly inspected the vessel and issued a valuation certificate. The first Surveyor after inspecting the vessel certified that the market value of the vessel was Rs. 21,50,000/-. The Surveyor gave a very comprehensive report and took note of the fact that a major over-hauling of the engine, accessories, reconditioning and painting of the Hull had been carried out during 2009. It may be pertinent to mention that the first Surveyor had considered all relevant factors in his report.

The vessel sailed from Mumbai sea port at around 3 p.m. on 23.4.2010 and was destined to reach London. The vessel was also loaded with cargo and sank midway (with the entire cargo) before reaching London.

The Eastern Shipping Co. lodged a insurance claim of Rs. 21,50,000 with the insurer company on 6.4.2011. On receipt of the claim statement from the insured the insurer immediately deputed another Surveyor (second surveyor) and carried out a spot survey. The second Surveyor submitted a report valuing the said vessel at 15 lakhs only. The insurer contended that the claim of Eastern Shipping Co. against the said vessel that sank midway before reaching London is not more than Rs. 15 lakhs and hence the insurer is not liable to pay any amount beyond Rs.15 lakhs in order to indemnify the insured for losing the vessel. The insured decided to sue the insurer to recover a claim amount of Rs. 21,50,000.

The insurer contended that, the insurance coverage under the policy was obtained by the insured for a higher sum than the actual value of the vessel and also that the insured managed to deliberately conceal the material facts while obtaining a policy of marine insurance from the insurer worth Rs.21,50,000/-.

Assuming that the claim is not barred by limitation, decide whether the insurer's claim is maintainable in law. Also give reasons for your decision.

5 + 10 =15 marks

2. Shambhu Dayal, who was governed by the Hindu Succession Act, 1956, died intestate on June 15, 2009 leaving behind his minor son, **Ratan**, his widow **Sarala Devi** and his mother **Gayatri Devi**, as his legal heirs. He had during his lifetime taken two life insurance policies with sum assured of Rs. 1 lakh each and had made his wife Sarala Devi, the nominee under the two policies. Later, Shambhu Dayal's relationship with his wife Sarala Devi, soured and they were no longer staying with each other for around 5 yrs. Moreover, Sarala Devi went back to stay with her parents whereas Shambhu Dayal was staying with Ratan and Gayatri Devi, when he died. However, Shambhu Dayal and Sarala Devi were not divorced.

After the death of Shambhu Dayal and also on the basis of the said nomination made by Shambhu Dayal at the time of subscribing to the two life insurance policies, Sarala Devi (being the nominee under the two Life Insurance Policies subscribed by the deceased, Shambhu Dayal) claimed her sole/ absolute right over the entire sum assured, payable under the two policies taken by insured i.e. Shambhu Dayal. Moreover, Sarala Devi claimed the entire sum assured under the two life insurance policies to the exclusion of Ratan and Gayatri Devi. Left with no other option, Gayatri Devi and Ratan sued Sarala Devi in the appropriate Court, for a declaration to the effect that they (Gayatri Devi and Ratan) were also entitled to a share of the sum assured due and payable under the insurance policies put in place by Shambhu Dayal during his lifetime.

Sarala Devi refused the prayer of Gayatri Devi and Ratan. Sarala Devi's contention was that on the death of the assured, she as his nominee became absolutely entitled to the sum assured/ monetary amounts due under the insurance policies. Sarala Devi further contended that neither Ratan nor Gayatri Devi had any right or legitimate claim of money under the policies.

Decide whether Gayatri Devi and Ratan are actually entitled to receive any monetary benefit under the policies? Give reasons for such a decision.

5 + 10 = 15 marks

PART –B

Answer any two Questions from this section

(2x10 =20 marks)

3. Discuss the regulatory framework governing reinsurance business in India. **10 marks**
4. Discuss, with the help of appropriate cases, the significance of the principle of insurable interest in a contract of insurance. **10 marks**
5. Discuss the impact of ‘assignment’ and ‘nomination’ to a policy of life insurance in India. **10 marks**

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 6th Semester – 2016 Batch

INTERNATIONAL CRIMINAL LAW

Full Marks – 60

Time Allowed: 3 hours

Attempt any **FOUR** Questions. All questions carry equal marks.

Note- Students are allowed to carry Bare copies of Genocide Convention, Rome Statute of the International Criminal court and Elements of Crimes: International Criminal Court.

Q.1 “Genocide is the international destruction of the members of the ‘protected’ group in whole or in part through well specified categories of conduct.” Critically examine this statement. Can the prohibited acts of crime of genocide be extended to rape?
(7.5 + 7.5 = 15 Marks)

Q.2 According to the orthodox view, 'crimes against humanity' can be committed by persons against persons only in the context of widespread or systematic attack against the group to which the victims belong. A 'new conception' offers that it should include some individual violations of human rights without 'wide and systematic attack'. Analyse critically.
(15 Marks)

Q.3 The collective nature of crimes under international law does not absolve us of the need to determine individual responsibility'. Critically examine in the light of Art. 25 of the Statute of International Criminal Court.
(15 Marks)

Q.4 Explain the subjective and objective elements of war crimes. Critically examine the category of 'war crimes' as 'serious breaches of International Humanitarian Laws'.
(7.5 + 7.5 = 15 Marks)

Q.5 Provide a critique of Tokyo trial as 'Victor's justice' with special reference to Justice Radha Binod Pal's dissenting opinion.
(15 Marks)

Q.6 Write a critical notes on any two:

(7.5 x 2 = 15 Marks)

- A) Crimes of aggression
- B) Nuremberg trials
- C) Jurisprudential concept of International Crimes

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. WINTER SEMESTER 2018-19 08th SEMESTER EXAMINATION

INTERNATIONAL INVESTMENT LAW

Marks: 70

Time Allowed: 3 Hours

INSTRUCTIONS

1. This is an OPEN BOOK exam. Thus, you are allowed access to all material you desire to carry, except those stored electronically.
2. ALL QUESTIONS ARE COMPULSORY.

ALL THE BEST.

1. *“This nature of an investment makes it inevitable that the nature, structure, and purpose of foreign investment stands out as structurally distinct in the broader realm of international law, especially in comparison to trade. In terms of legal methodology, the difference between the two fields call for caution in assuming commonalities between foreign investment law and trade law.”*

In the context of the above statement, enumerate the distinctions between international trade and investment. Do you feel the distinctions justify the creation of separate regulatory framework for the two? Do you agree with the view that these distinctions are the impediments to the pursuit of multilateralization in international investment law? Between the current BIT model and a WTO-like multilateral regulatory structure, which would you support and why?

[20 marks]

2. The cancellation of the 2G Spectrum licenses by the Supreme Court, initially distributed by a Department of Telecommunications, Government of India, led to a number of Foreign Investors serving the Government with Investment Treaty Arbitration (ITA) notices. In this context, the erstwhile Attorney General said, these corporations cannot claim damages since court orders do not constitute actionable claims, and that India follows the system of separation of powers, and the acts of the judiciary cannot be considered violations of BIT.

In light of the decision by the tribunal in *White Industries v Republic of India*, as well as general principles of international law, comment on the maintainability of the AG’s claim.

[20 marks]

3. In early 2005, the neighboring nations of Pindia and Republic of Fishfish signed a Bilateral Investment Treaty for '*economic cooperation in promoting investment by one contracting party within the territory of the other party*'. In 2008, KalaCola, a Fishfish-based soft drink manufacturer, embarked upon the process of setting up a manufacturing unit in the Pindian State of Mishtiland, exclusively to cater to this foreign market. Even before production began, KalaCola entered into an agreement with a Pindian PSU, Spread Corp, for the distribution of its products across the country. Spread Corp was among several domestic corporations who participated in an open bidding process in order to secure the deal with the soft drink manufacturing giant.

Prior to investing, KalaCola had received requisite licenses and permits from the Central Government of Pindia and the State Government of Mishtiland. In fact, the government of Mishtiland themselves acquired the necessary land for the construction of their factory from its residents, and were eager to help the industrial giant, whose presence in their state indicated a possibility of large-scale employment for locals and economic growth for the region. Relying upon the government's promise and cooperation, KalaCola invested heavily in building a state-of-the-art manufacturing plant, its most costly venture in a decade.

An NGO from Mishtiland, MyZameen, which had a long history of championing peasants' movements, were contacted by a couple of researchers from the local university, who were convinced that the presence of the factory posed a serious threat to the ecology of the area. These two researchers, Antiban Bose and Nationalist Ghosh, compiled a report which indicated that the groundwater depletion caused by the factory's insatiable consumption would lead to a critical lowering of the water table, and the effluent discharge facilities of the factory would also likely contaminate the river nearby. Based on their study, MyZameen started a protest with the help of the local farmers, and petitioned the government to stop construction and return the land to the original owners. Perplexed by this development, KalaCola sought help of the state government, who tried to negotiate with the locals for an amicable solution, without hindering the construction of the factory. However, several meetings later, it was clear to the government that no negotiated solution was likely as the farmers were adamant and wanted their land back. In early 2009, the farmers forcefully entered the premises of the factory demanding the construction be stopped. The manager of the factory called the police and state officials, but before they could arrest all the trespassing locals, lots of factory property had been destroyed and substantial material damage had been caused.

Sensing trouble, Spread Corp sent a notice to KalaCola for the termination of their contract. KalaCola responded by saying that such a unilateral termination was not legal and with an offer to renegotiate. However, Spread Corp showed no interest in this and went ahead with the termination. Aggrieved by this, KalaCola served the Pindian government with an Investment Treaty Arbitration notice, alleging the violation of fair and equitable treatment and full protection and security, and demanding the payment of a hefty compensation. They also made the government responsible for the actions of Spread Corp, which was a public sector undertaking with the government as its majority shareholder.

Before the tribunal, the government negated all these claims and suggested that the dispute with Spread Corp should be settled before municipal civil courts, since this was not a BIT violation and was a purely contractual dispute. However, KalaCola differed by saying the presence of the MFN clause in the Pindia - FishFish BIT allowed them to import the Umbrella Clause from the Pindia – Ravanaland BIT, which elevated even contractual disputes for international adjudication.

Decide the issues of jurisdiction, admissibility and merits of each of the claims made, as if you were a member of the tribunal with the casting vote.

[30 marks]

Pindia - FishFish BIT

Article 1. Definition of Investment.

"investment" means any kind of asset, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

- (a) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (b) shares, debentures or any other kinds of participation in companies;
- (c) claims to money or to any performance having an economic value;
- (d) concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

Article 6. Fair and Equitable Treatment.

All investments made by investors of one Contracting Party shall enjoy a fair and equitable treatment and full protection and security in the territory of the other Contracting Party.

Article 7. Expropriation.

Investments by investors of either Contracting State shall not directly or indirectly be expropriated, nationalized or subjected to any other measures the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting State except for the public benefit and against compensation.

Article 8. Most favored Nation

Neither Contracting Party shall subject investments and activities associated with such investments by the investors of the other Contracting Party to treatment less favorable than that accorded to the investments and associated activities by the investors of any third State.

Pindia-Ravanaland BIT

Article 13. Umbrella Clause

Each Contracting Party shall observe any obligation it has assumed with regard to specific investments in its territory by investors of the other Contracting Party.

