

END SEMESTER EXAMINATION

MONSOON SEMESTER 2017

1. Advanced Constitutional History II (O)
2. Agricultural Law (O)
3. Clinic I ©
4. Comparative Law on Civil Liberties (O)
5. Constitutional Law I ©
6. Contract I ©
7. Corporate Governance & CSR(O)
8. Corporate Law I ©
9. Criminology & Victimology (O)
10. Deviance, Control & Society (O)
11. Economics I ©
12. Energy Law & Policy (O)
13. English I ©
14. Entertainment & Media Law (O)
15. Family Law II ©
16. Gender & Law (O)
17. Indian Penal Code ©
18. Intellectual Property Law ©
19. International Commercial Arbitration (O)
20. International Finance (O)
21. International Humanitarian & Refugee Law (O)
22. International Maritime Law (O)
23. Interpretation of Statutes ©
24. Introduction to Research Methodology (O)
25. IPR, Biodiversity & Agriculture (O)
26. IPR, International Trade & Human Rights (O)
27. Issues in Legal & Political Philosophy (O)
28. Jurisprudence ©
29. Labour & Industrial Law II ©
30. Law & Impoverishment (O)
31. Law of Commercial Instruments (O)
32. Law of Evidence ©
33. Legal History I ©
34. Legal Methods ©
35. Medicine & Public Health Law (O)
36. Outer Space Law (O)
37. PIL & Human Rights ©
38. Political Science I ©

- 39. Protection of Animal Rights (O)
- 40. Securities Law (O)
- 41. Sociology I ©
- 42. Sports Law (O)
- 43. Taxation Law ©
- 44. Torts ©
- 45. Trademark Law (O)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 7th & 9th Semester – 2014 & 2013 Batch

Advanced Constitutional History of India II

Full Marks: 70

Time Allowed: 3 Hrs.

A. **Answer any five long questions:**

10 x 5 = 50

1. One of the foremost principles set by the framers of the Indian Constitution in the Directive Principles of State Policy is to secure a social order for the welfare of the people. Tracing the development of the idea of a welfare state in the newly emerging British Commonwealth, explain whether subsequent generations of policy-makers in India succeeded in implementing this ideal to the extent needed? 10
2. Has the Indian state been able to ensure the common man's right to work guaranteed in the Indian Constitution? Has the promise of the participation of workers in the management of the industries been adequately implemented in the last seventy years of India's independence? 4 + 6 = 10
3. In which resolution of the Congress Party was it adopted that there should be equal pay for equal work in post-independence India? 10
4. Given the considerable amount of contribution made by Rajkumari Amrit Kaur in the reorganization of health in India, have the post-independence policy makers been able to significantly raise the level of nutrition and improve the condition of public health in the country? Has the standard of living of the working classes of the country improved since 1947? 7 + 3 = 10
5. By excessively centralizing education in India could the policy-makers, under the ministership of Maulana Abul Kalam Azad, succeed in guaranteeing free and compulsory education for all children under the age of 14? Was this principle, i.e. guaranteeing universal education to the underprivileged segments of the Indian society, borrowed from western liberal thought? 10
6. Explain the historical circumstances behind the decision to retain the emergency provisions in the Indian Constitution. 10

B. **Answer any four short notes:**

5 x 4 = 20

7. Did the framers of the Indian Constitution demonstrate adequate concern for the promotion of the vernacular languages in the education system of the country after independence? 5
8. Evaluate the significance of the proposal to have Hindi as a link language guaranteed under article 351 of the Indian Constitution. 5
9. To whom do we attribute the introduction of the principle of village reorganization, Panchayati Raj and cottage industry in the Indian Constitution? 2 + 2 + 1 = 5
10. Is the protection of monuments and places and objects of national importance, guaranteed under article 48 of the Indian Constitution, a principle borrowed from western liberal thought? 5
11. To whom and to what extent is equal justice and free legal aid guaranteed in the Indian Constitution? 1 + 4 = 5

THE W. B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester Examination – 7th Semester - 2014 Batch

AGRICULTURAL LAW

[Elective Paper]

Full Marks: 50

Time Allowed: 3 hours

[The students are allowed to carry the Agricultural Law Module Part-II (Vol.-I&II) in the examination hall]

Answer question no 1 and two from the rest

No clarifications please

1. Write short notes on any one of the following: [1X10=10]
 - a. *Khuntia Case* (AIR 2000 SC 2538);
 - b. National Seeds Policy, 2002;

2. An appeal by special leave arise out of a common judgment and order dated 20th/21st March, 2002 passed by a Division Bench of the Bombay High Court allowing the appeals preferred by the State in part from a judgment and award dated 24.07.1995. The Government of Maharashtra intended to undertake construction of a medium irrigation project on the Uthala River at Patoda Taluka in the District of Beed commonly known as "Uthala Irrigation Project". For the said purpose, lands situated at village Tagadgao were acquired. The total land sought to be acquired measured 182 Hectares and belonged to 274 individual land owners. A notification under Section 4 of the Land Acquisition Act, 1894 (for short, "the Act") was issued on 6.10.1988. A declaration under Section 6 of the Act was made on 6.7.1989. An award was published on 29.06.1990. The acquired lands were classified in two categories; (1) Bagayat lands (irrigated lands); and (2) Jirayat lands (non-irrigated lands but are otherwise cultivable). By reason of the impugned judgment and order, the High Court allowed the said appeals in part upon re-classifying the entire land under acquisition into four groups, namely, (i) Pot-Kharab land; (ii) dry land under cultivation; (iii) land under seasonal irrigation; and (iv) land under perennial irrigation. On the basis of the aforementioned sub-classification, the market value was determined at (i) for perennially irrigated land at Rs. 1,00,000/- per hectare; (ii) for dry land at Rs. 50,000/- per hectare, (iii) for land under seasonal irrigation at Rs. 75,000/- per hectare and (iv) for Pot-Kharab land at Rs. 10,000/- per hectare. Aggrieved by and dissatisfied with the impugned judgment, appellants are before you. Decide the case with the help of legal materials and relevant decided cases. [20]

3. A NGO 'Farmers Welfare Association' (FWA) has filed a public interest litigation before the honourable Supreme Court against the state of Maharashtra, Karnataka, Orissa, Andhra Pradesh and state of Kerala and union of India that River water used for irrigation purposes are not being properly utilised as per the provisions of the respective State irrigation laws and the water users Association and Pani Panchayat are not discharging their powers and functions for the purpose of conservation of freshwater, which it is scarce resource. FWA also pointed out that all the above-mentioned states have not followed the provisions of the Acts for the proper construction of irrigation works and they have not established efficient plan for sufficient water distribution in the agricultural field. In this regard, the above-mentioned states have given their defence by claiming that Irrigation management is a social activity and has to be looked in the context of social inequality, conflicts, hierarchy, cultural and social Influence, local leadership, pattern of participation of local agencies and group dynamics in the rural areas. However, FWA claimed that the states are not helping to improved water use efficiency and reduction, wastage of this precious resource, greater crop discipline, elimination of concealment of unauthorised irrigation, equitable distribution of water, better collection of water rates, superior maintenance and operation of the irrigation system and higher accountability of the Government Department to the needs and aspirations of the farmers. Decide the case with the help of relevant legal materials. [20]

4. 'Citizens Welfare Group', (CWG) a registered Society filed a public interest litigation before the Supreme Court against the union of India claiming that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been drafted in such a way that there will be easy way for the executives to avoid the responsibility of implementing the provisions. The provisions of this legislations, which are having the similar kind of problems are definitions of affected family, cost of acquisition, displaced family, and other provisions such as, Preparation of Social Impact Assessment study, conducting Social Impact Assessment, Preliminary survey of land and power of officers to carry out survey, Preparation of Rehabilitation and Resettlement Scheme by the Administrator, determination of the market value of the land by collector. The union of India has made it clear that this legislation is the reflection of a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families. Therefore, there is no scope for the executives to avoid the responsibilities of implementing the provisions. Decide the case with the help of relevant legal materials. [20]

August 12, 2017

**The W.B. National University of Juridical Sciences
B.A./B.Sc. LL.B. Mid-semester examination – IX Semester (Monsoon 2016)**

Clinic I

Time : 120 minutes

Maximum score : 30 marks

Marks obtained :

Signature of Invigilator

Name of candidate : ID:

Signature of candidate :

General Instructions

- A. This question paper must be completed and submitted at the end of the examination, together with the answer booklet.
- B. All questions are compulsory.
- C. Candidates may consult or refer to written or printed material (including commentaries and notes).
- D. Mobile phones, tablets, laptops and other electronic devices are prohibited in the examination centre.
- E. If questions appear unclear please write your responses on the basis of explanations or assumptions as you consider appropriate, in each case clearly stating such explanations or assumptions.

Part I	Part II
1 to 5	1.
	2.
6 to 10	
Total	Total

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Examiner

.....
Examiner

A

PART I
(Responses are to be written within this question paper)

A. Please state whether the following statements are true or false by marking the appropriate boxes. You may add an explanation in the space provided if you so desire; however, an inaccurate explanation will prejudice evaluation of your response. (1 x 10 = 10)

Inaccurate responses will each attract a penalty of 0.50.

[Marks obtained in this part:]

- (1) A forged letter would not qualify as a document within the meaning of the Indian Evidence Act, 1872.
 True False
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.....

- (2) M, of unsound mind, writes out a promise. M’s guardian does *not* sign the promise even though he is required to do so under the law. The unsigned promise written by M is a document within the meaning of the General Clauses Act, 1897
 True False
.....
.....

- (3) In *K. Somayya v State of Bombay* (AIR 1964 SC) the apex court laid stress on the substance of the contract in deciding that it was not a government contract.
 True False
.....
.....

- (4) Mr Z writes out the following in an agreement with Mr Q - “*Mr Q shall be entitled to receive from Mr Z a bonus of Rs 50,000 upon successfully meeting the sales target at the end of any calendar year*” This provision is a covenant.
 True False
.....
.....

- (5) Under the law nothing precludes a notary from either authenticating or attesting a document
 True False
.....
.....

- (6) Pleadings can be verified only by the lawyer who holds a vakalatnama for the party.
 True False
.....
.....

(7) A defendant in a suit cannot seek a prohibitory injunction as against the plaintiff in that suit

True False

.....
.....

(8) A mandatory injunction cannot be sought for as an interim measure

True False

.....
.....

(9) A pleading cannot be amended once the issues are framed

True False

.....
.....

(10) A custom which is in the nature of law need not be pleaded

True False

.....
.....

PART II

(Responses are to be written in the answer booklet)

1. Sherlock Holmes is the owner of 20 acres of land, covered by document No. 34/2009 of the Kolkata Sub-Registration Office. His property is located at LB-13, Salt Lake, Kolkata (hereinafter "Property A"). M/s Moriarty & Co. is a partnership firm, with Dr. Jim Moriarty, James Moriarty and Charles Magnussan as partners. The firm is engaged in the hospitality and hotels business and owns several properties in Kolkata. One such property is the 20 Acres of land, covered by Document No. 45/2008 of the Kolkata Sub-Registration Office (hereinafter "Property B").

On 21.3.2017 Sherlock Holmes and M/s Moriarty & Co. entered into an exchange deed whereby the two parties to the exchange deed mutually transferred to each other, all their rights title and interests that they had in properties A and B respectively. According to the terms of the exchange deed, both the parties represented to each other that the properties were in good condition and were suitable for making constructions. In terms of the exchange deed, both the parties agreed to hand over possession of the properties on 30.8.2017.

On 10.8.2017 Sherlock Holmes came to know that Property B is not suitable for making construction of any sort due to geological reasons. Sherlock Holmes has now approached you for assistance in filing a suit

(10 marks)

[Marks obtained in this part:]

Please:

- a) Draft the plaint that needs to be filed before the court. (8)
 - b) Enlist the various petitions to be filed along with such plaint. (2)
2. Given below is a set of terms relating to an arrangement of surety between four parties that are required to be documented by a legal instrument. Please study the terms and answer the questions that follow in the context of preparation of the relevant legal document.