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. End Semester (Winter) Examination 2018 – 6th Semester – 2016 Batch

Labour and Industrial Law - I

Full Marks – 80

Time Allowed: 3 hours

Instructions

- 1. All the questions are compulsory*
- 2. Please read the questions carefully.*
- 3. This is an open-book examination. You are allowed to bring Bare Acts, Study-material, Books, Notes or any other written material with you.*
- 4. You are however not allowed to possess or use any electronic device during the examination.*
- 5. In case you find any relevant and necessary information missing in the problem that precludes you from forming a conclusive opinion, please state so in the answer and explain why that is relevant.*

ALL THE BEST

- 1. “A comparison of the two statutes suggest that the ambit of the Employees’ State Insurance Act 1948 is potentially both wider and narrower than that of the Industrial Disputes Act 1947 and Employees’ Provident Funds and Miscellaneous Provisions Act 1952.” Please comment on this statement with the help of statutes and case law discussed in the course.**

[14 Marks]

- 2. Los Pollos Hermanos, is a chain of 12 restaurants that was owned by Gustabhbbhai Firangilal. The restaurants of Los Pollos Hermanos were situated in National Capital Territory of Delhi but the corporate office of Los Pollos Hermanos was located in Noida, Uttar Pradesh. These restaurants were run with the help of 354 direct employees. In addition, Los Pollos Hermanos had contracted with Veritas Support Services (VSS), an agency that provided contract labour for house-keeping and security services. Under the terms of the agreement, VSS deputed 2 cleaning staff and 2 security-staff for each of the 12 restaurants of the Los Pollos Hermanos chain, to work as contract labour. The agreement further provided that:
 - a) The Managerial staff of Los Pollos Hermanos supervised the work of the contract labour deputed by VSS.**
 - b) The contract labour deputed by VSS were subjected to disciplinary action by the Management of Los Pollos Hermanos. In case of breach of any instruction or****

breach of terms of the agreement or in case of breach of any direction issued vide any circular or rules, notices were issued by the Los Pollos Hermanos Management and disciplinary action such as suspension, fine and termination of contract were imposed by the Los Pollos Hermanos.

- c) Los Pollos Hermanos Management also provided the tools and equipment to the contract labour deputed by VSS.
- d) The Complaint book in the Restaurant Chains also included space for complaints against the security staff and cleaning staff deputed by VSS.
- e) Los Pollos Hermanos paid the salaries of the 48 staff deputed by VSS directly into their bank accounts and the said amount was set-off from the dues paid by Los Pollos Hermanos to VSS.

Part A

On 15th November 2017, the Uttar Pradesh Workers Health Insurance Act 2017 came into effect. Section 1 of this Act stated that the Act shall extend to all establishments a) having 10 or more employees on any day of the preceding twelve months and b) with respect to which, Uttar Pradesh Government is the Appropriate Government under the Industrial Disputes Act 1947. Provided however that nothing in this Act shall apply to those establishments to which Employees' State Insurance Act 1948 applies. Gustabhbai Firangilal sent you a query asking for your advice on whether the Uttar Pradesh Workers Health Insurance Act 2017 shall apply to Los Pollos Hermanos. Please advise. [10 Marks]

Part B

On 16th December 2018, Gustabhbai Firangilal entered into a Business Transfer Agreement for the sale of Los Pollos Hermanos with Tukaram Salamankar. As per the Business Transfer Agreement dated 16.12.2018, Tukaram Salamankar (Purchaser) has undertaken to take over all the liabilities in respect of employees and workers employed by Gustabhbai Firangilal (seller) in Los Pollos Hermanos. Clause 7.4, 7.5 and 7.6 of the Business Transfer Agreement, specifically indicated:

“7.4. On or from the Effective Date all the employees of Los Pollos Hermanos shall be the employees of the Purchaser. The Purchaser agrees and acknowledges that the employment made to the Employees on the Effective Date shall be on a continuity of service basis and that the terms and conditions of service offered by the Purchaser to the Employees shall be no less favourable than the terms and conditions applicable to the Employees in their employment by Seller. The Purchaser further agrees that the Purchaser will be liable to pay to every Employee, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer. The Purchaser shall intimate in writing, the continuation of their services to all the employees of the Los Pollos Hermanos.

7.5 The Seller shall transfer or assign the Employee Benefit Funds (provident fund and/or gratuity fund) up to the Effective Date to the Purchaser without any variation or

prejudice to the rights of employees of Los Pollos Hermanos. The amount of Provident Fund shall be transferred to the respective employee account opened by the Purchaser. From and after the Effective Date, the Purchaser agrees to take over and be responsible for the fulfillment and maintenance of, and contributions to, the Employee Benefit Funds, in accordance with applicable Law.”

When the news of business transfer agreement broke out, the workers of Los Pollos Hermanos began to agitate on the ground that their consent was not taken before transfer of Los Pollos Hermanos to Tukaram Salamankar. Uttar Pradesh Hotel Workers Association (UPHWA), which counted among its members, 173 employees of the Los Pollos Hermanos, approached the Deputy Labour Commissioner Industrial Relations, Uttar Pradesh Government, Noida, on behalf of those employees. The Deputy Labour Commissioner, Noida, summoned all the parties for deliberations. When the Deputy Labour Commissioner realised that there was no meeting ground between the parties, it was decided to make a reference to the Uttar Pradesh Industrial Tribunal, Noida where it asked the Tribunal to decide the following question: “Is the consent of the workmen necessary for a valid transfer of Los Pollos Hermanos by Gustabhbai Firangilal to Tukaram Salamankar? Are the workmen entitled to any compensation?”

In its submission to the Industrial Tribunal, Gustabhbai Firangilal and Tukaram Salamankar averred that

1. Uttar Pradesh Hotel Workers Association (UPHWA) was not competent to sponsor a dispute in this case;
2. Assuming but not conceding that the Uttar Pradesh Government was the appropriate government, the reference should have been made to a National Tribunal since the dispute pertained to more than one state.
3. the contentions of Uttar Pradesh Hotel Workers Association (UPHWA) that the consent of the workmen was necessary for transfer of business or that the workmen were entitled to compensation were not tenable in law.

Even as the reference was pending, Tukaram Salamankar issued a letter to all the 354 direct employees of instructing them on the process of creation of a new salary-accounts with his bank. No such instructions were issued to the 48 cleaning and security staff deputed by VSS. Yash Pinkmani, one of the cleaning staff deputed by VSS, was informed by Tukaram Salamankar that the Business Transfer Agreement did not apply to the contract labour engaged through VSS. Yash Pinkimani wrote to Uttar Pradesh Hotel Workers Association (UPHWA) which in turn raised this matter with the Deputy Labour Commissioner Industrial Relations, Uttar Pradesh Government, Noida. The Deputy Labour Commissioner referred another dispute to the Uttar Pradesh Industrial Tribunal, Noida:

“Does the Business Transfer Agreement between Gustabhbai Firangilal and Tukaram Salamankar on sale of Los Pollos Hermanos extend to contract labour engaged by Los Pollos Hermanos through VSS”

As a Presiding Officer of the Uttar Pradesh Industrial Tribunal, please decide the two disputes? [16 + 10 = 26 Marks]

3. **Ramadhir Singh was employed as a Laboratory Technical Assistant by the Patna Science College on 01.06. 2004. After working for 8 years, he was charged with the misconduct of theft on 29.09.2012. He was served with a charge-memo alleging theft of laboratory materials and a disciplinary inquiry was initiated. The Enquiry Officer found Ramadhir Singh guilty of serious misconduct. The Management accepted the findings of the Enquiry Officer and terminated the petitioner from service on 11.11.2012. Ramadhir Singh thereafter wrote to the Executive Council in January 2013 protesting his termination of employment. The Executive Council took more than 6 months to go over his representation, asked for additional details from him and finally in August 2013, confirmed the decision of the Management of the Patna Science College to terminate the employment. After that, Ramadhir Singh wrote three successive letters to the Ministry of Education between September and January 2014 requesting its intervention. When he did not hear from the Ministry, he wrote to the Chancellor of the Patna University, Governor of Bihar once every two months between February 2014 and December 2014. Later, he also wrote four different letters to the University Grants Commission in the first half of 2015. Each of these letters were copied to the Management of the Patna Science College. With his inability to secure an intervention from any of the aforementioned authorities, Ramadhir Singh wrote to the Labour Commissioner on 18th September 2015 challenging his termination of employment and raised an industrial dispute against the order of termination, claiming that he should have been paid compensation on his termination from employment. The Labour Commissioner referred the dispute on ‘legality of Ramadhir Singh’s termination by the Patna Science College’ to the Labour Court. Even though the Management of the Patna Science College claimed that Ramadhir Singh was not a workmen and the industrial dispute was not maintainable due to the delay in raising it, the Labour Court ruled that it has jurisdiction and in its award, dated 14th November 2016, ruled that the enquiry held was in violation of principles of natural justice. The Labour Court ruled that the details of the allegations against Ramadhir Singh and the evidence related thereto were not shared with him in the charge-memo. Further, he was not given the opportunity to cross-examine the witnesses. Therefore, principles of natural justice had been violated. The Labour Court also held that the permission of the Appropriate Government had not been obtained for the termination of employment. Consequently, the Labour Court revoked the termination order and reinstated Ramadhir Singh and awarded him full back wages for the span between his termination and reinstatement.**

Part A

The Management of Patna Science College has approached the High Court under Article 227 and sought a writ of certiorari quashing the award of the Labour Court on the ground that

- a) The claim of Ramadhir Singh was not an industrial dispute since he was not a workman**
- b) The industrial dispute was not maintainable due to the delay in raising it.**

- c) Ramadhir Singh and the Management of the College had signed an arbitration agreement on 31st October 2015.
- d) Permission of the appropriate government was not necessary.
- e) Even assuming that the termination was illegal due to no-compliance with principles of natural justice, the Labour Court did not have the competence or the grounds to award reinstatement with full back-wages.

Please decide the case as a Judge of the Patna High Court.

[20 Marks]

Part B

On 3rd December 2016, all the clerical employees of Patna Science College began a strike in support of the demand for implementation of the recommendations of the Sixth Pay Commission. On 4th December, 2016, the Management of the Patna Science College declared a lock-out in response. Due to appeal from teachers and students, the strike and the lock-out were lifted on 6th December 2016. The Management of the Patna Science College initiated disciplinary proceedings against all the striking employees on account of participation in an illegal strike. Later, the Patna Science College Employees (PSCEA) Association, a registered union of the staff of the College, signed a settlement with the Management wherein all the disciplinary proceedings were withdrawn against the striking workers in lieu of deduction of 25% of the wages payable for 3rd December and 4th December 2016. Sardar Khan, one of the clerical staff at the College and a member of the Patna Science College Employees Association (PSCEA), applied to the Labour Court under Section 33C of the Industrial Disputes Act, seeking payment of full wages for 3rd and 4th December. He asserted that the strike was not illegal, further the lock-out was illegal and that he was not bound by the Settlement signed between the PSCEA.

Assuming that the application is maintainable, evaluate whether there is any merit in Sardar Khan's application.

[10 Marks]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 8th Semester – 2015 Batch

Law and Economics

Full Marks: 50

Time Allowed: 3 hours

Question Number 1 is Compulsory. Answer any Two from the rest

1) In South Africa, the average unemployment rate ranged from 20% to 40% (Kingdon & Knight, 2004a), depending on the definition, and until 2001 there was no generalized public support for the unemployed. Since credit was hardly available to those without work (FinScope, 2004), there were essentially two ways to self-ensure against employment shocks: one was to accumulate savings, the other was to rely on child labor when adult work could not be found.

Consider the following dynamic model with heterogeneous agents calibrated to South Africa in the 1990s prior to the introduction of an unemployment insurance agency. The tables given at the end of the question shows how child labor responds to idiosyncratic employment shocks.

There are two types of agents, adults and children. Each adult has one child. There is a continuum of infinitely-lived adults of measure one and a similar continuum of children. A child in this model lives forever as a child. The model will highlight the tradeoff between adult and child labor.

At each point in time t , an adult a is characterized by two employment shocks $s_a \in \{0, 1\}$ and $s_c \in \{0, 1\}$, respectively for himself and his child: s_a (or s_c) takes value 1 if the adult (or the child) has a job offer, it takes value 0 otherwise. Employment opportunities follow a Markov process with probabilities $p_a(s_{at}|s_{a,t-1})$ and $p_c(s_{ct}|s_{c,t-1})$ that depend on past realizations of the shock. Employment offers can be accepted or declined.

Let y measure an adult agent's productivity. It also represents the wage of an adult worker. A child laborer's productivity is a fraction λ of an adult's, $\lambda \in [0, 1]$.

All decisions at the household level are taken by the parent. There is a simple storage technology, but no access to financial markets. Households are *de facto* borrowing-constrained. Hence, parents choose whether they and their child should accept job offers when they have one, and how much to save from one period to the next. Let m_t represent the stock of savings available at time t . Parents care about the household consumption c_t and about a linear combination of their leisure l_{at} and their child's l_{ct} . These preferences are represented by a variant of a CES utility function:

$$U = \frac{[C_t^{1-\sigma} \cdot \{\eta \cdot l_{at} + (1-\eta) \cdot l_{ct}\}^{\sigma}]^{1-\gamma} - 1}{1-\gamma}$$

In the above utility function, γ measures the degree of risk aversion of the adult agent, σ the elasticity of substitution between consumption and the weighted sum of leisure in the family, and $\eta \in [0, 1]$ is the weight an adult puts on his leisure relative to that of the child.

A measure of altruism is thus given by $1 - \eta$.

Labor is indivisible. If he works, an agent spends a fixed proportion h_a or h_c of his time endowment at work.

Parents face the following budget constraint:

$$m_{t+1} + c_t = m_t + y_{at}^d + y_{ct}^d$$

Parent maximizes household utility subject to budget constraint.

Consider an unemployment insurance agency whose monitoring of applicants may be imperfect, which could lead to moral hazard. More precisely, while all agents without job offers are eligible to unemployment benefits, a fraction π of agents who refuse offers will be able to fool the unemployment agency and collect undue benefits. Unemployment benefits are a fraction θ of the typical wage. The unemployment insurance is financed with a proportional

income tax. The tax rate, τ , is endogenously chosen in such a way that the unemployment insurance agency balances its budget.

Since child labor is mostly an informal sector phenomenon, we assume that children neither pay taxes nor receive unemployment benefits.

Thus, if an adult works, his disposable income is

$$Y_{at}^d = (1 - \tau).Y$$

If he collects unemployment benefits, his disposable income is

$$Y_{at}^d = (1 - \tau).\theta Y$$

Since child labor is mostly an informal sector phenomenon, we assume that children neither pay taxes nor receive unemployment benefits.

Alternatively, to avoid the moral hazard problem, a universal basic income (UBI) can be given to every adult, whether he works or not. This policy is thus simpler than the unemployment insurance program since the monitoring of labor decisions is not necessary. In this case, while the child's disposable income remains unchanged, that of the adult becomes:

$$Y_{at}^d = (1 - \tau_{UBI}).(1 + w_0).Y$$

if he works and

$$Y_{at}^d = (1 - \tau_{UBI}).w_0.Y$$

if he does not work, whether by choice or not.

The basic income as proportion of wage is w_0 . It is comparable to θ in UI.

As for the unemployment insurance program, we impose that the universal basic income agency balances its budget. The tax τ_{ubi} levied on all income finances the program.

Tables 1 summarize the results under different scenarios and values of the free parameters. In addition to the base scenario ($\lambda = 0.25$ and $\eta = 0.5$), we consider

larger child contributions ($\lambda \in \{0.5, 0.8\}$) and cases of smaller and larger altruism ($\eta = 0.8$ and 0.3 respectively).

We present in the tables, the socially optimal unemployment insurance policy and its effect on the variables identified above, under various moral hazard levels. We do the same for the optimal universal basic income. The case of a child labor ban is also presented as it is the most basic policy available.

- a) Interpret the empirical results in terms of the model presented. (7)
- b) What, according to you should have been the optimal policy for the South African Government and why? Explain in the light of the above model. (7)

Table 1: A comparison of policies

Scenario 1: base scenario $\lambda = 0.25$ and $\eta = 0.5$					
	θ or w_0	Tax rate	Assets	Child labor	Average welfare
Child labor ban	n-a	n-a	16.3580	0	-59.5382
Optimal UI ($\pi \leq 0.5$)	0.80	0.1955	0	0	-46.8174
Optimal UI ($\pi = 1$)	0.50	0.1319	1.0600	0	-48.4095
Optimal UBI	1	0.5659	1.0600	0	-48.4095
Pure self-insurance	n-a	n-a	10.1522	0.1056	-53.6656
Scenario 2: $\lambda = 0.5$ and $\eta = 0.5$					
	θ or w_0	Tax rate	Assets	Child labor	Average welfare
Child labor ban	n-a	n-a	16.3580	0	-59.5382
Optimal UI ($\pi \leq 0.5$)	0.40	0.1084	0	0.2330	-44.4836
Optimal UI ($\pi = 1$)	0.40	0.1084	0	0.2330	-44.4836
Optimal UBI	0.70	0.4772	0	0.2330	-44.4906
Pure self-insurance	n-a	n-a	2.6755	0.2330	-46.9766
Scenario 3: $\lambda = 0.8$ and $\eta = 0.5$					
	θ or w_0	Tax rate	Assets	Child labor	Average welfare
Child labor ban	n-a	n-a	16.3580	0	-59.5382
Optimal UI ($\pi \leq 0.5$)	0.20	0.0573	0.1732	0.3474	-38.1654
Optimal UI ($\pi = 1$)	0.10	0.0295	0.1817	0.3149	-38.3386
Optimal UBI	0.10	0.1153	0.1803	0.3081	-38.3852

Pure self-insurance	n-a	n-a	0.1965	0.2710	-38.8264
Scenario 4: $\lambda = 0.25$ and larger altruism $\eta = 0.3$					
	θ or w_0	Tax rate	Assets	Child labor	Average welfare
Child labor ban	n-a	n-a	16.4616	0	-46.3302
Optimal UI ($\pi \leq 0.5$)	0.90	0.2147	0	0	-32.9350
Optimal UI ($\pi = 1$)	0.70	0.1754	0.0726	0	-33.5144
Optimal UBI	1	0.5659	1.5332	0	-34.7729
Pure self-insurance	n-a	n-a	13.2275	0.0430	-41.0914

Scenario 5: $\lambda = 0.25$ and smaller altruism $\eta = 0.8$					
	θ or w_0	Tax rate	Assets	Child labor	Average welfare
Child labor ban	n-a	n-a	16.1062	0	-86.3173
Optimal UI ($\pi \leq 0.2$)	0.50	0.1319	0	0.2330	-71.0935
Optimal UI ($\pi = 0.5$)	0.20	0.0573	1.1291	0.2330	-72.9041
Optimal UI ($\pi = 1$)	0.10	0.0295	2.7725	0.2330	-74.0411
Optimal UBI	0.10	0.1153	2.9678	0.2330	-74.1546
Pure self-insurance	n-a	n-a	5.4184	0.2354	-75.4365

Note: In the table, average welfare is computed as the weighted sum of households' value function at the steady state corresponding to the given policy. The optimal UI under given moral hazard π or optimal UBI represent the level of generosity (θ or w_0) that maximizes average welfare in the scenario considered. The tax rate presented guarantees a balanced budget for the chosen policy. All statistics are aggregated from equilibrium households decisions.

- c) Consider the Basu-Van model (American Economic Review, 1998). The authors show that a ban on child labour generates an endogenous force which lifts an economy stuck in a poverty trap to a “Good Equilibrium”. Explain the mechanics of the model, clearly stating the key assumptions. (Only intuitive argumentation will suffice). (7)
- d) Extend Basu-Van model to a two-sector economy. The rural sector produces agricultural good X and urban sector produces manufactured good Y. Production of X involves only unskilled labour (both adult and child) while production of Y involves both skilled and unskilled labour. Rural sector has a reserve army of disguisedly unemployed labour, most of whom are engaged in household farming.

The Constitution of the country goes through an amendment in the parliament and declares education to be a fundamental right and provides for free schooling, college and university education for every citizen. The Supreme Court, in a verdict, bans employment of children below the age of 18 years in industrial production. Explain the macroeconomic implication of this “revolutionary” change within the parliamentary democratic framework. Will this LAW alone be able to bring about any change? Provide a political economic analysis.

(You can contextualize this problem with respect to the development paradigms projected by Indian political parties). (7)

- e) Suppose the economy opens up and starts receiving huge FDI in its manufacturing sector. Consider the period before the Supreme Court verdict banning child labour in industrial production.

It became a favourite destination for western capital because of abundant supply of cheap labour, much of which was child labour. As a result of massive capitalization, the manufacturing sector started exporting goods to the west, much of which was tainted by child labour.

Across the western world, public opinion was mobilized against these products, since there is a general consensus in the developed world that child labour is a social vice. In light of this protest, the major importing countries decide to ban any export from that country which contains child labour as an input.

What is the expected implication of this ban on the small open economy? Will the incidence of child labour fall? What will be the impact on income distribution and poverty level? (7)

- 2) A coir Industry is situated next to a densely populated village in a rural area. Villagers from the village are employed in the industry. Salaries are higher in the plant which is more attractive for villagers than farming where the agrarian returns are abysmally low. The Industry flouts norms and sets up units closer to residential huts. Poisonous Fumes leak from the plant. As a result villagers start suffering from respiratory diseases. Children born to pregnant women

exposed to the fumes have congenital defects. An eminent colonial palace in the neighbouring district loses its sheen due to exposure to the poisonous gas. Are the Industry owners liable? Can the owners be held to be liable under the current Indian Laws? The plant is owned by a company incorporated in Sweden. If the industry is shifted or forced to close down what will be the economic loss caused to the villagers who have well-paying jobs in the plant? (7.5)

3) Three states Jayasthan, Bangal, and Rangataka have a dispute over water sharing of the Laxmi River. Jayasthan is a desert state, rich in industries. Bangal is heavily dependent on agriculture, however it is situated in the lower basin of the Laxmi river. Most of the water is used by the states situated in the upper basin. Rangataka does not receive substantial monsoons and have built dams on the river. A Tribunal has been appointed to decide the water allocation. Explain the Economics and Law governing the decision. (7.5)

4) A patent holder for a malaria drug refuses to license his drug to manufacturers in developing countries. He has failed to take into account that the market for the malaria drug is larger in developing nations as opposed to developed nations. What is the economic rationale that he should be governed by? Is there any law that can compel him to license the drug? (7.5)

LAW AND IMPOVERISHMENT

Full Marks: 50

Time: 3 hours

Instructions

1. All questions are compulsory.
 2. This is an open-book examination.
 3. You are allowed to bring books, journals, notes and other printed materials. However, no electronic device can be used during the examination.
 4. In any case of any omission in the facts that you believe is so substantial as to prevent you from forming a conclusive opinion on any issue, please state so with reasons.
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1. “The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993 declared, inter alia, that “[a]ll human rights are universal, indivisible and interdependent and interrelated.” However, the actual experience of constitutionalisation of socio-economic rights in major jurisdictions suggest that the distinction between positive and negative rights continue to subsist.” – Do you agree? Please support your answer with examples discussed in the course? (12 Marks)
2. “The social contract between the citizen and the State is a contract by which in exchange for the citizen ceding her autonomy partially, the State promises her security over her person and a life with dignity.” – Can it be said that the response of the Indian State to impoverishment indicate that the aforementioned social contract alluded to by the Delhi High Court in *Harsh Mander v Union of India* has broken down? Discuss with examples. (12 Marks)
3. The discourse on poverty or impoverishment as a form of deprivation of capabilities or as oppression is a mere academic one without any concrete implications on policy formulation or implementation. Please comment with the help of examples. (12 Marks)
4. Maninder Singh Bedi, the Deputy Chairman of Durniti and Prachaar Aayog, the main Policy Arm of the Government of the Republic of Farishta, submitted to the Prime Minister, Bhashanveer Maharaj of the Koi Saga Nahi Jisko Thaga Nahi Party (KSNJTNP) a Recommendation Paper titled ‘Healthcare Reforms in Farishta: Agenda for Action’.

The Recommendation Paper averred that urgent measures were necessary in view of the widespread and systemic crisis in the health care sector. The paper noted that doctor-to-people ratio in India was much lower than the globally acceptable standard and most poor families did not have access to affordable health care. Therefore, it suggested that every state government should set-up a chain of Antyodyaya Public Health Clinics at every taluk/ward where every citizen could seek primary medical treatment at a subsidised rate. The paper also recommended that access to such primary health care should be legally secured through a statute on right to health.

Faiz Khursheed, Coordinator of the National Campaign for Right to Health, came across this Recommendation Paper and opined that it is imperative that a Public Interest Litigation be

filed in the Supreme Court of Farishta seeking setting up of Antyodyaya Public Health Clinics and monitoring of the same by the Supreme Court through a continuing mandamus.