Guarantor	Vijay Harisanker Malla
Principal Debtor	Kingfisher Aviation Private Limited, (76% owned by Guarantor)
Creditors	Creditor 1 and Creditor 2
Creditor 1	Cavery Grameen and Krishi Udyogh Bank Limited (100% owned by Government of Karnataka)
Creditor 2	Government of Karnataka (under Swatanter Yojna Loan Scheme)
Debt	Loan of Rs 114.56 crores granted by Creditors to Principal Debtor in following proportion: Creditor 1: Rs 94.56 crores Creditor 2: Rs 20.00 crores
Term	Till repayment of Debt by Principal Debtor to satisfaction of Creditors
Special Condition	Aggregate liability of Guarantor not to exceed Rs 150 crores

(10 marks)

[Marks obtained in this part:]

Based on the terms provided:

- (a) Please draft a description of the parties (2)
- (b) Please draft a set of relevant recitals (1)
- (c) Please draft *two* relevant principle terms as they might be legally documented (2)
- (d) Please draft *two* transaction-specific representations that may be provided by the Guarantor to the Creditors (2)
- (e) Please draft one negative covenant that may be stipulated on the Guarantor by any of the Creditors (1)
- (f) Please draft one affirmative covenant that may be stipulated by the Guarantor on any of the Creditors (1)
- (g) Please write down *one* instance of how existing laws might *adversely* affect or limit operation of the principal terms of the proposed arrangement. You do not need to cite provisions or exact names of legislation. (1)

August 12, 2017

**The W.B. National University of Juridical Sciences
B.A./B.Sc. LL.B. Mid-semester examination – IX Semester (Monsoon 2016)**

Clinic I

Time : 120 minutes

Maximum score : 30 marks

Marks obtained :

Signature of Invigilator

Name of candidate : ID:

Signature of candidate :

General Instructions

- A. This question paper must be completed and submitted at the end of the examination, together with the answer booklet.
- B. All questions are compulsory.
- C. Candidates may consult or refer to written or printed material (including commentaries and notes).
- D. Mobile phones, tablets, laptops and other electronic devices are prohibited in the examination centre.
- E. If questions appear unclear please write your responses on the basis of explanations or assumptions as you consider appropriate, in each case clearly stating such explanations or assumptions.

Part I	Part II
1 to 5	1.
	2.
6 to 10	
Total	Total

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Examiner

.....
Examiner

B

PART I
(Responses are to be written within this question paper)

A. Please state whether the following statements are true or false by marking the appropriate boxes. You *may* add an explanation in the space provided if you so desire; however, an inaccurate explanation will prejudice evaluation of your response. (1 x 10 = 10)

Inaccurate responses will each attract a penalty of 0.50.

[Marks obtained in this part:]

(1) A mandatory injunction cannot be sought for as an interim measure

True False

.....
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(2) A pleading cannot be amended once the issues are framed

True False

.....
.....

(3) A custom which is in the nature of law need not be pleaded

True False

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.....

(4) Pleadings can be verified only by the lawyer who holds a vakalatnama for the party.

True False

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(5) A defendant in a suit cannot seek a prohibitory injunction as against the plaintiff in that suit

True False

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.....

(6) A forged letter would not qualify as a document within the meaning of the Indian Evidence Act, 1872.

True False

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August 12, 2017

- (7) Mr Z writes out the following in an agreement with Mr Q - “Mr Q shall be entitled to receive from Mr Z a bonus of Rs 50,000 upon successfully meeting the sales target at the end of any calendar year” This provision is a covenant.

True False

.....

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- (8) Under the law nothing precludes a notary from either authenticating or attesting a document

True False

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- (9) M, of unsound mind, writes out a promise. M’s guardian does *not* sign the promise even though he is required to do so under the law. The unsigned promise written by M is a document within the meaning of the General Clauses Act, 1897

True False

.....

.....

- (10) In *K. Somayya v State of Bombay* (AIR 1964 SC) the apex court laid stress on the substance of the contract in deciding that it was not a government contract.

True False

.....

.....

PART II

(Responses are to be written in the answer booklet)

1. Sherlock Holmes is the owner of 20 acres of land, covered by document No. 34/2009 of the Kolkata Sub-Registration Office. His property is located at LB-13, Salt Lake, Kolkata (hereinafter “Property A”). M/s Moriarty & Co. is a partnership firm, with Dr. Jim Moriarty, James Moriarty and Charles Magnussan as partners. The firm is engaged in the hospitality and hotels business and owns several properties in Kolkata. One such property is the 20 Acres of land, covered by Document No. 45/2008 of the Kolkata Sub-Registration Office (hereinafter “Property B”).

On 21.3.2017 Sherlock Holmes and M/s Moriarty & Co. entered into an exchange deed whereby the two parties to the exchange deed mutually transferred to each other, all their rights title and interests that they had in properties A and B respectively. According to the terms of the exchange deed, both the parties represented to each other that the properties were in good condition and were suitable for making constructions. In terms of the exchange deed, both the parties agreed to hand over possession of the properties on 30.8.2017.

On 10.8.2017 Sherlock Holmes came to know that Property B is not suitable for making construction of any sort due to geological reasons. Sherlock Holmes has now approached you for assistance in filing a suit
(10 marks)

B

[Marks obtained in this part:]

Please:

- a) Draft the plaint that needs to be filed before the court. (8)
 - b) Enlist the various petitions to be filed along with such plaint. (2)
2. Given below is a set of terms relating to an arrangement of surety between four parties that are required to be documented by a legal instrument. Please study the terms and answer the questions that follow in the context of preparation of the relevant legal document.

Guarantor	Vijay Harisanker Malla
Principal Debtor	Kingfisher Aviation Private Limited, (76% owned by Guarantor)
Creditors	Creditor 1 and Creditor 2
Creditor 1	Cavery Grameen and Krishi Udyogh Bank Limited (100% owned by Government of Karnataka)
Creditor 2	Government of Karnataka (under Swatanter Yojna Loan Scheme)
Debt	Loan of Rs 114.56 crores granted by Creditors to Principal Debtor in following proportion: Creditor 1: Rs 94.56 crores Creditor 2: Rs 20.00 crores
Term	Till repayment of Debt by Principal Debtor to satisfaction of Creditors
Special Condition	Aggregate liability of Guarantor not to exceed Rs 150 crores

(10 marks)

[Marks obtained in this part:]

Based on the terms provided:

- (a) Please draft a description of the parties (2)
- (b) Please draft a set of relevant recitals (1)
- (c) Please draft *two* relevant principle terms as they might be legally documented (2)
- (d) Please draft *two* transaction-specific representations that may be provided by the Guarantor to the Creditors (2)
- (e) Please draft one negative covenant that may be stipulated on the Guarantor by any of the Creditors (1)
- (f) Please draft one affirmative covenant that may be stipulated by the Guarantor on any of the Creditors (1)
- (g) Please write down *one* instance of how existing laws might *adversely* affect or limit operation of the principal terms of the proposed arrangement. You do not need to cite provisions or exact names of legislation. (1)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
B.A./B.Sc. LL.B. End-semester examination – IX Semester – 2013 Batch
Clinic I

Time : 3 Hours
Maximum score : 50 marks

Marks obtained :

Signature of Invigilator

General Instructions

- A. This question paper must be completed and submitted at the end of the examination, together with the answer booklet.**
- B. All questions are compulsory.**
- C. No written or printed reference or study material, including notes or texts are permitted.**
- D. Mobile phones, tablets, laptops and other electronic devices are prohibited in the examination centre.**
- E. If questions appear unclear please write your responses on the basis of explanations or assumptions as you consider appropriate, in each case clearly stating such explanations or assumptions.**

Part I		Part II	
1 to 5		1.	
		2.	
6 to 10			
Total		Total	

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Examiner

.....
Examiner

PART I
(Responses are to be written within this question paper)

A. Please state whether the following statements are true or false by marking the appropriate boxes. You may add an explanation in the space provided if you so desire; however, an inaccurate explanation will prejudice evaluation of your response. (1 x 10 = 10)

Inaccurate responses will each attract a penalty of 0.50.

[Marks obtained in this part:]

(1) Boeing Aircraft Limited and Sandhya Armaments Limited execute a joint-venture agreement on May 23, 2017. The agreement provides that it will come into effect on the receipt of approval from the Government of India. Till date the Government of India has *not* issued the approval due to political reasons. The joint-venture agreement is a document within the meaning of the General Clauses Act, 1897

True False

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(2) A company duly authorised Mr Akhtar through a power of attorney to execute an agreement on behalf of the company. The agreement was executed and Mr Akhtar died a few years later. The company then authorised Mr Chagla to execute an amendment to the same agreement. A plea has been filed by the counterparty to the agreement that this is improper as the signatory cannot change. This plea is sustainable.

True False

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.....

(3) Two parties enter into an agreement on 18.11.2017. Within the agreement, the term ‘Prime Minister’ is defined to mean “Indira Gandhi, daughter of Jawaharlal Nehru”. This definition is not legally enforceable.

True False

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.....

(4) Mr Q and Mr Z have executed an agreement. The agreement contains a clause that reads thus - “*Mr Q has always been entitled to receive from Mr X a bonus of Rs 50,000 upon successfully meeting the sales target at the end of any calendar year*”. This provision is not a covenant.

True False

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(5) A representation must be tested for accuracy at the point in time when the document is executed.

True False

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(6) A criminal complaint can be dismissed by a magistrate if there is no list of witnesses appended to it.

True False

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(7) An application for anticipatory bail can be filed only by a person who is named in the First Information Report.

True False

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(8) An application for amendment of a plaint can be filed before the second appellate court.

True False

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(9) There exists a uniform format across India, in terms of which all pleadings are to be drafted

True False

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.....

(10) Moneys in a bank account can be subjected to an interim attachment.

True False

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.....

PART II

(Responses are to be written in the answer booklet)

1. Your client, Dog Ate Dog Productions, is a private limited company (“hereinafter **“client”**”) and owns 20 acres of land (hereinafter referred to as **“Property A”**). Property A was purchased by the client on 01.01.2017 for the purposes of constructing an office building. Property A, is however, a paddy field and therefore needs to be filled up and made suitable before any construction can be commenced. The client has engaged a firm, M/s Tarantino Contractors (**“Tarantino”**) for the purposes of filling up Property A with soil, rocks and other construction debris upto a depth of five feet so as to make the site suitable for construction. On 14.11.2017, Tarantino Contractors sent men and materials to Property A and initiated the process for filling up of Property A and commencement of construction thereon. On the same day, at around 3.00 pm a group of about twenty people appeared at the work cite with banners, posters and flags and demanded that the work be stopped. This group of twenty people called themselves the **“Save Wetlands Forum”**; they declared that paddy fields are also wetlands and are essential for environmental protection and sustenance of the groundwater recharge system. The Save Wetlands Forum staged a dharna at the only road that leads to Property A and further declared that they would prevent the entry into or exit of any men or construction material into Property A and would also not permit the preparation of Property

A

A for construction even at the cost of their lives. On subsequent days a similar sequence of events unfolded, with the size of the group increasing. On each day the dharna/blockade by the Save Wetlands Forum starts in the morning and continues till evening making it impossible for Tarantino to undertake any meaningful work on Property A. As on 16.11.2017, it appears that the Save Wetlands Forum have camped on the road with tents and other apparatuses and is preventing all ingress and egress to Property A.

The client estimates a loss of about Rupees 10 crores in total if Property A is not prepared for construction and the construction work does not start soon.

The client has approached you seeking legal assistance.

(20 marks)

[Marks obtained in this part:]

Please:

- a) Draft appropriate document that needs to be filed before the appropriate court. (18)

[Note: It is unnecessary to draft the affidavits that accompany the main petition]

- b) Enlist the various petitions to be filed along with such plaint. (2)

2. Given below is a set of terms relating to an arrangement of sale of goods involving two parties that are required to be documented by a legal instrument. Please study the terms and answer the questions that follow in the context of preparation of the relevant legal document.

Seller	Druk Basochhu-Dagachhu Power Corporation (Bhutan)
Offtaker / Purchaser	Government of West Bengal through Biswo Banga Electricity Board, a division under the energy and revenue ministry.
Contracted Quantity	64MW of power, to be supplied by Seller. Energy supplied must conform to technical specifications specified in the Indian Electricity Grid Code
Term	20 years from Effective Date
Effective Date	Date on which all Conditions Precedent are satisfied / waived by Offtaker
Contract Price	INR 4.25 per kWh (kilo-Watt-hour) subject to escalation of 2% every twenty calendar months.
Wheeling Charges	As decided from time to time by West Bengal Electricity Regulatory Commission (currently 22.56 paise per kWh), to be paid by Offtaker to Seller in addition to Contract Price.
Timing of Payments	Arrears, on a monthly basis, within seven days of generation of invoice by Seller.
Delivery Point	Offtaker's sub-station at Jaigaon, West Bengal
Termination Right	Contract can be terminated at any time by either party upon occurrence of any force majeure event that results in stoppage of daily supply of power by Seller to Offtaker for a period exceeding thirty calendar days
Conditions Precedent	To be decided
Governing Law	England
Jurisdiction	Courts of London

A

[Marks obtained in this part:]

Based on the terms provided:

- (a) Please draft a description of the parties (2)
- (b) Please draft a set of relevant recitals (1)
- (c) Please respond with reasons whether, in your opinion, this an international contract? (1)
- (d) Assuming this is an international contract, (further to question (c) above), please describe what additional precautions you would recommend. (2)
- (e) Please draft *one* condition precedent to effectiveness that you believe may be relevant or desirable. (1)
- (f) Please draft *two* relevant principle terms as they might be legally documented (2)
- (g) Please draft *two* transaction-specific representations that may be provided by the Offtaker to the Seller (2)
- (h) Please draft *one* negative covenant that may be stipulated on the Seller by the Offtaker (1)
- (i) Please draft *one* affirmative covenant that may be stipulated by the Offtaker on the Seller (1)
- (j) Please draft *one* covenant that may be stipulated on the Offtaker by the Seller the breach of which might give the Seller the right to seek specific performance. (1)
- (k) Upon documentation, would this contract qualify as a determinable contract? Please provide reasons in support of your answer. (2)
- (l) Please draft *two* boilerplate or standard covenants that you believe may be appropriate or desirable. (1)
- (m) Please draft appropriate execution paragraphs for the document. You may assume that the Seller is a body corporate incorporated under the laws of Bhutan. Please also assume that Mr Dattaray Nimbalker, an Indian lawyer has been engaged by the Offtaker to execute the agreement on behalf of the Offtaker. (2)
- (n) Please write down *one* instance of how existing laws might *adversely* affect or limit operation of the principal terms of the proposed arrangement. You do not need to cite provisions or exact names of legislation. (1)

West Bengal National University of Juridical Sciences
End Semester Examination Monsoon Semester 2017- 18
LLB Optional Course- Law of Commercial Instruments

Full Marks - 50

Instructions: Kindly write legibly and clearly
Time allowed 3 hours

All questions are compulsory

1. Negotiability is a factor which influences the viability of a commercial instrument it moves a bunch of papers to the realms of fungible assets. Elaborate on this with emphasis on the roles and rights/liabilities of the various parties to such assets. [10]
2. As per S. 59 of the Negotiable Instruments Act, 1881 – a holder of negotiable instrument acquiring it post dishonor inherits right rights of his transferor only. Comment on this provision juxtaposing it with the rights and capacity of a holder and holder in due course. [10]
3. Write short notes on any two:
 - a. Bill of Lading
 - b. Stand by Letter of credit
 - c. Endorsement
 - d. Accommodation[10]
4. A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through her Bankers. B the drawer wants to recover the amount from C's Bankers. Decide in the light of the provisions of Negotiable Instruments Act, 1881-
 - a. Whether B the drawer, can recover the amount of the cheque from C's Bankers?
 - b. Whether C is the Fictitious Payee?
 - c. Would your answer be still the same in case C is a fictitious person?[20]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
End Semester Examination – 9th Semester – 2013 Batch
Comparative Civil Liberties

Full Marks: 60

Time Allowed: 3hrs

*****Every question is to be answered drawing comparatives with TWO foreign legal positions**

Answer any three of the following. (20*3=60 marks)

1. The Chhattisgarh Special Public Security Act, 2005 provides provisions which authorises the police to detain a person for committing acts, which among other things, show a “tendency to pose an obstacle to the administration of law”. The act also states any person whose actions “encourage(s) the disobedience of the established law” will be considered “unlawful”.

Commonwealth Human Rights Initiative (CHRI), in a statement, said that the present definition of “unlawful activities” imperils free exercise of fundamental freedoms set out under Article 19 of the Constitution of India and illustratively it appears to restrict the right to hold public meetings; organise public protests; and oppose government policies through the media.

Do you agree with the view of CHRI? Substantiate your answer highlighting the distinction between Civil Rights, Civil Liberties and Human Rights. (10+10=20)

2. Article 2 of UK Abortion Act 1967 does not confer an absolute right to life to the unborn. Article 1 of the American Declaration of Rights and Duties of Man and Inter American Commission on Human Rights say that abortion is legalised until the end of First trimester. Article 6(1) of the ICCPR protects the arbitrary deprivation of life and so does Article 2 of the ECHR. However in none of these legal instruments has the ‘timeline of when life begins’ has been addressed. While in India, the MTP Act prohibits abortion beyond a certain stage of pregnancy.

A 16 years old Indian girl entering 22nd week of pregnancy, not falling within any of the categories listed in the Act (permitting abortion), is barred from aborting the foetus in her womb. One is bound to raise the crucial question of her bodily autonomy as against a law in force. However that “which is not permissible may become valid by obtaining permission from the High Court on reasonable grounds”.

Do you opine that the MTP Act deprives the girl of her bodily autonomy? Will a similar situation in the UK Jurisdiction be the same? What do you think should be the right approach to such a situation in India? (10+5+5=20)

3. The right to sexuality and freedom from discrimination on the grounds of sexual orientation is based on the universality of human rights and the inalienable nature of rights belonging to every person by virtue of being human.

In 2009 the Supreme Court overturned the Delhi HC's verdict on Sec 377, IPC and held that sexual orientation is an essential attribute of privacy and is covered under clauses in the Indian Constitution that relate to liberty.

None of the codified Marriage Acts enacted by the Union of India explicitly defines marriage between a man and a woman. Neither do these acts explicitly prohibit same sex unions. However, the laws have "heteronormative underpinnings" and have been interpreted not to recognise same-sex unions. A draft of a new Uniform Civil Code has been proposed that legalizes same sex marriage and adoption as well as trans-marriages and adoption.

Drawing comparatives from foreign jurisdiction where marriage between the same genders is given a legal recognition, in the light of civil liberty of the individuals concerned and the social fabric of India, do you think a legal recognition ought to be given or not given to such couples in India? (10+10=20)

4. In *Indian Express v. Union of India*, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are: 1. freedom of access to all sources of information, 2. freedom of publication, and 3. freedom of circulation.

In *Brij Bhushan v. State of Delhi* (AIR 1950 SC 129), the validity of censorship previous to the publication of an English Weekly of Delhi, the Organiser was questioned. The court struck down the Section 7 of the East Punjab Safety Act, 1949, which directed the editor and publisher of a newspaper "to submit for scrutiny, in duplicate, before the publication, till the further orders, all communal matters all the matters and news and views about Pakistan, including photographs, and cartoons", on the ground that it was a restriction on the liberty of the press. Similarly, prohibiting newspaper from publishing its own views or views of correspondents about a topic has been held to be a serious encroachment on the freedom of speech and expression.

How does freedom of the press qualify to be an essential aspect of civil liberties? Do Parliamentary privileges create an exception to the freedom of speech? (10+10=20)

5. Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017 has led to the restriction on sale of cattles for slaughter purpose. Due to which consumption of a certain meat has been banned in some states of the country. In the light of the provisions under Part III & IV of the Indian Constitution, do you agree/disagree that the Rule hits hard on one's liberty, the choice to food habits, one's profession and trade? In terms of conflicting interests and liberties, what suggestions will you provide to balance the situation? (10+5+5=20)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 3rd Semester – 2016 Batch

CONSTITUTIONAL LAW – I

Full Marks – 60 marks

Time Allowed: 3 hours

(ANSWER ANY THREE OF THE FOLLOWING QUESTIONS)

1. a) In the wake of recent cross-border incursions in the Kashmir valley by Pakistan, the Union Government has decided to significantly strengthen the border outposts in the valley. For this purpose, a sizeable contingent of the military and paramilitary forces (including the Border Security Forces) who were guarding the other international borders, have also been relocated to the valley on a priority footing. Considering the ramifications of what this move would entail for the security of the other international borders (many of which are porous), the Union Government issues administrative directions to the different states adjacent to these international borders to increase armed police deployment in their border districts. The directions also mandate the state to mandatorily report acts of ‘internal disturbance’ to the Union Government on a weekly basis, along with descriptions of what steps have been taken by the respective state governments towards quelling those. The directions make it very clear that if they are not adhered to by the state governments, such non-adherence could result in proclamation of President’s Rule in the state concerned.

The states have decided to challenge this direction in the Supreme Court on grounds including those concerning the federal structure of the Constitution, and have asked the Supreme Court to pre-emptively declare that such imposition of President’s Rule would be declared unconstitutional. The necessity for these pre-emptive prohibitions, according to the Chief Ministers of one of the states, is borne out of past experiences where despite the Supreme Court declaring such impositions as unconstitutional, it was too late in the day for the government to be reinstated. He argues therefore that the Supreme Court can, while doing ‘complete justice’, definitely pass such orders.

Analyze the constitutional viability of the administrative direction and the judicial challenges to the same, both in terms of jurisdiction and merit. [5+3+4=12]

b) In the famous case of *Union of India v. Harbhajan Singh Dhillon*, Shelat, J., while dissenting with the majority, famously observed:

“The words in that entry [Entry 97, List I, Schedule VII], viz., "any other matter not enumerated in List II or List III must mean any matter not being in the entries preceding it, that is, entries 1 to 96 in List I and any matter not enumerated in List II and List III. The residuary power declared by, Art. 248, and of which the field is defined in entry 97 of List I, must, therefore, be the power in respect of a field or category of legislation not to be found in any one of the three Lists”.

Are you in agreement with this view? Analyse, in light of the relevant context. [8]

2. a) Subba Rao, J., (as he then was), in the much-celebrated *State of West Bengal v. Union of India* case, disagreed with Sinha, C.J., about the real nature of the Indian Federal model, and observed:

“The real test to ascertain whether a particular Constitution has accepted the federal principle or not is whether the said Constitution provides for the division of powers in such a way that the general and regional governments are each within its sphere substantially independent of the other. [...] Though some authors, accepting the American Constitution as the yardstick for a federation, prefer to describe Constitutions with a bias towards Union as quasi-federations, I do not think it is inappropriate to describe all Constitutions which substantially accept the federal principle as Federations. Applying this test, I have no doubt that the Indian Constitution is a federation, as the units in normal times exercise exclusive sovereign powers within the fields allotted to them.”

Are you in agreement with his views? Analyse, with references to relevant precedents and provisions. [10]

b) The Parliament of India decides to bring in a Constitutional Amendment that provides for the codification of the Basic Features of the Constitution. For the said purpose, the Parliament takes the *Kesavananda Bharati* judgement as the yardstick, and uses the individual lists of Essential or Basic Features enunciated by Sikri, C.J., Shelat, Grover, Hegde, Jaganmohan Reddy, Mukherjee and Khanna, JJ., as indicators to draw up the list

of Basic Features. The proposed Amendment also stipulates that if the Parliament, by a majority of two-thirds of the members of both houses of the Parliament present and voting, decides to remove any particular feature from the list, can refer it to a body called the Constitution Review Commission (CRC) consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition of the Lok Sabha, whose opinion on the matter shall be conclusive and binding.

A group of citizens want to challenge this proposed Constitutional amendment as untenable, in view of the true nature and intent of the Basic Structure Doctrine. Moreover, the States also seem to have problems with the Amendment because in their opinion, it completely undermines the Centre-State balance, which is so intrinsically important to the amendment process, especially in amendment of the “entrenched provisions” of the Constitution which require the approval of at least half of the states.

If you are the lawyer representing the aggrieved groups, what would your arguments be? How do you think the State would seek to counter your arguments? Elucidate, with appropriate references to the context. [5+5=10]

3. a) The President of India, upon the aid and advice of the Council of Ministers, decides to promulgate an Ordinance called the Death Penalty Ordinance, 2017 whereby any plea for pardon of a Death sentence made before the President or the Governor, as the case may be, would be referred to a special tribunal consisting of a Retired Chief Justice of the Supreme Court, a retired head of the armed forces and an eminent person from the civil society nominated by the President of India. This tribunal would be empowered to make recommendations to the President or the Governor as to whether pardon should be granted. In doing so, they would not be bound by any particular procedural limitation, and would be empowered to do everything that is necessary to secure the ends of justice. The decision of the tribunal would be final and binding on the President, and would only be open to the Special Leave jurisdiction of the Supreme Court under Article 136 of the Constitution.