Sugato Pathranobis, the Dean of Delhi School of Economics in his review of the Recommendation Paper argued that any public healthcare scheme aiming at universal access would be wholly counterproductive due to inefficiency and corruption and called for providing cash transfer.

Debabrata Basu, the Head of the Department of Economics at Pataliputra University wrote in a paper published in Modern Indian Review that such public healthcare schemes would not only be ineffective but also unnecessary. He submitted that a suitably designed package of health insurance would secure more effective access to health care.

Aman Mani Thomas, a newspaper columnist, commented that past experience in India reveals that the creation of legal rights to public services have been nothing more than an exercise in symbolism and do not lead to any material difference in ensuring access.

Would you second the recommendations of the Durniti and Prachaar Aayog, as outlined in the paper, 'Healthcare Reforms in India: Agenda for Action'? What is your assessment of the criticisms and alternatives put forth? (14 Marks)

The West Bengal National University of Juridical Sciences

B.A/B.Sc. LL.B (Hons.) End Semester Examination
Winter Semester 2017-18 (Batch 2017)

Legal History II

Full Marks: 70

Time Allowed – 3 hours

A. Answer ANY FIVE long questions: 10 x 5 = 50

1. Were the market reforms of Alauddin Khalji designed to establish a regulated economy? 10
2. Did Akbar establish the *mansabdari* system to centralize the Mughal bureaucracy? How original was the *mansabdari* system? 8 + 2 = 10
3. Did the British demonstrate a desire to politically control India through its early charters, especially the Charter of 1600, the King's Commission and the Charter of 1661? 4 + 6 = 10
4. Critically analyse the provisions of the Charter of 1726 to demonstrate if they were aimed at introducing the basic tenets of English law in India? 10
5. Was the Charter of 1753 meant to reorganize the judicial system of India? Did the British succeed in ensuring a free and fair justice delivery system through the provisions of this charter? 6 + 4 = 10
6. What were the circumstances under which the High Courts of Judicature were established in India? 10

B. Answer ANY FOUR short questions: 5 x 4 = 20

1. What is meant by *zat* and the *sawar* with special reference to *do-aspa sih-aspa*? 3 + 2 = 5
2. Briefly trace the establishment of the East India Company's factory at Surat. 5
3. In which phase of the administration of justice were the Admiralty Courts established in Madras? What were the functions of these courts? 2 + 3 = 5
4. Analyse in brief the establishment of the judicial system at Calcutta. Was the judicial system of Calcutta meant to give the British an upper-hand over Indian lawmakers? 3 + 2 = 5
5. What was the fiction of *nawabi*? Why did the officials of the company want to continue with this system? 2 + 3 = 5

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

L.L.B. WINTER SEMESTER 2018-19 08th SEMESTER EXAMINATION

Mergers & Acquisitions

Marks: 50

Time Allowed: 3 Hours

Students are permitted to carry unannotated copies of the module and the Companies Act 2013.

This exam is for 50 marks.

Section A is compulsory. Please answer any 2 of the 4 questions in Section B.

Section A

(25 marks)

1. Please take a look at the extracts of the joint venture agreement in Annexure 1 and answer the following questions based on the relevant regulations and case law.
 - (a) How does Indian law define a joint venture? (3)
 - (b) What type of JV does the Agreement create? (1)
 - (c) What are the advantages of this form of JV over other forms? (2)
 - (d) What will happen if the Articles of the company say that there are 2 votes attached to each share? (2)
 - (e) What if Clause 7.2 of the JVA has not been incorporated in the Articles of the company? (4)
 - (f) Why does the Agreement have a 'Reps and Warranty' clause? What is the difference between the two terms? (3)
 - (g) What kind of Clause is Clause 7.3? (1)
 - (h) Is Clause 7.3 'reasonable' in accordance with the existing law? (2)
 - (i) Can a foreign company bid as PC? (1)
 - (j) If the answer to (h) is 'yes', are there any restrictions on this? (2)
 - (k) Why must FDCM conduct a thorough due diligence as per Clause 21 before entering into this Agreement? (2)
 - (l) Why do Agreements such as this often have a termination clause? (2)

Section B

(12.5 x 2=25 marks)

2. Distinguish in detail the differences between a reduction in share capital and a buy-back of shares.
3. Do protective rights in transactions lead to a change in control? Answer with reference to appropriate regulation and case law.
4. What are the many ways in which a listed public company can increase its share capital after an IPO? Is there any difference for a private company or an unlisted company? **(7.5+5)**
5. Why are mergers a less-used tool for restructuring? Answer with reference to Section 232, 233 and 234 of the Companies Act 2013.

Annexure 1

JOINT VENTURE AGREEMENT BY AND BETWEEN PROJECT COMPANY AND FOREST DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED [ON BEHALF OF GOVERNMENT OF MAHARASHTRA]

This Joint Venture Agreement (“Agreement”) is made as on this [●] day of [●] _____ BY AND BETWEEN _____, a limited company, through its authorized representative _____ (hereinafter referred to as “(PC)”, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include successors and permitted assigns);

AND

GOVERNMENT OF MAHARASHTRA represented by the FOREST DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED, “(FDCM)”, a wholly owned Government Company of the Government of Maharashtra duly

WHEREAS

1. FDCM is established by the Government of Maharashtra inter-alia for implementation of the recommendations of the National Commission on Agriculture regarding raising of manmade forests, as a wholly owned Government Company of State of Maharashtra.
2. The Government of Maharashtra had decided and entrusted FDCM to establish the Gorewada Zoo and Rescue Centre on design, build, finance, operate and transfer (the “DBFOT”) basis in accordance with the terms and conditions to be set forth in a Concession Agreement;

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AND THIS AGREEMENT WITNESSETH AS UNDER: .

ARTICLE 2 PROJECT

2.1.1 The Project shall mean and include the design, build, finance, operate and transfer (“DBFOT”) of the Gorewada Zoo and Rescue Centre on public private partnership (“PPP”) , in accordance with the provisions of the Concession Agreement and includes all works, services and equipment relating to or in respect of the Gorewada Zoo and Rescue Centre (“Project”).

For the avoidance of doubt, the Project shall also mean and include any development on the Site, or any part thereof, and collection of Fee, as contemplated in this Agreement and the Concession Agreement.

2.1.2 PC and FDCM agree that the Project shall be implemented by them through the instrumentality of the JVC, in accordance with the provisions of this Agreement.

ARTICLE 3 INCORPORATION OF THE JVC

3.1 JVC

3.1.1 The Parties shall procure that, no later than 45 days from the execution hereof, the Parties shall incorporate the JVC as a limited liability company under the provisions of the Companies Act, 2013 under the name and style of Gorewada Zoo & Rescue Centre or such other name as may be mutually agreed between the Parties. The registered office of the JVC shall be located in the State of Maharashtra.

3.1.2 The Parties agree that the Articles of Association and Memorandum of Association shall be approved by both PC and FDCM and shall, as far as possible and as permissible by Applicable Law, incorporate the provisions of this Agreement. The Parties further agree that in the event of any conflict between the terms of this Agreement and the Articles of Association and/or Memorandum of Association, the terms and conditions of this Agreement shall prevail and take precedence as amongst the Parties hereto.

3.1.3 The JVC shall perform the functions and discharge the obligations set out herein and the Parties shall ensure that all steps as may be necessary to authorise and oblige the JVC shall be taken, including but not limited to execution of necessary agreements with the JVC.

3.1.4 The PC shall bear all the cost of incorporation of the JVC and all related and incidental costs.

3.1.5 The PC shall subscribe to 49% Shares and FDCM shall subscribe to 51% Shares of the JVC and shall always adhere to this Shareholding during the Term of this Agreement.

3.1.6 Subject to the provisions of the Act and the Articles, each fully paid Share shall carry one vote.

3.1.7 The JVC shall at all times be managed and operated as an independent enterprise for the benefit of the Shareholders. Except as expressly authorized in this Agreement, the JVC shall not at any time engage in dealings or transactions with any Party or its Affiliates on terms more favourable than would be accorded to an independent, non-affiliated person or company. It is hereby expressly agreed between the Parties that all related party dealings or transactions will not be permitted unless unanimously approved by the Parties in accordance with the terms and conditions of this Agreement.

3.2 Sole purpose of the JVC

The JVC shall be set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under Concession Agreement and the JVC or any of its subsidiaries shall not, except with the previous written consent of the PC and FDCM, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein subject to the Memorandum and Articles of Association of the JVC and including such other business as may be approved by the Board from time to time in accordance with terms hereof, the JVC's business shall be the execution and performance of the Gorewada Zoo and Rescue Centre (the "Business") in accordance with the terms of the Concession Agreement and the financing documents executed / to be executed by the Company with its lenders rendering financial assistance in respect of the Project. Subject to the terms hereof, the Shareholders agree to use their reasonable endeavours to promote and carry out the Business and to provide such technical and other assistance to the JVC as is within its scope of expertise at all times during the term of this Agreement.

3.3 Functions and Responsibilities of the Parties

3.3.1 JVC

The Parties procure that the JVC shall and they shall cause the JVC to, assume and undertake the following functions and responsibilities:

(a) In order to enable the JVC to undertake the principal Business and performance of any or all of the obligations under this Agreement, the Parties agree that the functions and responsibilities specified in Part A of **Schedule A**, including any other matter necessary and/or incidental to the development, construction, operation and maintenance of the Gorewada Zoo and Rescue Centre shall be undertaken exclusively by the JVC.

(b) To ensure that the JVC is duly authorised and empowered to undertake the Project and carry out its functions specified in Part A of **Schedule A**, PC and FDCM shall take such steps as may be necessary, including but not limited to, delegating and assigning appropriate powers necessary and required under Applicable Law, to the JVC, as envisaged under this Agreement and in accordance with Applicable Law.

ARTICLE 4

SHARE CAPITAL AND FUNDING

4. SHARES AND SHARE CAPITAL

4.1 The JVC shall initially have an authorised share capital of Rs. 10,00,000/- (Rs. Ten lakh only) comprising of 1,00,000 (One lakh only) equity shares of the value of Rs. 10/- (Rs. Ten only) each.

4.2 At the time of incorporation of the JVC, PC shall subscribe to and pay for 49,000 (Forty nine thousand only) Shares and FDCM shall subscribe to and pay for 51,000 (Fifty one thousand only) Shares, in cash or such other form as may be mutually determined between the Parties. Upon subscription of the Shares, the PC shall hold 49% and FDCM shall hold 51% of the issued, subscribed and paid-up equity capital of the JVC (“Shareholding”). The Parties further agree that at all times during the Term, the aggregate Equity held by FDCM in the issued, subscribed and the paid-up equity share capital of the JVC shall be not be less than 51%. Unless otherwise agreed between the Parties, subscription of the Equity from the Effective Date, by the said Shareholders shall always be accomplished in a manner such that the effective shareholding of each of the said Shareholders in the Company, with respect to Equity on a fully diluted and aggregate basis shall be as follows:

Name of the Shareholder (as on Effective Date)	Percentage Shareholding
PC	49%
FDCM	51%
Total	100%

4.3 The JVC shall issue further Shares for meeting the Equity and in such event, PC shall be entitled to subscribe to and purchase the number of Shares in proportion to its existing Shareholding in the JVC and FDCM shall be issued such number of Shares in proportion to its existing Shareholding for no additional consideration/costs to be paid by FDCM, such that each Party i.e. PC and FDCM, shall continue to have Shareholding in the JVC in accordance with the terms of clause 4.2 hereof. The JVC shall issue and allot, from time to time such number of Shares to the said Shareholders, on such terms and conditions, as may be approved in the meeting of Shareholders/ Board provided that all monies infused in the JVC by each of the said Shareholders towards subscription of Equity shall not exceed their respective Shareholding as mentioned in clause 4.2 hereinabove. For avoidance of doubt, it is clarified that for the purposes of this Clause, all monies due and payable to the JVC by the PC for purchase of further issue of the Shares shall be credited to the Escrow Account opened pursuant to the Escrow Agreement.