Analyse the constitutional viability of the ordinance, in light of relevant precedents and provisions. [12]

- b) The Parliament decides to pass a Constitutional Amendment whereby it would be mandatory that to be sworn in as the Prime Minister of India or the Chief Minister of a

State, one has to be an elected member of the respective Lower House, the Lok Sabha (in case of the Prime Minister) or the Vidhan Sabha (in case of the Chief Minister). The justification given is that since the Council of Ministers needs to be collectively responsible to the Lower Houses, the Leader of the Council of Minister should be an elected member of the Lower House. Moreover, the Parliament decides to ground the justification on the values of democracy and general elections.

Do you think such an amendment would pass the muster of a constitutional scrutiny? Analyse, with appropriate references in support of your contentions. [8]

4. a) In his separate concurring opinion in the landmark case of *Shamsher Singh v. State of Punjab*, Krishna Iyer, J. opined:

“We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various Articles, shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well known exceptional situations.”

- (i) What are these exceptional situations? [3]
- (ii) Do you think that the Amendment to Article 74(1) brought about by the 42nd Constitutional Amendment, 1976, has made any perceptible change to the interpretation of the position of the President vis-a-vis the Union Council of Ministers? [5]

b) The decision of the Supreme Court in the case of *ADM Jabalpur v. Shivakant Shukla* case, according to Prof. Upendra Baxi, had “*made the darkness of the emergency completely dark*”. How far are you in agreement with this statement? Do you think that this ‘darkness’ has been substantially removed by the 44th Amendment, 1978? Cite necessary instances to substantiate your contention. [6+6=12]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

END SEMESTER EXAMINATION- MONSOON SEMESTER 2017

CONTRACT-I

Full Marks-60

Time Allotted- 3 Hrs

The Indian Contract Act, 1872 Bare Act, without any commentaries, is allowed. Case List is allowed. Only those Case list approved and signed by the subject teacher are to be taken inside the examination hall. All Questions carry equal marks. Answer any Three of the Four Questions. Please read the Questions carefully and give only relevant answers. Please keep in mind the marks break up, as indicated with each Question. Attempt all the parts of a Question, as given therein. Questions can be attempted in any order.

Q.1 The State Government of Kerala accepted the recommendation of the Government of India, dated 1/01/2000, suggesting that tourism be declared an “industry”. As per the recommendation, those engaged in tourism promotional activities were to become automatically eligible for the concessions/incentives as applicable to the industrial sector from time to time. One such concession granted was exemption from building tax. Accordingly the Kerala Building Tax Act 1975 had to be amended to implement the recommendation of the Government of India. Specifically the building tax exemption was available to classified hotels. P1 was one applicant whose project was approved by the Government of India, on 1/10/2008, as per the recommendation. P1 was planning to set up a 55 room 3 star hotel in Calicut. P1 knew that the State of Kerala has accepted the Government of India recommendation and would grant building tax exemption. P1 accordingly started the construction of the hotel building, which was completed in the year 2016. However notice for filing the returns under the Kerala Building Tax Act was issued to P1 in 2010. P1 relied on the Government of India recommendation, as accepted by State of Kerala, and refused to file return. P1 argued that they were entitled to building tax exemption. In the meanwhile, based on the Government of India recommendation, the Kerala Building Tax Act was amended in 2012 with effect from 1st January 2012. In 2015, the State of Kerala issued a notice, stating that the amended provisions of the Kerala Building Tax Act, granting exemption, stood revoked and therefore no one will be granted building tax exemption. The revocation notice was made effective from 1/01/2015. Subsequently another notice was issued asking P1 to submit statutory returns under the Kerala Building Tax Act, for the period 2010-2015. P1 challenged the same before the Kerala High Court. The High Court, however dismissed the claim of P1 saying that since no exemption notice has been issued under the amended provision, when they were in force, P1 was not entitled to any building tax exemption. Further it held that mere promise to amend the laws does not hold out a promise of exemption from payment of building tax.

In view of the above stated facts frame a legal opinion. Support your reasons with relevant authorities.

[10+10=20]

Q.2 (a) Q, a dock worker, regularly carried fellow dock workers to and from work in his car when they were working in the same dock as himself. It was a regular and understood arrangement that they should pay him something in cash or kind. An accident occurred in which P's husband, a fellow dock worker who was a passenger in the car in pursuance of the arrangement, was killed. P brought an action against Q and was awarded damages and costs for tort of negligence. Q failed to satisfy the judgment and P brought the present action against the Motor Insurers' Bureau claiming the full amount of the damages and costs by virtue of their agreement with Q. As per the said agreement between Q and the Motor Insurers' Bureau, in case of any accident involving third party, the Bureau will compensate. This liability of the Bureau to compensate the third party however will be subject to the failure of Q to pay the awarded compensation to third party. Furthermore the liability of the Bureau will only arise if Q would be under a contractual liability to compensate the third party, in cases of accident. The contract between Q and third party, needs to be enforceable under the Indian Contract Act 1872. Further the accident caused by Q should be in the course of authorized usage of the vehicle. Authorized usage, as per the agreement between Q and Bureau, included travelling for work by Q and his friends/family. Unauthorized usage, as per the said agreement, included using the vehicle for transportation of persons/goods, for a consideration under an enforceable contract.

Based on the fact given, frame a legal opinion. Support the opinion with relevant authorities.

[4+6=10]

(b) “[S]uppose that he does not know that his message did not get home. He thinks it has. This may happen if the listener on the telephone does not catch the words of acceptance, but nevertheless does not trouble to ask for them to be repeated: or the ink on the teleprinter fails at the receiving end, but the clerk does not ask for the message to be repeated: so that the man who sends an acceptance reasonably believes that his message has been received.” In these instances, as per Lord Denning, the rule of instant communication will not apply to telephonic conversations. Explain, why? As per J. Hidayatullah “If A says to B, “Telephone your acceptance to me” and the acceptance is not effective unless A has heard it, the contract is not formed till A hears it.” He then states that if however in such situation contract is said to be formed it is a fiction and is thus similar to postal rule. Based on this statement by J. Hidayatullah, explain the reasons he gave to dissent from the majority in *Bhagwandas Goverdhandas Kedia v Messrs Girdharilal Parshottamdas and Company and Others*.

[5+5=10]

Q.3 A suit has been filed for the recovery of a sum of Rs. 10,29,977/- which has been deducted by the State of Rajasthan from P's bill in accordance with the conditions of a tender for the supply of stones, stone metals and gravel to the State of Rajasthan for the purpose of repair and construction of certain portions of Grant Trunk Road. The tender was accepted by the Public Works Department of the State of Rajasthan. The said tender, inter alia, provided the following clauses in the conditions of contract:

“1.....

2. *The contractor is to deliver the materials on or before the dates mentioned in the Tender,*

failing which he shall be subject to pay or allow one per cent. On the total amount of the contract for every day not exceeding ten days that he shall exceed his time as liquidated damages.

3. In every case in which the payment or allowances mentioned in clause 2 shall have been incurred for ten consecutive days, the Executive Engineer shall have power either to annul the contract altogether, or to have the supply completed without further notice at the contractor's risk and expense as he may deem best suited to the interests of Government, and the contractor shall have no claim to compensation for any loss that he may incur in any way.

4. If the contractor shall be hindered in the supply of the materials so as to necessitate an extension of the time allowed in this Tender, he shall apply in writing to the Executive Engineer, who shall grant it in writing if reasonable grounds be shown for it and without such written authority of the Executive Engineer, the Contractor shall not claim exemption from the damages leviable under clause 2."

The materials were to be delivered on or before June 30, 2016 under the said contract. Sometime prior to the expiry of the said date of delivery P applied in writing for extension on the ground that there were hindrances in the supply of the materials because of want of transport. P states that the State of Rajasthan allowed the time for delivery to expire but did not grant any extension in writing. The State of Rajasthan, by its conduct induced P to effect delivery of the materials on the assurance of extending the time for such delivery. By a letter dated November 21, 2015 P was informed that the Additional Chief Engineer had refused to grant P any extension of time. By another letter dated November 25, 2015 the previous letter dated November 21, 2015 was cancelled. P continued performance of the agreement on the basis that the time for the completion of the works thereunder had not expired and the State of Rajasthan accepted the benefit of such performance of the agreement by P. P accepted to have delayed performance and failed to complete the work by 30th June 2016. However P states that the failure of the Executive Engineer to extend time is wrongful, arbitrary and ineffective and that the agreement between the parties with all its terms and conditions excepting the time for completion of the work thereunder remained in force and subsisting. P has pleaded that the State of Rajasthan is estopped from denying that the time for completion of works under the contract has not been extended. In any event P states that such time has been extended by mutual agreement which has to be inferred from the conduct and course of dealings between the parties. In view of the fact that P continued to supply the materials, for the work, till 30th September 2016, indicates the extension of time by conduct. P states further that the provision for deducting one per cent, of the total amount of the contract for every day not exceeding 10 days, is by way of penalty and is not enforceable in law. P has pleaded an alternative case to the effect that should the Court hold that there was valid termination or annulment of the contract by the defendant as from 30th June, 2016, he will contend that in that event P is entitled to be paid for the said materials supplied by P to the defendant after 30th June, 2016 at a fair and reasonable rate under the circumstances under which the materials were supplied after that date. In the written statement the State of Rajasthan states that P agreed to allow the State of Rajasthan to deduct and retain the said amount by way of liquidated damages. P failed and neglected to complete its part of the said contract by 30th June, 2016 and requested the State of Rajasthan to extend the time of such completion till the end of December, 2016. The State of Rajasthan did not accede to such request. The State of Rajasthan has denied that P was hindered in the supply of materials or

that the said alleged hindrance necessitated an application for extension of time as alleged by P. The allegations of extension of time by mutual agreement or as to estoppel have been denied by the State of Rajasthan. The alternate case, as argued by P, is also denied by the State of Rajasthan.

In view of the facts and contentions of P and the State of Rajasthan, frame a legal opinion. Support your reasons with relevant authorities.

[7+13=20]

Q.4 (a) Before the coming into force on April 1, 2016 of the SudhraPradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 2016 (Act 1 of 2016), Ash had purchased from certain proprietors of land the right to collect forest produce from the said land during the years 2014, 2015 and 2016. The right was to be enjoyed after April 1, 2016 on which date under the aforesaid Act, the proprietary rights came to vest in the State of SudhraPradesh. The Deputy Commissioner acting under s. 7 of the Act prevented Ash from enjoying the rights he hadacquired from the proprietors, and in April 2016 auctionedthe right to collect forest produce from the land. Ash deposited Rs. 10, 00, 00 to acquire the right of collecting lac from the said land during 2016, 2017 and 2018. He collected some lac but thereafter filed a suit claiming refund of the deposit of Rs. 10,00, 00 on the basis that there was no. valid ,contract between him and the State of Sudhra Pradesh as the provisions of Art. 299 of the Constitution of India were not complied with and the contract was void. Interestingly it is clear that Ash did face difficulties in collection of lac. Further these difficulties were not caused by the State of Sudhra Pradesh and hence the State did not prevent Ash from collecting lac. Apparently Ash abandoned the contract midway of his own volition and claimed the refund. Finally Ash argues that he does not bear the burden of proving the extent of benefit he derived from the contract. Neither, as per Ash, does he has the burden for showing the extent of benefit conferred by him on the State of Sudhra Pradesh, under the contract.

In view of these facts give a legal opinion. Support your opinion with relevant authorities.

[6+4=10]

(b) (i) Whether a judgment debtor has any option or right to make the payment of the decretal amount in the manner he likes unilaterally?

(ii) Whether the mere acceptance of such amount by the creditor can be held to be agreeing to the condition put by the judgment debtor while satisfying the decree?

(iii) Whether a debtor can unilaterally insist upon the payment of the decretal amount in liquidation of the principal amount in the first instance notwithstanding his liability to pay the interest and costs?