4.4 In the event additional funding is required in the JVC for meeting the shortfall in the Total Project Cost, the PC shall obtain such funding through third party debt. If such funding is not available, the PC shall invest its own funds (in the form and manner acceptable to FDCM) in the most tax efficient manner, provided that such funding shall in no event result in any change of the Shareholding either directly/indirectly specified in Clause 4.2 of this Agreement.

ARTICLE 7 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

7.1 Each of the Parties represents and warrants that:

- (a) where relevant it is validly incorporated/established and is in good standing under the laws of India;
- (b) such party has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary action (corporate, statutory, contractual or otherwise) to authorize the execution, delivery and performance of this Agreement;
- (c) this Agreement has been duly executed and delivered by such party and constitutes a legal valid and binding obligation of such party, enforceable against such party in accordance with its terms;

(d) the execution, delivery and performance by such party of this Agreement and the acts and transactions contemplated hereby do not and will not, with or without the giving of notice or lapse of time or both, violate, conflict with, require any consent under or result in a breach of or default under:

(i) any law to which it is subject; or

(ii) any order, judgment or decree applicable to it; or

(iii) any term, condition, covenant, undertaking, agreement or other instrument to which it is a party or by which it is bound;

(e) there are no legal, quasi-legal, administrative, arbitration, mediation, conciliation or other proceedings, claims, actions, governmental investigations, orders, judgments or decrees of any nature made, existing, or pending or, to the best knowledge of such party, threatened or anticipated against such party which may prejudicially affect the due performance or enforceability of this Agreement or any obligation, act, omission or transactions contemplated hereunder; and

(f) that it will comply with all Applicable Laws, regulatory requirements in connection with the performance of its obligations under this Agreement, and will not do or permit anything to be done which might cause or otherwise result in a breach of this Agreement or cause any detriment to the transactions herein envisaged.

7.2 PC represents and covenants that it will not sell its shares in the JVC such that the shareholding in the JVC is altered from the shareholding in clause 4.2. hereof.

7.3 Throughout the duration of this agreement, PC shall not, in any manner, represent , provide services or engage in any aspects of business that would be deemed similar in nature to the Project.

10. TERM AND TERMINATION

10.1 TERM

This Agreement is intended to be of enduring nature having regard to the mutual objectives and stipulations in this Agreement and shall take effect as of its execution and shall continue in force until termination of the Concession Agreement.

10.2 TERMINATION

Without prejudice to any claim for any antecedent breach, any Party shall be entitled at its option, on the happening of any of the following events, to terminate this Agreement:

(a) by giving to the other Party 60 (Sixty) days written notice if the other Party becomes or is declared bankrupt, insolvent or goes into voluntary or compulsory liquidation, except for the purpose of amalgamation or reconstruction; or

(b) by giving to the other Party 60 (Sixty) days written notice if any distress or attachment is levied, or any receiver is appointed in respect of the business or a substantial part of the property or assets of the other Party, or if it takes any similar action in consequences of debt; or

(c) by giving to the other Party 60 (Sixty) days written notice if there is a Government expropriation, nationalisation or condemnation of all or substantial part of the assets or capital stock of the other Party; or

(d) by notice in writing to the other Party, if the other Party is in material breach of any provision of this Agreement and such breach has not been remedied (to the reasonable satisfaction of the Party not in breach) within 60 (Sixty) days of notice of such breach having been served on that Party by the other Party;

(e) by notice in writing to the other Party if any direction or order from any authority in India or any change in applicable statutes, rules and regulations or Government policy is made which prevents or significantly impairs

the implementation of this Agreement or directly or indirectly so restricts the scope and exercise of the right of either Party as concerns the JV so as to render its objectives effectively impossible or

(f) upon termination of the Concession Agreement.

10.3 CONSEQUENCES OF TERMINATION

10.3.1 The termination of this Agreement shall not relieve any Party of any obligation or liability accrued prior to the date of termination.

10.3.2 If this Agreement shall terminate pursuant to Clause 10.2 then any Party electing to terminate this Agreement shall have, without prejudice to any other rights or remedies it may have to require the Party in default under Clause 10.2 to Transfer its Shares to the non-defaulting Party. The price at which such Shares shall be transferred shall be the Fair Price as defined in Clause 10.3.3.

10.3.3 The Auditors shall be instructed by the JV to certify in writing simultaneously to both Parties the amount which, in their opinion, represents the fair market value ("Fair Price") of the Shares by applying valuation principles generally accepted and currently practiced in India. It is hereby clarified that these valuation principles should, inter alia, take into consideration a transaction between a willing buyer and a willing seller who are not rushed to complete a transaction and consequently act under forced sale circumstances. It is further agreed that in so certifying, the Auditors shall be considered to be acting as experts and not as arbitrators. The cost of obtaining such certification by the Auditors shall be equally borne and paid for by each of the Parties.

10.3.4 The Parties shall promptly provide required information and documents in obtaining the requisite Governmental or statutory approvals to implement the provisions of this Clause 10.

10.3.5 The Party entitled to or obliged to purchase the Shares may nominate or cause any other person or party to purchase the Shares.

10.3.6 During the term of this Agreement and until the Party entitled or obliged to purchase Shares in accordance with this Clause 10 actually purchases the Shares, PC and FDCM shall each use reasonable efforts to maintain and preserve the Business and the best interest of the JVC.

10.3.7 The foregoing shall not limit the ability of either Party to seek legal and equitable remedies related to a material breach by the other Party or the failure of the other Party to perform any other duty or obligation under this Agreement.

10.4 TERMINATION PURSUANT TO A DEADLOCK

In the event that a Deadlock is not resolved by the Parties within the time period specified in Clause 5.2.8, unless the Parties agree otherwise, FDCM shall, within 10 (Ten) days of the expiry of the time period referred to in Clause 5.2.8, notify PC in writing that the PC shall sell the PC's Shares in the JVC to an identified third party which shall be nominated by FDCM. The price at which such Shares shall be transferred shall be the Fair Price as defined in Clause 10.3.3. For avoidance of doubt, it is clarified that till such time the nominated third party is not identified by FDCM, the PC shall continue to act in the capacity of the Shareholder of the JVC. FDCM may elect to purchase all of the PC Shares at a price and upon terms and conditions to be mutually agreed]

12. CONFIDENTIALITY

12.1 Each of the Parties shall procure that during the term of this Agreement and after termination for a period of 10 years keep confidential and cause their respective Affiliates, directors, representatives, employees and agents, as the case may be, to keep confidential any confidential information which any such persons may acquire in relation to the transactions contemplated by this Agreement or in relation to the employees, clients, business or affairs of any other Party and shall not use or disclose such information except with the consent of the other Party. The restrictions in this Clause 12 shall not apply to any information:

- (a) which is at the date of this Agreement publicly available other than through breach of this Agreement by any Party;
- (b) which was known to the Party, as evidenced by its written records, prior to it receiving such confidential information;
- (c) which subsequently comes lawfully into the possession of the disclosing Party by a third party which did not require any obligation of confidentiality; or
- (d) which is required to be disclosed in accordance with the requirements of law, any Governmental Authority, any stock exchange regulation or any binding judgment, order or requirement of any court or other competent authority.

For the purpose of this Clause “confidential information” means all the information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by a party to the other party whether before or after the date of this Agreement.

13. FORCE MAJEURE

13.1 If either Party (“Affected Party”) is prevented from performing its obligation under this Agreement from causes which are beyond its reasonable control, such as, but not limited to, strikes, labour controversies, fires, Acts of God or elements, acts of terrorism, embargoes or governmental orders or restrictions, the affected Party shall be excused for non-performance of its obligation during the period such cause continues to exist, but if such cause continues to exist and prevents performance by the affected Party of its obligation for more than 12 months, the other Party shall have the right to forthwith terminate this Agreement effective upon delivery to the affected Party of written notice of such termination.

15. GOVERNING LAW, DISPUTE RESOLUTION AND JURISDICTION

15.1 In the event any dispute arises between the Parties out of or in connection with this Agreement, including the validity thereof, the Parties hereto shall endeavour to settle such dispute amicably in the first instance. The attempt to bring about an amicable settlement shall be treated as having failed as soon as one of the Parties hereto, after reasonable attempts, which shall continue for not less than 15 (Fifteen) days, gives a notice to this effect, to the other party in writing.

15.2 In case of such failure, the dispute shall be referred to a sole Arbitrator, who shall be appointed by FDCM. The Arbitration proceedings shall be governed by the (Indian) Arbitration and Conciliation Act, 1996 and shall be held in Nagpur, India. The language of arbitration shall be English.

15.3 The Parties submit to the jurisdiction of the courts of Maharashtra.

15.4 This Agreement shall be interpreted in accordance with Indian law.

17. BINDING EFFECT AND INVALIDITY

17.1 All terms and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the legal representatives and assigns of the Parties.

17.2 The Parties agree that if any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired. Notwithstanding the foregoing, the Parties to this Agreement shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision so found to be void or unenforceable.

20. INDEPENDENT CONTRACTORS

20.1 Each Party hereto is an independent contractor and nothing contained in this Agreement shall be construed to be inconsistent with this relationship or status. Neither Party owes a fiduciary duty to the other. Nothing in

this Agreement shall be in any way construed to constitute either Party as the agent, employee or representative of the other. As an independent contractor, each Party has relied on its own expertise or the expertise of its legal, financial, technical or other advisors.

20.2 The JVC shall be an independent company from both Parties and shall not be construed to be an agent or representative of either PC or FDCM. Neither PC nor FDCM shall take any action on behalf of or binding upon the JVC, except as may be specifically provided for in this Agreement or as may be specifically consented to in writing by the JVC. The JVC shall not be authorised to take any action on behalf of or binding on either Party without such Party's specific consent in writing.

21. ASSUMPTION OF RISK

21.1 Each Party hereto acknowledges (i) the risks of its undertakings hereunder, (ii) the uncertainty of the benefits and obligations hereunder, and (iii) its assumption of such risks and uncertainty. Each Party has conducted its own due diligence and requested and reviewed business plans, financial documents and other written material as in such Party's opinion shall be the basis of that Party's decision to enter into this Agreement.

22. RELIANCE

22.1 Each Party has consulted such legal, financial, technical or other expert it deems necessary or desirable before entering into this Agreement. Each Party represents and warrants that it has read, knows, understands and agrees with the terms and conditions of this Agreement. All discussions, estimates or projections developed by a Party during the course of negotiating the terms and conditions of this Agreement are by way of illustration only, and unless specifically contained in this Agreement or one of its Schedules, are not binding or enforceable against other Party in law or in equity.

22.2 Each Party agrees and acknowledges that in entering into this Agreement it is not relying on any representation, warranty or statement made by or on behalf of the other Party, whether orally or in writing, unless the same is expressly set out herein.

23. INDEMNITY

23.1 If, for any reason or resulting from any cause whatsoever, any statement, representation or warranty set forth herein is found to have been materially incorrect, untrue when made, in breach or fails to prove to be true, and if any debt, liability or other obligation of any kind is found to exist, the Party making such representation or warranty shall be fully liable to the other Party for any and all liability, damage, costs and expenses, including attorney fees, arising from such misrepresentation, breach or incorrect statement.

23.2 The JVC shall not incur any liability on behalf of either Party and shall not hold itself out as having any authority to bind either Party in any way. Creditors of the JVC shall have recourse only to the assets of the JVC, and the JVC shall ensure that no creditor is led to believe otherwise or in any way to seek repayment from either of the Parties. Notwithstanding the JVC's limited liability, and without Clause 23.2 expanding such liability, if for any reason any third person brings a claim against either or both of the Parties based on the Party's being a joint venture Party and arising out of the operation of the JVC or if otherwise either of the Parties incurs any liability for any action or omission taken pursuant to this Agreement or in its role as a Shareholder in the JVC other than from willful wrongful conduct, the JVC shall be responsible for and shall indemnify, hold harmless and defend either Party if either Party incurs any liability, loss or damage, including attorney costs, as a result of its being a Party to this Agreement or for being a Shareholder, if such liability, loss or damage arises from a claim brought by person other than the other Party.