Support all your answers with relevant authorities.

[3.5+3.5+3=10]

Corporate Governance and CSR

Monsoon Semester 2017 Examination

Students are allowed to carry unmarked copies of their modules or the following:

Companies Act 2013 and Rules (as amended in 2017), LODR 2015, OECD Principles of Corporate Governance (summary), UK Corporate Governance Code (summary).

This is a three hour examination for a total of 50 marks. Part A is compulsory, in both Part B and C please choose 2 out of the three questions.

Part A

(20 marks)

This Question is compulsory.

1. Medellin Pvt. Ltd, an Indian company in the business of producing talcum powder, has launched an IPO to sell its shares to the public. It has sold 25% of its shares to the general public. Medellin Ltd. has as both chairman and CEO the all-powerful Mr. Escobar who along with his family owns 45 % of the shares in the company. Another 30% of the shares are owned by Mr. Moreno and his family. Mr. Escobar and Mr. Moreno , who are pioneers of the powder industry, were the promoters of the company in the late 70's. The Board of Directors in the company are: Mr Escobar, Mr. Moreno, Mr. Escobar (Junior) (who is 18 years old), Mr. Lehder , Mr. Murphy and Mr. Pena. The last two directors are independent directors of the company. Before Mr. Murphy's retirement he used to be a legal advisor to Ochoa LLP who is Medellin Ltd's auditor. Medellin Ltd has an audit committee that consists of Mr. Murphy, Mr. Escobar (Jr), Mr Pena and Mr. Moreno. Mr. Pena, who is the chairperson of the audit committee is a football player who went to college on a football scholarship .

Ochoa LLP is a well known and prosperous accountancy firm in India and has been involved with Medellin Ltd since its inception in the 70's. In fact, Ochoa LLP has been providing several investment advisory as well as human resources services to Medellin Ltd. Moreover, the senior partner of Ochoa LLP, Mr. Gaviria is the cousin of Mr. Escobar. The signing off partner of Medellin Ltd, Mr. Diaz has recently come under suspicion for some 'shady deals.' Interesting, the rumour mill suggests that these shady deals are with Mr. Pena who has troubled past with a history of substance abuse.

Medellin Ltd has a 100% owned subsidiary company called Lion Pvt. Ltd. Lion Pvt. Ltd was created to provide transportation services to its parent company- it owns 20 trucks and manages the logistics of delivery as well. It is a small company that has as its directors Mr Escobar and Mr Escobar (Jr). Mr Escobar (Jr.), who is responsible for running Lion Pvt. Ltd is a 'party animal' and often uses the trucks to hold huge parties where he invites numerous friends, a lot of whom are below 18. Mr. Pena is deemed 'cool' enough to attend this parties because he brings 'more fun' to the parties. As a result of these parties, Lion Pvt. Ltd. is using its assets at 60% of their total capacity, which is ensuring a significant loss to the subsidiary. Mr Escobar (Jr.) also used two trucks as collateral to a gambling debt (when he lost in poker to Mr. Pena) and leased another four trucks out, adding to the woes of Lion Pvt. Ltd. When a junior manager, Mr Herrera brought this matter to the notice of the Board of the parent company, Mr Escobar's response was- 'boys will be boys'.

Mr. Herrera was later fired. As a response, he posted a damning blogpost entitled 'How powder turns to dust: the scandals of the Escobars'. Shareholders are emailing the company in concern, especially since it turns out that Lion Pvt. Ltd was never listed as a subsidiary in the company's records.

You are appointed as the first compliance officer of Medellin Ltd. As a compliance officer appointed under the LODR, you have certain responsibilities. Please outline the regulatory concerns and use the applicable regulations to make recommendations. Please also outline the liabilities of all parties for infractions already committed.

Part B

(10 x 2 Marks)

Please answer any two questions:

2. Why is corporate governance necessary to Indian companies? Answer with reference to any two theories of corporate governance.
3. What are the inherent concerns with using a 'comply or explain' model of corporate governance as opposed to mandatory regulation. You can answer in reference to any jurisdiction or any specific law.
4. Outline the growing importance of executive remuneration as a corporate governance mechanism.

Part C

(5 x 2 Marks)

Please write short notes on any two:

5. Approvals of Related Party Transactions
6. The Market for Corporate Control as a corporate governance mechanism
7. The (dis) utility of Large Shareholders in corporate governance

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 5th Semester – 2015 Batch

CORPORATE LAW – I

Full Marks – 70 marks

Time Allowed: 3 hours

Instructions: Answer any five questions out of the following seven. The questions are to be answered in order. Students are allowed to carry ANY material or document, including marked and/or highlighted documents, apart from electronic gadgets. No clarification will be provided with respect to any of the questions. Any assumption the student may make while answering the questions would need to be clearly mentioned in the answer. There is no need to duplicate statutory provisions in course of the answer. Simple mention of the concerned provision would be sufficient.

1. (a) Government of Rivendale has invited bids for a tender to build several flyovers. Two conditions for submitting bids are that the bidding company must have at least 10 years of experience in the construction sector and a capital of Rs. 5 crores. Mr. Sharuman has 30 years of experience in the sector and he talks to Mr. Sauron into incorporating a company with two of them as the only shareholders. Most of the capital has been contributed by Mr. Sauron. Explain with applicable precedents if any whether this company is now eligible to submit the bid. (1.5)

(b) A public company Hogsmeade Breweries Ltd. has recently sacked one of its floor managers, Alastor, on the ground of embezzlement, although no criminal action was taken against him for lack of evidence. The company has also sent a memorandum to all its employees stating the reasons behind Alastor's dismissal. Alastor, meanwhile, has made a public statement alleging that the company and in particular, one of its shareholders, Aberforth, were originally responsible for the embezzlement and have conspired to frame him. Explain with applicable precedents if any whether all the parties involved have any tortious claim against each other. Would the answer have been any different had Aberforth not been named in the statement? (2+ 1.5)

(c) In the State of Narnia, there is a notification issued by the Ministry of Commerce that companies belonging to the category of small scale industries are eligible to several tax benefits. One of the foremost corporate groups of Narnia, Azlan & Sons, seeks to take advantage of this notification by incorporating several subsidiary companies held through multiple layers of ownership/control, each of which subsidiary company would legally satisfy all the requirement of being a part of one small scale industry. Comment on the feasibility of this. (1.5)

(d) Artemis Fowler Investment Pvt. Ltd. has recently bought the majority shares in Opal Koboy Premium Pvt. Ltd. Before the first meeting of the shareholders of Opal could be held after this, some of the directors of Artemis have been informed that Opal happens to hold 5% paid up equity shares of Artemis. As the legal counsel of Artemis, advise its Board of Directors about the legality of the scenario and whether the situation merits any intervention under any and all circumstances. Also mention Opal's rights as a shareholder of Artemis in case the situation is allowed to continue. (5)

(e) Is it possible for Mistborn Chemicals Pvt. Ltd. under the provisions of the Companies Act to drop the term limited from its name under any circumstances short of changing the liability clause of its Memorandum of Association? Is it possible for its rival company, Sanderson Chemicals Pvt. Company, to start operating as a company with the term limited in its name, and if so, what conditions need to be satisfied for that to happen? (1.5 + 1)

2. (a) The Board of Directors of Dark Tower Construction Ltd. has decided to buy a piece of real estate property for the company. Ronald Deschain, one of the promoters of the company, who does not have a place on the Board, owns a property that fits all the requirements. On knowing the Board's decision, he sells the property to Walter O'Dim at market price, but with the understanding that for 2 rupees that Walter makes a profit of by selling the property to the company, he will give Ronald back 1 rupee. As the legal counsel of Ronald, explain to him his legal liability (if any) and the remedies against him that the company may have under all possible circumstances. (5)

(b) Chewbacca Carriage Services Co. Ltd. has recently been incorporated in India with seven members, out of whom Luke and Leia are two. However, at the time of incorporation, both of them were minors. The other members were unaware of this. As per the object clause of the Memorandum of Association, the company is supposed to engage in, *inter alia*, cross-border transportation of GMO products, something that existing laws of India do not allow. Jabba, one of the creditors of the company, is now trying to get the incorporation invalidated on these grounds so that he can hold the members personally liable for debt owed. As the legal counsel hired by the company, explain the legal issues involved along with relevant case-law precedents supporting your argument. (5)

(c) Ellen Ripley, one of the promoters setting up the company Prometheus Investment Pvt. Ltd., has also entered into a contract to acquire 5% paid up equity capital of Nostromo Finance Ltd. on behalf of Prometheus. The contract is executed before Prometheus is registered. Ellen has now approached you as her legal counsel to know the legal liabilities in relation to the contract, both according to Indian law and English common law. Advise. (4)

Q.3. (a) State true or false or partly true/false with regard to the following statements, along with supporting legislative provisions or case-law precedents where applicable:

(i) It is possible for a company to have a clause in its Articles of Association, which prevents the company from subsequently altering any clause in the Articles in future. (1)

(ii) It is not possible for any company registered in India to have a clause in its Articles of Association that would empower the Board of Directors to expel a member under a given set of circumstances. (1)

(iii) Although Companies Act, 2013 provides for alteration of Articles of Association vide special resolution, a company can require vide its Articles that such alteration needs to have unanimous approval of the members present and voting. (1)

(iv) All clauses of the Memorandum of Association of a company require a special resolution to be amended as per the Companies Act, 2013. (1)

(v) It is possible for a company to alter a clause in the Articles of Association in April, 2017 in a manner as if the clause has been altered in March, 2017, so long as a special majority of members vote in favour of such alteration. (1)

(vi) If the Articles of Association of a company require all the members going insolvent to offer their shares for sale to existing members first at a price determined by the Board of Directors, then the official receiver/assignee/trustee appointed for such member cannot object to such arrangement or such price even if the price is less than market value. (1)

(vii) If the member of a company is also appointed by the company as its accountant and the Articles of Association of the company requires removal of such accountant to be preceded by a notice of 6 months, although the contract of employment contains no such requirement, then the company can still be sued by the member in case the accountant's services are terminated without such notice. (1)

(viii) If a director has entered into a bona fide contract on behalf of a company with an outsider, and subsequently, it is discovered that the appointment of the director was invalid, the validity of this contract can be successfully challenged. (1)

(ix) If the Articles of Association of a company require that any bill of exchange drawn by the company to be effective must be signed by two directors and an outsider has accepted such a bill from the company without having read the Articles or checking whether it bears those two signatures, then later he cannot claim under such a bill if both directors had not signed it before. (1)

(b) The Regional Director of Corporate Affairs of an Indian state has received an application in Form INC 18 from a company that needs special license from the Central Government to operate as per the object clause of its Memorandum of Association. Before approving this application, what are the criteria that the Regional Director must ensure to have been satisfied? Explain. (5)

Q.4. (a) Identify any anomalies, apparent or real, in the following fact scenario:

Matrix Vision Pvt. Ltd. is a company registered in India on November 1, 2016. It held its first general meeting of shareholders on August 12, 2017. The second general meeting was held on October 12, 2017. One of the items on the agenda of the second meeting was the special business of declaration of dividend for the financial year 2016-17. Morpheus, one of the members of the company owning 5% of the paid up equity share capital, has applied on November 1, 2017 to the company to hold an extraordinary general meeting. On November 19, 2017, Morpheus declared a meeting on his own and sent a letter to the

company seeking a list of all existing members to send notice for such meeting. The date of the meeting has been fixed as February 15, 2018. The notice for the meeting was sent to all the members in the list and to every director by January 31, 2018. On the date of the meeting, due to lack of quorum, the meeting was adjourned to a date one week later. (9)

(b) Transformers Robotics Manufacturing Co. Ltd. has decided to issue a new batch of equity shares to raise capital. Before the new shares could be issued, one of the existing members, Bumblebee, has sold his shares to Megatron, a third party outsider. Now Megatron wants Bumblebee to buy any additional shares as may be offered by Transformers to Bumblebee. At the same time, the Government of India wants to convert some of the debentures of Transformers that the company had issued to the Government in return for a loan, into equity shares. However, Megatron is also insisting that if Transformers issues any new equity shares to the Government, those shares have to be offered to either Megatron or Bumblebee first. Meanwhile, Transformers had issued some options to an employee of the company, Optimus, 6 months before and the latter is now seeking equity shares from the company in exercise of such options. Comment on the legal issues involved in this fact scenario with appropriate references to case-laws and statutory provisions. (5)