23.3 Neither Party shall be liable to the other Party for any consequential, indirect, exemplary, incidental, special or punitive damages based on any claim arising out of this Agreement. Neither Party's aggregate liability under this Agreement shall exceed such Party's contribution to the registered capital of the JVC.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. WINTER SEMESTER 2018-19 08th SEMESTER EXAMINATION

PATENT LAW

Marks: 70

Time Allowed: 3 Hours

ANSWER ALL QUESTIONS
PATENT ACT (WITHOUT COMMENT) IS ALLOWED
NO EXPLANATION WILL BE OFFERED

- I. Examine patentability of following subject matter: (10 x 6 = 60)
1. A squash ball characterized by its blue colour which had surprisingly enhanced its visibility during play.
 2. Method of manufacture of Chemical Weapons and its product.
 3. A computer based game apparatus which involves a combination of standard game items, such as a board, playing pieces, a random outcome generator (e.g. dice), chance cards etc in digitized form.
 4. Substance X for use as an antibiotic for treating disease Y.
 5. Method of preparing vaccine and its product.
 6. DNA sequence of Bt. Cotton transgenic variety.
- (2 X 5= 10)
- II. 1. A patent application referred "spring, made of copper". Patent Office could locate earlier reference "metal coil spring". Examine the status of anticipation of this application. 5
2. "If a machine is displayed or operated where it can be seen by a member of the public, such as at an exhibition, on the highway, or in a part of a factory to which persons not bound to secrecy are admitted, then all information which a person skilled in the art might be able to gather is regarded as having been disclosed and therefore loses novelty". Explain with example. 5

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester Examination – 2nd Semester – 2018 Batch

Political Science-II (Compulsory)

Full Mark: 70

Time Allowed: 3 Hours

Q1.) Answer any one question: 25 Marks

- a) “Communalism in India developed mainly with the emergence of colonial rule....and is not merely religion’s entry into politics or politics defined in religious terms. In other words, religion’s entry into politics did necessarily produce communalism.” Discuss this view in the context of the origin of communalism in British India, particularly, after the establishment of the Muslim League in 1906 till 1942. (25)
- b) Define Caste. Evaluate the role of caste in Indian politics. Do you think caste plays a positive or a negative role in Indian politics? Argue with suitable examples. (5+8+6+6=25)
- c) “India is not Europe: secularism in India cannot mean the same thing as it does in Europe.” In the light of this statement, compare and contrast between Secularism in the East v/s Secularism in the West. What according to Partha Chatterjee are the characteristics/anomalies of a secular state and how did he relate these characteristics to the Indian scenario? (6+9+19=25)

Q 2) Answer any two questions: 2x15=30

- i) Is communalism at all a consciousness? What according to Bipan Chandra are the different variants of communalism in post-independent India? (6+9=15)
- ii) Compare Gandhian and Nehruvian ideas on secularism. Mention the problems associated with Nehruvian secularism. (10+5=15)
- iii) What are the different factors behind the growth of regional parties in India? Are the regional parties in India, a force to reckon with? (9+6=15)
- iv) Explain Rajni Kothari's model of 'One-party System' and its impact on India. How has this model undergone a change since 1990s? (5+5+5=15)
- v) Define Nationalism. What are the essential factors behind the growth of nationalism? (5+10=15)

Q 3) Write Short Notes on any three: (3x5=15)

- a) Shah Bano Case (1985)
- b) Telegu Desam
- c) Varna and Jati
- d) Separatist movements in India
- e) Importance of Panchayats
- f) Identity Politics
- g) Gandhian Satyagraha

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

THE LAW OF PRIVACY

INSTRUCTIONS

Full Marks = 70

Time Allowed: 3 hours

1. This is an OPEN BOOK exam. Thus, you are allowed access to all material you desire to carry, except those stored electronically.
 2. ALL QUESTIONS ARE COMPULSORY.
-

ALL THE BEST.

1. The Republic of Neophilia is a small, secluded island nation somewhere in the Pacific Ocean. It gained independence from colonial rule a couple of years ago, and has since been ruled by the Common Platform Party of Neophilia, which played a leading role in its struggle against colonialism. Neophilia is a culturally diverse land where people of several different religions, languages and ethnicities have coexisted for centuries. Though the long, grueling struggle against colonialism has ended with independence, the challenges before the infant nation are manifold. With high rates of poverty and unemployment, coupled with illiteracy and malnutrition, the government of Neophilia has its hands full. It is faced with the humungous task of ensuring the economic upliftment of its people, while also creating a rights-based civil society in which each citizen is empowered to protect their interest through civic participation and political engagement.

The President of Neophilia and Leader of the Common Platform Party, a lawyer-politician called JeweliusBehru has taken upon himself the task of turning the nation into a modern, secular democracy, and secure for it a place of pride in the international arena. To this end, he has openly extended his support for non-aggression among nations, the principle of sovereign equality, the right to self-determination of all people and international cooperation. He has spoken before the World Parliament on the need to respect the rights of all nations and spearheaded the universal adoption of several international human rights documents. Behru is a respected figure both within and outside his nation, and counted as the leading voice from the developing world.

Recently, Behru and his cabinet have approved the Draft Constitution of Neophilia, which through a laborious process spanning several years and the efforts of many

incredible legal and political luminaries, has culminated into the longest written Constitution in the world. While it is yet to be placed for necessary Parliamentary approval, the Draft Constitution has been floated for public comment. An organization called Centre for Civil Rights (CCR), which plays a watchdog role in Neophilian politics, wrote a petition to Behru's office with their suggestions on the draft. CCR's suggestion, *inter alia*, was to include an express Right of Privacy as a part of the Fundamental Rights guaranteed by the Neophilian Constitution. Their note stressed that this right was crucial to the realization of an empowered civil society and also in consonance with Neophilia's international obligations, including the UDHR and ICCPR, both of which guarantee the same. CCR's report strongly supported the inclusion of this right, suggesting further that the text of the proposed provision should mirror the language of the aforementioned international conventions.

Upon being notified about CCR's suggestion, Behru held a closed-door meeting with the Attorney General, MC Subtlebad. Subtlebad voiced his concerns about the proposal, highlighting the following in particular:

- i. He was skeptical of the effects it may have on welfare schemes for the masses living in abject poverty. He worried that if a fundamental right to privacy was granted, citizens may refuse to disclose relevant information to the government, which is crucial for the receipt of government benefits. In light of the Right to Constitutional Remedies, he feared that such an acknowledgment may give rise to intense litigation where an independent judiciary may strike down any governmental attempt to gather such information for whatever purpose.
- ii. He told Behru that in a country with less than 20% literacy and raging social evils, to believe that citizens should hold such a right is premature, since any understanding of 'informed consent' was beyond them.
- iii. He also seemed troubled by the language of the conventions, which sought to protect the privacy of the home as a sacrosanct space, considering this a probable obstacle to sweeping social reform legislation for the empowerment of women, among others.
- iv. Referring to CCR's letter, he pointed out that the government would have to face massive structural changes, including reforming the prison programme, which since the colonial era made use of the 'panopticon-like architecture' and raised 'grave concerns regarding prisoner's rights'.
- v. In the context of group privacy, he found the possibility of government hiding behind the veil of secrecy, political parties refusing to disclose source of funds, actions of subversive entities being protected etc. as antithetical to the larger democratic ideals of transparency and accountability.

Behru, relying on Subtlebad's advice, decided to run the matter by the Law Minister, who was also an eminent Constitutional Law scholar and the chief architect of the Draft Constitution.

You are the Law Minister of Neophilia, Dr. BabaraoAmbadar. On each of the several issues raised by the AG, give your reasoned opinion, and comment generally on the

merits of the proposal. If you opine in favor of inclusion, describe in detail the language of the provision, status of the right vis-à-vis other fundamental freedoms and nature of restrictions on the same.

Presume that the Draft Constitution and Laws of Neophilia are *parimateria* with that of India.

[50 marks]

2. You are at a local tea-shop, where you unwittingly become part of the following conversation-

Friend 1: “When the citizen can submit so much of information to private parties, what problem do they have giving the same data to the government?”

Friend 2: “These people who keep shouting ‘privacy, privacy’ and question the government on everything are basically black-money hoarders and ant-nationals. After all, if you have nothing to hide from the government, why would you be worried?”

How would you respond? Provide your reasoned opinion on the questions raised.

[20 marks]

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 6th Semester – 2016 Batch

THE LAW & PRACTICE OF PROJECT FINANCE

Full Marks – 55

Time Allowed: 3 hours

Answer all the following questions.

Q.1. The elected government of the country of Fantasia has chosen to build a series of highways across the country and has floated a common tender for the whole project. Stanley Laurel & Sons Ltd. (SLSL) and Oliver Hardy Constructions Ltd. (OHCL) (both companies incorporated in the neighbouring country of Realville) have together got a company incorporated in Realville by the name of Roadomatic Pvt. Ltd. (RPL). RPL has won the tender and is in the process of negotiating with the government of Fantasia before achieving financial close. Lucre Financials Pvt. Ltd. (LFPL) is a domestic bank of Fantasia that plans to provide the bulk of the finance necessary for the project in the form of a loan to RPL. RPL and the government of Fantasia have jointly requested SLSL and OHCL to be present during the ongoing negotiations. Briefly discuss the various motivations and objectives of all the parties involved in the negotiation. **(11)**

Q.2. (a) The central municipal council of the country of Ankh-Morpork is planning to float a series of tenders for the purpose of building and improving upon the infrastructure of the computer network of all the government and public sector offices in the country. The authorities are trying to decide upon whether to adopt the guidelines prescribed under the WTO GPA or the EU Procurement and Utility Directives to govern said tenders. Compare between the various tendering procedures accepted under the said instruments for this end. **(5)**

(b) In the above fact-scenario, a financial advisor to the council has advised the council to insist that all private bidders who bid for the tender must provide a standard letter of support from any financier along with their bids. What sort of clauses would the financier institution allow to be contained in such a letter? **(3.5)**

(c) In the above fact-scenario, the advisor has also been asked by the council to provide an opinion regarding what sort of bonds the council should ask to be provided by all the bidders and the winner in particular. Do so on behalf of the advisor with reasons for your opinion. **(2.5)**

Q.3. (a) Provide reasoned explanations about the validity of the following statements: **(2 x 3)**

(i) When it comes to raising debt finance for a project by a project company, the capital market usually proves to be less committed than the bank market.

(ii) When it comes to raising debt finance for a project by a project company, the standard covenants provided for in a bond usually turn out to be considerably looser than the contractual controls imposed by banks through the loan agreement.

(b) Grunnings Drills Pvt. Ltd. is a project company that is starting a project in country A and needs to procure necessary supplies and services locally. However, the company is incorporated in country B and has got the necessary loan sanctioned from a bank located in country B. Advise the Board of Directors of the company about the various ways they can seek to address the potential problems that may arise due to currency mismatch. **(5)**

Q.4. Write a note on the various forms of security usually available to protect investments in a project in India, the registration requirements for the same if any, the applicable fees and charges, the ways in which existence of any previous charge on assets to be secured may be determined by the lenders, the legal framework relating to establishment of priority vis-à-vis such charges and the various steps available to a lender to enforce such security interests. **(11)**

Q.5. (a) There are several sponsors jointly trying to form a project company for the purpose of applying for the tender for an infrastructure mega-project and they are unsure about how to regulate their mutual relationship before the company comes into existence. Explain to them the concept of how a pre-development or project development agreement works and the standard provisions that such an agreement ought to consist of. **(4)**

(b) With regard to the factors that affect a project's bankability, mention at least five of the so-called 'first order points of principle' that lenders are likely to consider when determining such bankability. **(2.5)**

(c) As the majority shareholder of a project company planning to conduct a 'back-to-back' exercise between the concession agreement that the company is planning to enter into with the host government and the construction contract that the company is planning to enter into with a contractor, briefly mention the key areas that you should direct the company to focus on. **(4.5)**

The West Bengal National University of Juridical Sciences

B.A/B.Sc. LL.B (Hons.) End Semester Examination (Winter Semester 2017-18)
(Batch 2017)

Property Law

Full Marks: 70

Time: Three Hours

(Bare Act of the Transfer of property Act, 1882 without notes and commentaries is allowed)

(Answer any SEVEN questions including question no. 1 & 2 which are compulsory)

1. (A) “What is given to the unborn person need not necessarily vest in him at his birth, but the vesting has to take place within the limits prescribed in Section 14.”