Q.5. Comment on the legalities of the following fact situations with supporting legislative provisions or case-law precedents as applicable:

(a) Dothraki Mercantile Ltd. has sent a pamphlet to each of the shareholders of Daenerys Ltd., asking them to sell the shares held by them to Dothraki and take, in addition to the fair market value of those shares, equal number of shares of Dothraki in exchange. Viserys, an existing shareholder of Dothraki, is objecting to this arrangement on the ground of the pamphlet not satisfying the requirements for a prospectus under the Companies Act, 2013. (2)

(b) Camelot Fashion Designers Ltd. has issued a batch of debentures on May, 2017, which are listed on the Bombay Stock Exchange. On July, 2017, Camelot published a document stating its decision to issue one batch of rights shares, which are to be offered to its existing shareholders and another batch of debentures having the same terms and conditions as the earlier batch, apart from the fact that this second batch's date of redemption is 2 months later than that of the first batch. However, this document did not contain any profit/loss statement of Camelot for the past years. (2)

(c) John Carter Cinematographic Co. Ltd. has published a document offering to sale 10000 equity shares to any member of the public. However, the document does not contain any price of the shares, but mentions a range from INR 100 to INR 300. The shares are listed with the National Stock Exchange. The company has filed only this document for the first time with the Registrar of Companies on the very day the issue of shares is complete. (2)

(d) Jay Garrick is the managing agent of Flash Courier Services Pvt. Ltd. The Articles of Association of the company authorizes him to borrow on behalf of the company up to a sum of INR 100000, although he can borrow more with authorization from Board of Directors. The company is filing for liquidation and Jay borrows Rs. 200000 from Bart Allen saying the money is going to be used for the benefit of the company. The usage of the money by Jay actually served incidental benefit for the company and the

directors are now ready to pay off the loan to Bart, but Wally, a shareholder, is objecting to it, arguing that the company is not bound to do so. (3)

(e) Gaulix Infrastructure Pvt. Ltd. has recently passed a special resolution of its shareholders to issue a batch of debentures to raise debt capital worth INR 1 crores. The debentures are issued on April 1, 2017. All of them are to be redeemed on March 31, 2036. Getafix, the director-in-charge for this issue, sets aside 10% of the money raised as debt capital in a separate account for redemption purpose. He also appoints as the debenture trustee Pragmatix, who had supplied goods worth INR 60 lakhs to the company in 2014, but currently is owed no further payment by the company on such account. On April 30, 2035, Getafix adds on to that account a sum equal to INR 10 lakhs. On March 30, 2036, the account holds a sum of INR 40 lakhs overall. (5)

Q. 6. (a) Comment on the validity of the following charges and related scenarios with supporting authority as applicable:

(i) Themyscira Divinity Ltd. has assigned to Diana Prince all the rights relating to loans that Themyscira would be lending to any third party outsider over the next 3 years as security for a loan Diana is giving to Themyscira today. (2)

(ii) Krypton Chemicals Pvt. Ltd. has taken a loan from Brainiac Internationals Ltd. and deposited to Brainiac the title deed for 3 warehouses currently owed by Krypton. (2)

(iii) A floating charge has been created by Ferris Aircrafts Pvt. Ltd. in favour of Jordan. Meanwhile, Sapphire, who has rented her aircraft hanger to Ferris, is suing the company for unpaid rent. If the court rules in favour of Sapphire before Jordan crystallizes the charge, even then Jordan will have superior claim over assets of the company compared to Sapphire. (1)

(iv) Martian Rejuvenation Ltd. has created a fixed charge over one of its properties in favour of J'onnn. However, the charge has not been registered till one month passed from date of creation. During this month, the company has also created a floating charge including the same property in favour of Primaid, who has also crystallized the charge in good faith during the month and is now claiming superior rights over J'onnn over that property. (2)

(b) The Board of Directors of Gotham Pharmaceuticals Ltd. has received applications on October 1, 2017 for equity shares offered earlier and decided to allot 100 equity shares to applicants from April 1 to April 5, 2018. Before the allotment of all 100 shares is complete, on April 3, 2018, it has been found out that there were some irregularities involved in the appointment of some of the directors. Selina, Pamela and Oswald had all applied for the shares. Selina had provided a promissory note as consideration (application money) and got hers allotted on April 1 itself, while Pamela and Oswald paid for their shares in cash and got those allotted on April 4. All three got their share certificates on July 10, 2018. Grayson, one of the existing shareholders of Gotham, has approached you as his lawyer to help him identify any existing irregularities in this entire transaction. Advise. (7)

Q.7. (a) Anthony Stark was one of the subscribers to the Memorandum of Association of Ferro-Alloy Metalworks Ltd. and agreed to take up 100 equity shares of the company in that capacity. One of promoters of the company, Mandarin, had promised Stark that he would not have to pay cash for those

shares, but they would actually be given to him in recognition to the work that he had done to set up the company. It was also decided that Stark would not have to get these shares from the company itself, but Mandarin would sell those shares to Stark from his personal shareholding. Stark has now approached you as his legal counsel to know how sound his position is legally and in case he fails to get those shares on such terms, whether he can avoid the entire deal if he can prove Mandarin has defrauded him into being part of it. Advise. (3)

(b) Bucky, a minor, has just entered into a contract with Clint Burton, an existing member of the Radiant Skull Decorations Ltd., to buy 100 equity shares from Steve. The contract has been signed by Steve Rogers, the legal guardian of Bucky. Clint was not aware of Bucky being a minor at the time of executing the contract. In the light of this scenario, answer the following questions with supporting authority as applicable:

(i) Is Radiant bound to recognize and register this transfer? (2)

(ii) Can Steve apply to Radiant with a copy of transfer deed to become a member? Can Bucky do so instead of Steve? (1+1)

(ii) Whom can the company hold liable for any unpaid calls with regard to those shares? (1)

(iv) Is it possible for Bucky to rescind the contract anytime? If he accepts any dividend from the company for those shares, will that answer change in any way? (1+1)

(c) Xavier is trying to become a member of X-tronics Ltd. after having bought shares of the company from Summers, one of its members. Xavier has never liked the manner in which X-tronics conducts its business and has sought in the past multiple times to forcefully liquidate the company. He now believes that being a member may help him raise certain questions in the general meetings which the Board of Directors may find uncomfortable to answer. The Board, however, is refusing to register the transfer and arguing that so long as they follow the guidelines laid down by the Supreme Court in relevant case-law precedents, they are at liberty to do so. Xavier has approached you as his legal counsel for guidance. Advise. (4)

THE W. B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2017 – 7th Semester - 2014 Batch

Criminology & Victimology

Answer Any Five Questions All Questions Carry Equal Marks

Total Marks 50

Time Allowed – 3 hours

1. 35th Law Commission's views received support from Supreme Court in Bachan Singh v. State of Punjab favouring the retention of death penalty. Comment.
2. Positivist and Classical criminologist in reality are part of same enterprise; however basic controversy among them is empirical rather theoretical. Discuss and critically comment.
3. Apply the Differential Association theory of Sudertherland to present day problem of corruption and suggest measures to deal with the problem.
4. (a) Define Juvenile Delinquency. Discuss legal regime which governs Juvenile Delinquency in India.

(b) Mr. Karan as an compliance with Ram and Rita was charged of the offence of dowry death. The heinous offence was committed on 1-11-1999 when the age of Karan was 16 years and 2 months. The trial continued upto 1-05-2001. He along with his lawyer pleaded for the benefit of Juvenile Justice (Care and Protection of Children) Act of 2015. Decide whether his plea can be entertained or not by the court of Law. Give reasons.
5. "Probation as a community based treatment of offenders is the suitable alternative to imprisonment in India." Critically analyse the above statement.
6. Write Short Notes on any two of the following:
 - i. Mulla Committee on Prison Reform
 - ii. Krishna Iyer Committee on Women Prisoners
 - iii. Modern Concept of Criminology
 - iv. Mallimath Committee on Criminal Justice Reforms

7. *“Social learning can be direct or indirect. Direct social learning is the result of positive or negative effects on behavior i.e. result of rewards or punishments. When applying punishment, excessive use of aggression should be avoided.”* Discuss
8. *“Basic concept of social anomie is an enormous gap between the desires of the individual and its real capabilities to satisfy those desires.”* Critically analyse the theory of social anomie.
9. Indian prison system is in ICU and is in life support in need of drastic reforms. Discuss the reforms if any and their sufficiency carried till date.
10. Organised crime is on rise discuss the role of the different pillars of criminal justice in combating organised crime?

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LL.B. End Semester (Monsoon) Examination 2017 – 7th Semester - 2014 Batch

DEVIANCE, CONTROL AND SOCIETY

Total Marks: 50

Time: 3 hours

You can attempt any section first. However, all the questions within a section have to be completed before you proceed to the next section. Mixing up sections and/or incorrect numbering of the questions will entail marks deduction. Attempt the exact number of questions asked for. Do not answer more than the number required otherwise marks will be deducted.

Section A: Essay Type questions: Answer any 2

2x20=40 marks

1. In *Culture & Truth* (1989), Renato Rosaldo wrote that Horace Miner's celebrated article *Body Ritual among the Nacirema* could be taken as a scathing critique of ethnographic discourse. Assess the validity of the statement keeping in mind the concept of ethnocentrism and deviance.
2. What is meant by an ecological approach to explaining crime and deviance? Explain what is meant by 'zone of transition' and what its importance was held to be.
3. Since some policies related to crime and deviance which had been based in biological explanations, were found to have had disturbing consequences in the past, do you think biological explanations should be ignored? Give reasons for your answer. Do you think it can be argued that Foucault was being concerned with examining the shift from a *corporal* to a *carceral* system of punishment?

Section B: Write Short Notes on the following: Answer any 2

2x05=10 marks

1. Fiddling 'epitomises the capitalist spirit'.
2. 'An individual will be able to use marijuana for pleasure' only when one goes through 'a process of learning to conceive of it as an object which can be used in this way'.
3. The 'medicalization' of deviance and the consequent changes in the nature of social control.

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END SEMESTER EXAMINATION- MONSOON SEMESTER 2017

ECONOMICS I

Full Marks-50

Time Allotted- 3 Hrs

Answer any two questions from Group A and one from Group B

Group A

1a) Explain how allocation of output between different firms is done in a centralized cartel. How is the industry price determined? Also show the distribution of profits between the member firms. Draw suitable diagrams in support of your answer.

(4+2+2)

b) Explain the issue of stability of a cartel using the Prisoners' Dilemma game. What is "trigger strategy"? How does "credible threats" ensure cooperation among member firms in the long run?

(6+2+4)

2a) What is meant by a two person zero sum game? Using a suitable example, show how the mixed strategy Nash equilibrium is obtained.

(2+8)

b) Derive the reaction functions in a duopolistic market where the firms simultaneously determine the output levels. What is a Cournot-Nash equilibrium?

(5+5)

3a) Distinguish between the Hicks approach and the Slutsky approach relating to the decomposition of price effect into income and substitution effect.

(10)

b) Suppose that in a two commodity framework, marginal utility for both the goods is negative beyond some point. What would be the shape of a typical indifference curve?

(4)

c) An individual spends $1/4^{\text{th}}$ of his income on good 1 whose income elasticity is 5. Show that good 2 is inferior.

(6)

Group B

4) Explain the long run equilibrium in a perfectly competitive industry.

(10)

5) Write short note on social cost of monopoly.

(10)

Energy Law & Policy

Time: Three hours

Full Marks: 60

(Answer any FIVE questions including question no. 1 which is compulsory)

1. (A) “The Indian Government strategy has a liberalized view that allows the private sector to enter into the energy sector for the increase in the economy. Government allows the cooperation of the private sector in fulfilling the government policies that have to be adapted in the energy sector to overcome the crisis. The major concerns regarding the energy policies are energy access, energy security and the climate change.”

In view of the above statement critically examine energy governance in India. How far India’s federal system and coalition-based politics impacted the much needed policy reform in energy sector?

- (B) Do you think India’s energy security initiatives have little real impact? Justify your answer. (8marks + 4marks = 12marks)

2. (A) “Indian government should not only focus on meeting energy demands to satisfy its economic growth, but must also reevaluate its broad development goals. While the government is right in promoting economic growth in the interest of poor Indians, its efforts will be futile if – in the process of achieving economic prosperity – it irreparably harms the interests of Indians.”

In view of the above critically analyze India’s Integrated Energy Policy.

- (B) “Access to energy is crucial to economic and social development and the eradication of poverty. Improving accessibility of energy implies finding ways and means by which

energy services can be delivered reliably, affordably, in an economically viable, socially acceptable and environmentally sound manner.”¹

Critically evaluate the statement in view of constitutional dimensions of energy governance in India with special reference to the role of judiciary in recognizing right to access energy as a fundamental right.

(5marks + 7 marks = 12 marks)

3. (A) “Regulation of oilfields and mineral development is declared by Federal Law to be expedient in the public interest is a subject on which the Federal Government and the Federal Legislature could legislate.”

Explain with the help of decided case laws on this issue.

(B) The Calcutta Electric Power & Supply Company Ltd., hereinafter called 'the Company'-holds a licence Under the Electricity Act² to supply electricity in certain areas in and around Kolkata including Salt Lake, Rajarhat and New Town. One company namely, Bengal Lamps Private Ltd. set up a factory for manufacturing electrical equipment in Salt Lake, within the area of supply of the Company. Bengal Lamps was receiving energy from the Company. Bengal Lamps made several representations to the State Government that the supply of energy by the Company was inadequate to meet its requirements and was 'interrupted and fluctuating'. Meetings were held between the Company, the State officials and Bengal Lamps for devising means to ensure

¹ Commission on Sustainable Development (CSD), Report: *Ad Hoc Open-Ended Intergovernmental Group of Experts on Energy and Sustainable Development* (New York, March, 2000).

² The Electricity Act makes provision for the grant of a licence to supply energy in any specified area and also to lay down or place electric supply lines for transmission of energy. Clause (e) of Sub-section (2) as amended by West Bengal Act 30 of 2005, and Sub-section (3) provide:

(2)(e) grant of a licence under this Part for any purpose shall not in any way hinder or restrict-

(i) the grant of licence to another person within the same area of supply for a like purpose; or

(ii) the supply of energy by the State Government or the State Electricity Board within the same area, where the State Government deems such supply necessary in public interest ;

(3) Where the supply of energy in any area by the State Electricity Board is deemed necessary under Sub-clause (ii) of Clause (e) of Sub-section (2), the Board may, subject to any terms and conditions that may be laid down by the State Government, supply energy in that area notwithstanding anything to the contrary contained in this Act or the Electricity Supply Act, 1948.

The Act also provides that, the State Government may grant a licence to supply electrical energy to consumers within a specified area on terms and conditions prescribed in the licence and subject to statutory conditions, but on that account the State Government is not debarred from granting a licence to another person or to supply energy directly to a consumer within the same area if the State Government deemed it necessary so to do in the public interest.

uninterrupted and adequate supply of energy required by Bengal Lamps, but there was no improvement in the supply position.

Bengal Lamps then applied to the Government of West Bengal to grant direct supply of electrical energy from the State Electricity Board. The State Government by order dated December 14, 2006, issued in exercise of the powers conferred by the Electricity Act, directed the State Electricity Board "*to supply electrical energy directly to Bengal Lamps upon terms and conditions similar to those on which it supplied electrical energy to other customers*". In reply to a representation to reconsider the decision, the Government informed the Company that the "decision was necessitated in the public interest and there was no justification for revising it". Another representation made by the Company was also turned down and direct supply of electrical energy was commenced by the State Electricity Board to Bengal Lamps.

A petition moved by the Company in the Calcutta High Court for a writ of certiorari quashing the order dated December 14, 2006 and the same was rejected by the Calcutta High Court. In appeal, counsel for the Company pleaded that the order dated December 14, 2006, resulted in discrimination between Bengal Lamps and other consumers within the area of supply of the Company, and also between Bengal Lamps and the Company and the order was invalid in view of Article 14³ of the Constitution of India. Sole reliance was placed by counsel for the Company on paragraph-2 of the Government Gazette Notification issued by the West Bengal Government on April 24/28, 2007, containing the revised tariff for the supply of electrical energy to licensees obtaining bulk supply from the West Bengal State Electricity Board and to other consumers. It stated:

The revised tariff shall, except in the case of the licensees, be applicable to consumers in respect of consumption in the month of May 2006. In the case of licensees, obtaining bulk supply of energy from the Board, the revised tariff shall apply to supplies made from 1st July, 2006 and onwards.

The Schedules in the Gazette Notification set out the rates at which electrical energy was to be supplied by the Board to licensees as well as to diverse classes of consumers who received supply of energy from the Board.

³ **Article 14. Equality before law:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Discuss the validity of the Government's Order made on request for direct supply of electricity to Bengal Lamps with special reference to the provisions relating to Licensing under the Electricity Act, 2003.

(4marks + 8marks = 12 marks)

4. (A) "The most important instrument to transform the monolithic electricity utility structure existing now, into a totally competitive sector is the *open access* provision."

How far the Electricity Act, 2003 has created a consolidated policy framework to this end? Discuss.

- (B) "Participation from both state and central governments is essential in management in oil and gas sector to ensure optimal resource development of the sector."

Justify the above statement referring the involvement of state governments in licensing and revenue sharing in oil and gas sector.

(8marks + 4marks = 12 marks)

5. (A) Briefly discuss the Statutory Framework governing nuclear power generation in India.

- (B) "Private companies that are currently allowed only in captive production should be able to engage in commercial mining, and bring technical improvements and more efficient management to the coal sector."

In view of the above critically discuss the issue of liberalization of coal sector in India which would make it modern and competitive to increase coal production adequately to meet the current and future demand.

(7marks + 5marks = 12 marks)

6. Write short notes (any two): 6X2

- a. Renewable Energy and National Action Plan on Climate Change in India
- a. Production sharing agreement
- b. India's National Solar Mission and WTO

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END SEMESTER EXAMINATION- MONSOON SEMESTER 2017

ENGLISH- I

Full Marks-30

Time Allotted- 2 Hrs

1. Answer any **TWO** of the following questions : (8x2=16)
 - a) Robert Browning's Dramatic Monologues often display an act of Intransigence. Discuss with reference to *Porphyria's Lover* and *My Last Duchess*.
 - b) Discuss the basic tenets of *Ahimsa* as promulgated by Mahatma Gandhi.
 - c) Explore the making and unmaking of female subjectivity in Tagore's short stories with special reference to *The Wife's Letter* and *The Exercise Book*.
 - d) Comment on the legal metaphor used in Franz Kafka's *The Trial*.

2. Explain any **TWO** of the following statements with reference to the context : (5x2=10)
 - a) "I mean that God has made you a man and I have nothing to do with that and he has made me a woman and you have nothing to do with that. You haven't asked me to give you the right to write what you want nor do I consider it necessary that I should ask you for the right to write freely."
 - b) "Strength does not come from physical capacity. It comes from an indomitable will."
 - c) "One thing surprised me: why didn't you force Bindu to leave? I understand it now: deep inside, you were all afraid of me. Deep inside, you could not help respect the intelligence that God had given me."
 - d) "The court does not want anything from you. It receives you when you come and dismisses you when you go."

3. Do as directed: (8x0.5= 4)
 - a) She treats her servants in contempt. (Correct if necessary)
 - b) 'I must hurry. My father is always furious if any of us are late for meals', she said. (Change in to indirect speech)
 - c) Undue favour shown by a person of high position to his known people or relatives. (One word substitution)
 - d) Emperor Ashoka is worthy ____ remembrance.
 - e) Nobody was absent. (Change to affirmative)
 - f) It is always wise to think before you speak. (Begin: To.....)
 - g) I infer from what he says that he is not in a mood to listen to sound reasoning. (Change into past tense)
 - h) They know it. (Change the voice)

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LL.B. End Semester (Monsoon) Examination 2017 – 7th Semester - 2014 Batch

ENTERTAINMENT AND MEDIA LAW

Full Marks – 50

Time Allowed – 3 hours

Answer ANY TWO of the following questions (25x2=50)

1. a) Ram Rahim Dhanshali, a prominent filmmaker, has decided to make a ‘period film’ depicting the National Emergency of 1975. Even though he calls his film ‘a fictionalised account of historical events’, there are direct references to how prominent political leaders, including the then Prime Minister and immediate members of her family were complicit in committing serious violations of human rights and fundamental freedoms. The film also has commercial ingredients like songs and dances in it. One such song has a dream sequence where the Prime Minister’s younger son, an important political figure of those days, is seen to get intimate with another political personality. This event, based on no verifiable historic account whatsoever, has been described by the Director as “an extension of cinematic liberties”.

Before this film was even sent to the CBFC for certification, the film has already faced the wrath of political parties and people, and a certain Chief Minister has already gone on record stating that “No matter what the outcome of the certification process is, we will ban this film in our state”. Some of the politicians who have been depicted (by means of references and implications) in the film have threatened to sue the filmmakers for defamation.

Alarmed by these developments, the producers have decided to postpone the impending release of the film. In doing so, they have withdrawn the film from the CBFC for the time being, sensing that the political climate is not conducive for releasing the film in the current climate.

The Director, aggrieved by the turn of events, has decided to approach the Court of law, alleging serious transgressions on his Free Speech rights. Meanwhile, the aggrieved politicians are also mulling legal actions against the makers.

As an impartial commentator, analyse the circumstances, with appropriate references to the context.

(13)

b) The Advertising Standards Council of India (ASCI) brings an amendment (*fictitious*) to its Code of Ethics in Advertising, and brings in the following provisions:

- (i) Any claim about the quality of the product, whether to suggest its own value or its value in comparison to its competitors, has to be substantiated on the basis of scientifically verifiable parameters.
- (ii) Any advertisement for a product that bears any similarity, in terms of content or otherwise, to an advertisement for a brand of alcoholic beverage or tobacco product, has to be sent to a screening committee before being made public in any form (print, electronic or otherwise).
- (iii) Any advertisement for condoms, birth control pills and all other forms of contraceptive or birth control products can be shown in Television only between 11 P.M. and 5 A.M.

Analyse the legal viability of these provisions, citing relevant references to the context.

(12)

2. a) In the case of *Supdt., Central Prisons v. Ram Manohar Lohiya*, Subba Rao, J. (as he then was), speaking for the majority, famously observed:

“The limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order. [...] If the restriction has no proximate relationship to the achievement of public order, it cannot be said that the restriction is a reasonable restriction within the meaning of the said clause.”

In this backdrop, analyse the constitutional validity of the laws that impose gags on expressional freedoms of individuals “in the interest of public order”. You may make references to settled cases before and after the cited case, and any instance, whether historic or contemporary, to substantiate your point.

(13)

- b) Mr. Hoshiyar, a gossip journalist, has come across a scoop that a certain married Cricketer and a married Bollywood starlet (not married to each other though!) have been secretly dating for some time. He is reasonably certain about it. He decides to publish a story on this affair where he relies on several ‘sources who do not wish to be named’

(most of whom do not in fact exist in real life) to substantiate his claim. The next day, his Editor receives a legal notice from the two persons involved, where the newspaper has been charged with 'breach of privacy' and 'defamation'. Moreover, he has been asked in the notice to divulge the names of his sources. They claim that even if what has been reported were true, this involved an absolutely intimate matter of their personal lives, and they did not want the matter to become public. Mr. Hoshiyar needs your legal counsel. How would you help him? (12)

3. a) Assume that India has formally won the bid to host the 2020 Olympic Games. One of the terms required by the International Olympic Committee (IOC) to be satisfied before finally granting the bid is an Anti-Ambush Marketing law. India has therefore decided to pass a law called '2020 Olympics (Regulation of Ambush Marketing Practices) Act, 2017. The law would lay down standard anti-ambush marketing practises like total sanitization of the hosting cities from directly or indirectly advertising the rivals of the event sponsors for a designated period of time, absolute bans of any association of a non-sponsor to the World Cup, either directly or by implication, and a host of many others. One of the salient features of this law is the fact that Television broadcasters of the event are precluded to sell advertisement slots to any competitor of the official sponsors of the tournament. ESPN STAR Sports Ltd., the official broadcasting partner, has invited bids for advertisement slots from all interested companies @ Rs. 10 crores for a block of 30 seconds. PepsiCo Ltd., a prominent beverages giant which happens to be one of the official sponsors of the tournament, is unwilling to pay that sum. Moreover, citing the provisions of the law, they are also keen to prevent the broadcasters to sell the slots to Coca Cola Ltd., a competing beverages giant, at the offer price. Sensing a huge loss of revenue and resenting the armtwisting technique employed by PepsiCo., ESPN STAR Sports Ltd. has decided to approach the Supreme Court of India, challenging the constitutionality of the said provision of the Anti-Ambush Marketing Law. Moreover, the Advertising Association of India (AAI) has decided to challenge the constitutional viability of the said law, stating violation of Fundamental Rights like Articles 14 and 19, insofar as there is glaring arbitrariness, and gross violations of their expressional freedoms. The state seeks to justify the law, citing its absolute necessity for hosting the event, and arguing that this situation only involves a temporary infringement

of occupational freedom, which the state is constitutionally entitled to restrict under Article 19(6).