Critically analyze the statement with suitable illustrations.

(B) There is a dispute as to succession of property situated in Salt Lake between a widow and her nephew. Upon intervention by the family members there is a compromise on condition that the widow will retain the possession for life while the title of the nephew in the property has been admitted with a condition restraining him from alienating the property during the widow’s life time.

Is the condition legally enforceable? Justify your answer.

(C) Determine the nature (*movable/ immovable*) of the following properties:

- i. A contract to cut grass
- ii. Standing timber
- iii. Water

(4+3+3=10 Marks)

2. (A) A made a gift of his property to B for her life and then to her sons absolutely. B had no child on the date of execution of the gift. The deed further provided that in case B had only daughters, then the property would go to such daughters but only for their life. In case B had no child then after the death of B, the property was to go absolutely to C. B died without any child, and C claimed the property under the gift deed.

Is the transfer valid? Give reasons.

(B) Write short notes:

- (i) Beneficial enjoyment of dominant heritage

(ii) Mortgagee's right of accession

(iii) Fundamental point of difference between the mortgagor's right of redemption and the mortgagee's right to foreclosure or sale **(4+3X2=10 Marks)**

3. *Good Day Tea Co. Ltd.* owned a tea garden at Darjeeling, known as Rangdubi Tea Estate, which was mortgaged to *Britania Co. Ltd.* with an objective to raise fund for the company's business. In 2006 *Britania Co. Ltd.* obtained an order for the compulsory winding-up of the Tea Company and the tea estate was put up to auction by the liquidators and the same was purchased by *Britania Co. Ltd.* On 10th October, 2007 by an interchange of letters of offer and acceptance *Britania Co. Ltd.* agreed to sell the tea estate to one Mr. Mohan Bhargava. The agreement was unregistered but Mr. Mohan Bhargava paid the first installment of the price and entered into possession of the tea estate. In 2011 *Britania Co. Ltd.* sold the tea estate to *Himalaya Tea Co.* by a duly registered sale-deed on the ground that Mr. Mohan Bhargava failed to pay remaining installments of the consideration and complete the sale. The Indian Tea Licensing Committee issued the export quota rights to the *Himalaya Tea Co.* on the basis of the registered deed of title in favor of the company though the company was not in possession of the estate. Subsequently, one Mr. Om Prakash Gupta obtained rights under the contract of sale from Mr. Mohan Bhargava and also acquired possession of a part of the tea estate. After acquiring the possession of the tea estate Mr. Om Prakash Gupta filed a suit in which he sought to have it declared that the *Himalaya Tea Co.* and others have no right or title to the estate and are debarred from enforcing any right to the estate including the right to sell tea under the export quota allotted to it or transfer the quota rights to any person. He also sought an injunction as the *Himalaya Tea Co.* is not the owner of the tea estate.

Argue the case on behalf of *Himalaya Tea Co.* with the help of relevant case laws.

(10 Marks)

4. Mr. Amit Mazumder, the owner of around 7 acres of land in Koikhali, Dist. 24 Parganas (South) dies on 12th February, 1992, leaving a widow Smt. Mrinalini Mazumder and two sons Akash and Sudip Mazumder. During the lifetime deceased Amit Mazumder incurred some loan amounting to Rs. 500000/- from Mr. Tarun Dey of the same village. Mr. Akash Mazumder, the elder son deceased Amit Mazumder for the purpose of repaying the debt, mortgages the property to one Mr. Rubel Islam for securing a loan of Rs. 300000/- by way of simple mortgage, which was executed on 18th June, 1992. Subsequently, the property was sold by Smt. Mrinalini Mazumder and two sons Akash and Sudip

Mazumder on 6th August, 1994 to Mr. Kripal Singh as the family was facing huge financial crisis including the government liabilities. The property was sold for a consideration of Rs. 900000/- to Mr. Kripal Singh with a condition to re-purchase the property within 7 years from the date sale, which was concluded on 14th September, 1994. During the 7 years the said property (the market value of same is Rs. 1850000/-) will be in possession of Mr. Kripal Singh and will enjoy ownership right till then. In January, 2001 Smt. Mrinalini Mazumder met with a road accident and died in the hospital while undergoing expensive medical treatment. Due to this incident the two brothers failed to pay the loan amount and repurchase the property. In the month of December, 2001 the two brothers Akash and Sudip Mazumder contributed Rs. 300000/- each from their respective business and took personal loan from some family friends of Rs. 300000/- to accumulate Rs. 900000/- to repurchase the property from Mr. Kripal Singh. They went to Mr. Kripal Singh to give him back the money and negotiated to repurchase the property still in his possession. However, Mr. Kripal Singh refused to accept the money and retransfer the property to Akash and Sudip Mazumder.

Akash and Sudip Mazumder want to redeem the property and they approached to you to represent their suit before the court of law. Advance your argument on behalf of Akash and Sudip Mazumder. **(10 Marks)**

5. (A) "The burden of proof that one is a *bona fide* purchaser for value without notice is on the person asserting the same."

Discuss the above statement with suitable illustrations.

(B) Mr. X was in possession of house owned by Mr. Y as a tenant since 2015. In the year 2018 Mr. Y transferred the property by sale to one Mr. Roy for rupees 80 lacs and executed the sale deed as required by law. However, before this sale in April, 2017 Mr. Y entered into an agreement for sale with Mr. X and allowed Mr. X to continue the possession of the property in pursuance of that agreement for sale. Mr. Roy while purchasing did not inquire as to what capacity the tenant was in possession of the property.

- (i) Does Mr. X can continue his possession in the property?
- (ii) Did Mr. Roy commit any mistake while purchasing the property without making such inquiry as regards the exact nature of the possession of such tenant?

Discuss with the help of relevant provision of law.

(4+2+4=10 Marks)

6. (A) “The question whether a transaction is a lease or licence turns on the operative intention of the parties and there is single, simple litmus test to distinguish one from the other.”

Elaborate the above statement with the help of judicial decisions.

(B) During the pendency of a civil suit relating to an immovable property, Mr. X purchased the suit property from the defendant Mr. Y by a registered deed of sale dated 24.9.1995. Mr. X, as it appears, was not aware of the pendency of the suit; rather the vendors stated in the deed of sale that the property was not a subject matter of any litigation. On 27.11.1995, the suit was decreed ex- parte against the defendant Mr. Y. On 30.5.1998, Mr. X filed an application under Order 9 Rule 13 of the CPC seeking setting aside of the decree and also making a prayer under Order 22 Rule 10 of the CPC for being brought on record. Prayer was also made for condoning the delay in filling the application inasmuch as the ex-parte decree was not in the knowledge of the Mr. X The trial Court has allowed the application condoning the delay in filling the same and held that a sufficient cause for setting aside the decree within the meaning of Order 9 Rule 13 of the CPC was made out. However, the learned counsel for the decree-holder (Mr. A) vehemently urged before the Court, that an application under Order 9 Rule 13 of the CPC can be filed only by a defendant and by no one else. Mr. X is a transferee *pendente lite* and in the absence of his having promptly taken steps under Order 22 Rule 10 of the CPC for being brought on record, he remains bound by the result of the suit. He must suffer the consequences of an adverse decree passed against his vendors who have not chosen to lay any challenge to the ex-parte decree, submitted the learned counsel.

In view of the above fact discuss the rules relating to impleadment of transferee under Section 52 of the transfer of property Act. **(4+6=10 Marks)**

7. (A) “While a total restraint on the power of alienation is void, partial restraints may good.” – Discuss with the help of suitable illustrations.

(B) Rupam gives a field to Liton, reserving to himself, with Liton’s assent, the right to take back the field in case Liton and his descendants die before Rupam. Liton dies without descendants in Rupam’s lifetime.

Explain if A can take the gift back?

(C) A public limited company, working at a loss, having come to know of the proposal of the Department to reopen its income-tax assessments for the previous years, disposed

of its assets to the respondent firm, with which it had a partnership business, and employed the proceeds in paying off the debts due to various creditors, with the result that nothing was left for paying off the tax arrears of the company.

Is the transfer made by the company to the respondent firm hit by any provision/s of the Transfer of Property Act? Explain. (3+2+5=10 Marks)

8. (A) "Property is a very wide term and would include anything which carries some value and over which the right of ownership may be exercised." Discuss.
- (B) In 1931 Mr. Akash bequeathed one property by virtue of a will to his wife in life for her maintenance and for the maintenance of three daughters. After the death of the wife the property would devolve upon the daughters. After the death of Mr. Akash the property devolved upon the wife. Thereafter one of the daughters died in 1946. In 1953 by a deed of settlement and subsequently in 1955 by partition the widow divided the property in three shares, gave one share each to the two daughters and kept one share for herself. After the passing of the Hindu Succession Act that one-third share kept with her became her absolute property. She gifted that share to one of the daughters in 1968. In 1973 the widow died. The daughter of the predeceased daughter filed a suit for partition claiming one-third share on the property on the basis of notional interest of her deceased mother.

Will she succeed in her action? Give reasons for your answer. (6+4=10 Marks)

CASE LIST

(The examinees are at liberty to refer any other relevant and suitable case laws not mentioned in this list.)

Characteristics of Property

1. Jagdish v. Mangal Pandey - AIR 1986 All 182
2. Diamond v. Chakraborty - 447 US 303 (1980)
3. Shantabai v. State of Bombay – AIR 1958 SC 532
4. Duncan Industries v. State of Uttar Pradesh - [(2000) SCC 633]

Transfer of Property

1. VN Sarin v. Ajit Kumar Poplai (AIR 1966 SC 432) – 2. Indoji Jethaji v. Kothapalli – (54 IC 146)
3. Naranbhai v. Suleman [(1976) 16 Guj LR 289]

Notice

1. Ranjit Lal v. Municipal Corporation

2. Imperial Bank of India v. Umang Raj
3. Abdul Majid v. Burahuddin Ahmed
4. Lloyd's Bank Limited v. PE Gusdur and Co. Ltd.

Transfer to Unborn Person

1. Girijesh Dutt v. Data Din - AIR 1934 Oudh 35
2. JV Satyanarayana v. P Manikyan - AIR 1983 AP 139
3. Trustees of the Sahabzadi Oalia Kulsum Trust v. Controller of Estate Duty - AIR 1998 SC 2986

Vested Interest and Contingent Interest

1. Rajesh Kanta Roy v. Shrimati Shanti Debi - AIR 1957 SC 255
2. Jaydayal Poddar v. Bibi Hazra - AIR 1974 SC 171
3. Namburi Basava Subhramanayam v Alapati Hymavathi - AIR 1996 SC 2220

Doctrine of Election

1. V Ramakotayya v. G Viraraghavayya - AIR 1929 Mad 502
2. Ramayya v. Mahalakshmi - AIR 1922 Mad 357

Transfer by Ostensible Owner

1. Laxman Salvi v. Balkrishna Ghatage - AIR 1995 Bom 190
2. Syed Abdul Khader v. Rami Reddy - AIR 1979 SC 553
3. Jaydayal Poddar v. Bibi Hazra - AIR 1974 SC 171

Doctrine of Lis Pendens

1. Sri Jagannath Mahaprabhu v. Pravat Chandra Chatterjee - AIR 1992 Ori 47
2. KA Khader v. Rajamma John Madathil - AIR 1994 Ker 122
3. Ramji Das v. Laxmi Kumar - AIR 1987 MP 78
4. Rajendra Singh v Santa Singh - AIR 1973 SC 2537
5. Sanjay Verma v. Manik Roy - AIR 2007 SC 1332
6. Pandit Ram Chander v. Pandit Maharaj Kunwar - AIR 1939 All 611

Doctrine of Part Performance

1. Mool Chand Bakhru v. Rohan - AIR 2002 SC 812
2. Pomal Kanji Govindji v. Vrajlal Karsandas Purohit - AIR 1989 SC 436
3. Sardar Govindrao Mahadik v. Devi Sahai - AIR 1982 SC 989
4. Shakar Gopinath Apte v. Gangabai Hariharrao Patwardhan - AIR 1976 SC 2506
5. S Nath Sinha v. Krishna Kumar Nag - AIR 1967 SC 1440

6. Caton v. Caton - (1865) LR 1 Ch App 137
7. Maddison v. Alderson - 8 App Cas 467
8. Mohammad Musa v. Aghore Kumar Ganguly - (1914) 42 Cal 801
9. Ariff v. Jadunath - AIR 1931 PC 79

Fraudulent Transfer

1. Immani Appa Rao v. Gollapalli - AIR 1962 SC 370
2. Abdul Shakoor Sahib v. Arji Papa Rao - AIR 1963 SC 1150

Rights and Liabilities of Buyer and Seller

1. Haryana Financial Corporation v. Rajesh Gupta - AIR 2010 SC 338

Gifts

1. Hiralal Chamanlal v. Gaurishankar
2. Thakur Raghunath Maharaj v. Ramesh Chandra - AIR 2001 SC 2340

Mortgage

1. Shivdev Singh v. Sucha Singh - AIR 2000 SC 1935
2. Chaturbhai Valdas v. Bai Jivi - AIR 1973 Gij 93
3. Pomal Kanji Govindji v. Vrajlal Karsandas Purohit - AIR 1989 SC 436
4. Amulya Majumdar v. United Industrial Bank - AIR 1981 Cal 404

Lease & License

1. Associated Hotels of India v. RN Kapoor - AIR 1959 SC 1262
2. Mangal Amusement Park Ltd. v. State of MP - AIR 2012 SC 3325
3. Pandit Ram Chander v. Pandit Maharaj Kunwar - AIR 1939 All 611
4. Sabiruddin v. Pyarelal

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester Examination – 2nd Semester – 2018 Batch

Sociology – II

Total Marks: 75

Time Allowed: 3 hrs.

You can attempt the questions in any order. However, make sure that you attempt the exact number of questions asked for. Do not answer more than the number required.

Attempt any 5

5x15= 75 marks

1. Both PESA and FRA “are premised on setting right the historical wrongs that led to increasing marginalization, impoverishment and vulnerability of indigenous and tribal peoples.” Examine the claim in the statement by Prof. V. Xaxa, and comment on the developments subsequent to the legislations.
2. Trace the development of disability laws in India- and the approaches to such legislation, keeping in mind the international developments, and disability activism within the country.
3. In the context of colonial and post-colonial India, comment on the emergence and consolidation of issues relevant to the Dalit community.
4. While Marx saw class divisions as the essence and core of social stratification and conflict, Weber proposed a more multidimensional view of society and social stratification. Do you agree with this statement? Explain your views.
5. Briefly reflect on Erving Goffman’s ideas on disability. In this context, critically analyse the social model of disability.
6. It has been argued that the popular perception is that “constitutional and legislative protections are in and of themselves sufficient to ensure basic protections for India’s most marginalized citizens.” However, in reality, India’s law enforcement machinery is frequently found to enforce the ‘rule of caste’, and not the ‘rule of law.’ Comment on the statements, using illustrations.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. WINTER SEMESTER 2018-19 08th SEMESTER EXAMINATION

Third World and Feminist Approaches to International Law

Marks: 60

Time Allowed: 3 Hours

Attempt any **Four** Questions. All questions carry equal marks.

Q.1 ‘Third world’ has been able to wrest away the authorship of International Law norms, standard and values from the charismatic priesthood of European enlightenment thinkers. Assess critically this statement with special reference to ‘Third Worldism’ as a counter hegemonic ideology. **(15 Marks)**

Q.2 “Human rights and the Third world have always had a troubled and uneasy relationship ever since they were invented as epistemological categories at the end of Second world war. Human rights discourse has treated the Third world as object, as a domain or a terrain of deployment of its universal imperatives. Indeed, the very term ‘human rights violation’ evokes images of Third world violence- dictators, ethnic violence, and female genital mutilations- whereas First world violence is commonly referred to as ‘civil rights’ violations. At least, in this sense, ‘human rights’ have traditionally never been universal.”

Based on the above statement problematise the idea of ‘universal and non-ideological’ human rights. **(15 Marks)**

Q.3 ‘New international Economic Order (NIEO) and Permanent sovereignty over natural resources (PSNR) constituted moments of radical challenge to International Law that resulted in transforming and expanding the reach of International Law, but they were also inherently limited in the extent of their radicalism.’ Assess critically. **(15 Marks)**

Q.4 Critically examine the TWAIL critique of democracy, development and good governance in International law. **(15 Marks)**

Q.5 ‘Though TWAIL presents itself as ‘anti-hierarchical, counter hegemonic, suspicious of universal creeds and truths and yet it fails to acknowledge and include Dalit experiences within its fold’. Critically examine this statement. **(15 Marks)**

Q.6 ‘Much international law clearly institutionalises male dominance on a yet higher level. The primacy of the principle of state sovereignty builds the public/private distinction into international jurisdiction. Formal equality, employing the standard sameness/difference approach is normative. Consent is routinely used to hide coercion.’ In light of this statement evaluate the Feminist critique of international Law. **(15 Marks)**

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. End Semester (Winter) Examination 2018 – 8th and 10th Semester – 2015 and 2014 Batch

LAW OF UNITED NATIONS

Full Marks: 60

Time: 3 hours

Instructions

- a. Please read the questions carefully.
- b. You are allowed only to carry the *Bare Text of the United Nations Charter, 1945*.
- c. Answer the Questions Legally and Legibly.
- d. Each of the questions carries 15 marks.

I. ANSWER ANY FOUR OF THE FOLLOWING QUESTIONS LEGALLY (4 X 15 = 60)

1. The History and Origin of the United Nations Charter, 1945 primarily reflects the domination and hegemony of the Western States and United States of America. Expand the above Statement by mapping the stages in the formation of United Nations Charter, 1945.
2. According to the United Nations Charter *the Secretary General of the United Nations* is labeled as the Chief Administrative Officer of the United Nations. His task as scholars point out is Multifaceted. Analyze the role played by the Secretary General of the United Nations in maintaining global world order.

3. One of the most debated and heated area of research in the United Nations Charter and modern International Law is *Article 2(4)*, which finds its roots in Just war theory. But, since the establishment of the United Nations and through subsequent practice *Article 2(4)* has undergone rapid transition. Evaluate legally the perspectives and controversies surrounding *Article 2(4)*.
4. Notwithstanding *Article 7* of the United Nations Charter. The Security Council is regarded as the Prime Organ in the United Nations in comparison to other Organs. Critically evaluate the contribution of United Nations Security Council in the maintenance of International Peace and Security.
5. Discuss the various interpretative techniques adopted to interpret the United Nations Charter in the light of the evolving nature of the United Nations. Also, gauge the importance of *Article 31 and Article 32 of the Vienna Convention of Law of Treaties (VCLT)* in the process of Interpretation.
6. The United Nations Charter vis-à-vis the advisory opinion in the case of *Conditions of Admission of a State to Membership in the United Nations, 1948* (Advisory opinion requested by General Assembly) Provide for criteria on how a State can become a member of United Nations. Despite the Jurisprudence, the membership of the United Nations in recent times has become highly politicized. Explain comprehensively the membership process in the United Nations.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 10th Semester – 2014 Batch

WOMEN AND CRIMINAL LAW

Full Marks: 50

Time Allowed: 3 Hours

1. An upcoming actress has accused a famous film director of sexual misconduct in his office. The director tried to take advantage of the actress in lieu of offering her a role in one of his upcoming films. In the wake of #Me too Movement, the actress revealed her story.
Is there any legal remedy available to the actress in the given fact scenario? [5]
2. What are the factors to be considered while awarding compensation under the Compensation Scheme for Women Victims/ Survivors of Sexual Assault/ Other Crimes, 2018? [5]
3. A (Male) and B (Female) are married to each other for 10 years. B accused A for marital rape.
(a) What legal remedy B has in this case? [2]
(b) What are the recommendations made by Justice Verma Committee Report, 2013 in this regard? [3]
4. Anu, a Kendriya Vidyalaya teacher who had twins through a surrogate mother was denied maternity leave as she was not the biological mother.
She approached you for legal assistance. Advice her. [5]
5. Amar was following Bina. Bina made a complaint against Amar of stalking in the nearby Police Station. Amar said that the conduct was not amounting to stalking. Can Amar take such a plea? Amar approached you for legal assistance. Advice him. [5]
6. (a) What are the Constitutional safeguards available for the protection of women? [4]
(b) What do you mean by “Human Trafficking”? Mention the National laws, International laws and relevant case laws in this regard. [6]

7. Write Short Notes: (Any three)

[3x5=15]

- (a) Decriminalisation of Adultery
- (b) The Criminal Law (Amendment) Act, 2018
- (c) Acid Attack
- (d) Voyeurism
- (e) Equal Pay for Equal Work

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Winter) Examination 2018 – 8th Semester – 2015 Batch

World Trade Law

Full Marks: 45

Time Allowed: 3 Hours

Instructions:

- (i) No clarification can be sought on the question paper.
- (ii) Students are allowed to carry the bare text (without commentary) of WTO Agreements.
- (iii) Answer **question no. 7 and any four among the remaining six** questions.

1. Point out the problems posed by nontariff barriers in the multi-lateral trade negotiations. Discuss the functions performed by the General Council acting as Dispute Settlement Body and Trade Policy Review Body.

3 + 5 = 8 Marks

2. Elaborately discuss the debate on the standard of review in the WTO dispute settlement with special reference to Article 17.6 of the Anti-Dumping Agreement.

8 Marks

3. Elaborately discuss the concerns in the interpretation of market access and national treatment provisions under the GATS.

8 Marks

4. “Adoption of zeroing methodology in the determination of dumping is necessary to prevent targeted dumping”. Elucidate. Discuss the approach of the WTO Dispute Settlement Body regarding the use of zeroing with the help of decided cases.

3 + 5 = 8 Marks

5. Whether the requirement of ‘unforeseen developments’ has been subsumed under the three requirements of the Safeguards Agreement? Substantiate with the help of decided cases.

8 Marks

6. Write critical notes on the following
- (a) Appellate Body's reluctance to reopen the Panel's determination on product classification in the *Japan - Taxes on Alcoholic Beverages* (1996) case.
 - (b) Publication requirement under Art. X of the GATT.

4 x 2 = 8 Marks

7. Republic of Lotivia has developed a high labour standard over the years in conformity with the ILO Conventions. It has been the global leader in advocating for the incorporation of labour standards under the WTO regime. Retoria is a developing country with poor labour standard, and its economy is based on the flourishing asbestos industry run on highly deplorable labour standards. It has a very high percentage of mortality rate below 30 years of age due to cancer or related illness.

In November 2018, Lotivian scientists, after a decade long research, publicly disclosed that the chrysotile asbestos from Retoria has a component which is highly dangerous to human health. During this revelation, the Lotivian scientists stated that there is a high probability of other asbestos produced in Retoria having similar toxic components due to poor processing standards. They also concluded this to be the prime reason behind the high level of underage mortality, not just of workers but also of the public in general, in Retoria. In December 2018, Lotivian representative to the World Health Summit urged the world community to take steps to protect their citizens as well as to protect the people in Retoria by adopting appropriate measures to ban import of asbestos from Retoria. In the same speech, he also mentioned that the Lotivia is also producing asbestos in a highly human friendly environment, and the toxic components of the asbestos are eliminated in the end product.

In January 2019, the Government of Lotivia notified that "pursuant to the concerns expressed by us in the World Health Summit, the import of all six forms of asbestos from Retoria is prohibited". Retoria has approached the WTO Dispute Settlement Body against the trade embargo imposed by Lotivia. Sketch the arguments available for both the States.

Note: Both the states are parties to WTO Agreements.

13 Marks