Step into the shoes of a Supreme Court Judge and give your reasoned decision. (13)

b) Recently, a Bench of the Supreme Court presided over by A.K. Goel and U.U. Lalit, JJ., have favoured the audio and video recordings of Court proceedings, observing that such recordings are in “larger public interest”. In the process, the Learned Judges scorned at arguments suggesting that such recording could mean a loss of judicial privacy, observing, “What privacy? This is not a case of privacy. We don’t need privacy here. Judges don’t need privacy in court proceedings. Nothing private is happening here. We all are sitting in front of you....”

Analyse this development in light of the arguments that may be advanced in favour of and against such recording of judicial proceedings, citing appropriate references to the context. (12)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 5th Semester – 2015 Batch

LAW OF EVIDENCE

Full Marks – 70 marks

Time Allowed: 3 hours

QUESTION NO. 1, 8 AND 9 ARE COMPULSORY. ANSWER ANY FIVE QUESTIONS FROM QUESTION NO. 2 TO 7.

QUESTION NO. 1:

10 Marks

Mr. A, a young man, was living in a village called Paharpur. Ms. R, a girl of the same village, aged about 14 years, who was a relative of Mr. A, was working in one house as maidservant in Kishanganj, around 200 K.M away from Paharpur. Mr. A went to Kishanganj and informed Ms. R that her mother is seriously ill. The employer of Ms. R after having a discussion with Mr. A allowed her to go the village. On the way to Paharpur, at Paharganj the dead body of Rupwati (Ms. R) was found. She was raped and murdered. The employer of Ms. R identified Mr. A who had taken her to the village on the plea of her mother's illness. In reality her mother was not ill.

A criminal case for murder and rape was started against Mr. A. The evidence available were that they were last seen together, recovery of some ornaments of victims from the residence of Mr. A, some marks of injury on the body of Ms. R. At the stage of recording of statement under Section 313, CrPC accused had not given any clarification about the custody of victim and how they got separated. According to the medical report the girl had succumbed to death within 4 – 5 hours from the time when the girl was in the custody of Mr. A. The Sessions Court convicted the accused but the High Court on the ground that there is no direct evidence of murder and rape gave benefit of doubt to the accused and acquitted him. The Government wants to file an appeal and has contacted you for your advice. Advice the government on the merit of the Appeal giving sufficient reasons and by citing relevant cases which were earlier decided by the Supreme Court.

QUESTION NO. 2:

Marks 8

The law of evidence is same for civil as well as criminal cases but there are occasions when it prescribes different standards, either through legislative provisions or by practice, for civil and criminal cases. Elucidate how it prescribes different standards for civil and criminal cases.

QUESTION NO. 3:

Marks 8

The definition of the word 'Proved' states that court's determination is based on 'considering the matters before it'. Impliedly, court not only considers evidentiary matter but does take into account non-evidentiary matters. Discuss in detail citing relevant provisions of law and decided cases what 'matters' do courts consider in determining whether a fact is proved.

QUESTION NO. 4:**Marks 3 + 5 = 8**

What do you understand by the doctrine of “res-gestae”? Do you think that evidence of every fact which forms part of the same transaction is relevant and admissible?

QUESTION NO. 5:**Marks 8**

While ‘state of mind’ or ‘body’ or ‘bodily feeling’ is declared relevant under Indian Evidence Act but it remains a challenge to prove *mens rea* or to prove that a particular act was done intentionally or accidentally. Discuss in detail citing relevant provisions of the Evidence Act and judicial pronouncements how aforesaid facts are relevant and how to prove them.

QUESTION NO. 6:**Marks 8**

The issue of relevancy of ‘conspiracy’ is always a matter of academic interest and the judiciary in series of cases such as; *Mirza Akbar v. King Emperor* AIR 1940 PC 176, *Bhagwan Swaroop v. State of Maharashtra*, AIR 1965 SC 682, *State v. Nalini*: 1999(5) SCC 253 and *Saju v. State of Kerala*, 2001(1) SCC 378, tried to explain how we should interpret provisions of the Indian Evidence Act. Discuss in detail principle relating to relevancy, admissibility and evidentiary value of ‘conspiracy’ under Indian Evidence Act.

QUESTION NO 7:**Marks 8**

Discuss in detail by citing relevant provision of law and decided cases, the rule of estoppel as laid down in the Indian Evidence Act, 1872.

QUESTION NO 8:**Marks 2.5 X 4 = 10**

Distinguish between any four of the following:

1. Character evidence in civil cases and in criminal cases
2. May presume and shall presume
3. Primary evidence and secondary evidence
4. Relevancy of judgement in rem and judgment in personam
5. Latent ambiguity and patent ambiguity
6. Judicial Confession and Extrajudicial Confession

QUESTION NO 9:**Marks 2.5 X 4 = 10**

Write short notes on any four of the following:

1. Statement of person who cannot be called as witness.
2. Retracted Confession
3. Principles laid down in *Selvi & Ors. v. State of Karnataka & Anr.* 2004 Cri Appeal No. 1267
4. Judicial Notice
5. *R. V. E. Venkatachala Gauder v. Arulmigu Viswesaraswami & V. P. Temple* (2003) 8 SCC 752
6. Professional Communication

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

END SEMESTER EXAMINATION- MONSOON SEMESTER 2017

FAMILY LAW - II

Full Marks-65

Time Allotted- 3 Hrs

1. (a) Two brothers X and Y, inherited the property from their father and separated by effecting a partition between themselves. X had a daughter D and a son S. On the death of X, his son S, took the properties by survivorship. He later died without leaving any male descendants, and his sister D, claimed the property by succession. At this time, the son's of Y, i.e., sons of S's paternal uncle, took the possession of the property on the ground that the properties in the hands of S were ancestral property and a female cannot own ancestral property.

Solve the problem in the light of Pre and Post 2005 Amendment of the Hindu Succession Act, 1956. Also, support your answer with relevant case laws. (5)

(b) Sonu, the Karta of a Hindu joint family was staying in the United Kingdom and was not in a position to handle the joint family affairs in India. He executed a power of attorney in favour of his younger brother Monu and the whole family accepted the latter's management of the joint family affairs without any protest. Monu filed a suit for eviction against the tenant Sanju, and the tenant raised the preliminary objection that as he is not the Karta, the suit for eviction filed by him does not hold good in law.

Advise Sanju in this case. Also, support your answer with relevant case laws. (5)

(c) Anu, a Hindu female was a member of the joint family comprising of her father –in –law, her husband and his brother. On the death of her husband his one third share was inherited by her after effecting a notional partition. Soon thereafter she remarried and sued for partition and handing over of this one third share in the property. During the litigation her former father- in- law died and she claimed half of his share as well under the inheritance laws.

Advise Anu about her legal rights. Also, support your answer with relevant case laws. (5)

2. (a) Ali was 80 years old Muslim having four sons namely, Amir, Adil, Zunaid and Ibrahim. He executed a gift deed of his land in favour of his son Amir and also filed an application before the Tehsildar for mutation of his son's name in his place as the owner. Amir also

started collecting rent from the tenants of the land. His other sons challenged the validity of this gift on the ground that since the possession of the property was not handed over to Amir by Ali, the gift was illegal, void and inoperative.

(i) Whether the essential requirement of delivery of possession of the property was adequately met with in this case or not? (2)

(ii) What criterions were laid down by Hon'ble Supreme Court for the validity of a gift under Muslim Law? (3)

(b) Mr. Ansar, a Sunni Muslim had married his first wife in 1946 and gave birth to two girls who were married in 1962 and 1967 respectively. Subsequently, his first wife died and he married another woman in July 1969. The couple begot a son three months before their marriage and gave birth to another son and a daughter after their marriage, in 1972 and 1974 respectively. Mr. Ansar former railway employee executed a will in February 1978 bequeathing all his properties to his second wife and her three children and died in October 1981. A Muslim could execute a will only with respect to one-third of his property and bequeathing more than that would require the legal heirs' prior consent, which had not been obtained in the present case. Who all are legal heir of their father's property? Give reasons for your answer and support your answer with judicial decisions. (5)

3. (a) A Hindu father executed a mortgage of the joint family properties, to raise a loan, though not for a family necessity. Two years later, he executed a second mortgage on the same property, to a different mortgagee. A year after that, he executed a third mortgage to raise a loan in order to repay with it, the first and the second mortgages.

Is the loan binding on his son's share as well? Also, support your answer with relevant case laws. (5)

(b) Salman, a Shia testator dies leaving behind net assets worth Rs. 1,20,000 and a legacy under which he gives Rs. 40,000/- each to A, B and C in that order.

(i) Calculate the bequeathable amount and the share of A, B and C. (2.5)

(ii) Will there be any difference if Salman belonged to Sunni sect? (2.5)

4. (a) How Sections 41 to 48 (Sections 42 to 46 to be more specific, which deals with Rules of distribution where intestate has left no lineal descendants) of the Indian Succession Act, 1925 are unfair to the interest of Christian Women and what changes in this regard could be suggested? (3+3= 6)
- (b) What are the general principles for the purpose of intestate succession among Parsis? (4)
5. Difference Between (Any two): (5 x 2=10)
- (i) AUL and RADD
- ii) Mitakshara Coparcenary and Dayabhaga Coparcenary
- (i) Sunni and Shia law of succession
- (ii) Hiba- bil-iwaz and True Hiba-bil-iwaz
6. Write short note on (Any Two): (5x2=10)
- (a) Doctrine of Nearer in Relation excludes remoter
- (b) Causa Mortis under Sunni Muslim
- (c) Doctrine of Escheat
- (d) Marz - ul- maut

TABLE OF RESIDUARIES IN ORDER OF SUCCESSION — Sunni Law

I. — DESCENDANTS:

1. SON.

Daughter takes as a residuary with the son, the son taking a double portion.

2. SON'S SON h.l.s. — the nearer in degree excluding the more remote. Two or more son's son inherit in equal shares. Son's daughter h.l.s. takes as a residuary with an *equal* son's son. If there be no *equal* son's son, but there is a *lower* son's son, she takes as a residuary with him, *provided she cannot inherit as a sharer* [see ill. (k)]. In either case, each son's son h.l.s. takes double the share of each son's daughter h.l.s.

Note.—When the son's daughter h.l.s. becomes a residuary with a *lower* son's son, and there are son's daughters h.l.s. equal in degree with the *lower* son's son she shares equally with them, as if they were all of the same grade [see ill. (m)].

II. — ASCENDANTS:

3. FATHER.

4. TRUE GRANDFATHER h.h.s. — the nearer in degree excluding the more remote.

III. — DESCENDANTS OF FATHER:

5. FULL BROTHER.

FULL SISTER — takes as a residuary with full brother, the brother taking a double portion.

6. FULL SISTER. — In default of full brother and the other residuaries above-named, the full sister takes the residue if any, if there be (1) a daughter or daughters, or (2) a son's daughter or daughters h.l.s., or even if there be (3) *one* daughter *and* a son's daughter or daughters h.l.s. See *Sir.* pp. 24-25.

7. CONSANGUINE BROTHERS.

CONSANGUINE SISTER — takes as a residuary with consanguine brother, the brother, taking a double portion.

8. CONSANGUINE SISTER. — In default of consanguine brother and the other residuaries above-named, the consanguine sister takes the residue, *if any*, if there be (1) a daughter or daughters or (2) a son's daughter or daughters h.l.s. or even if there be (3) *one* daughter *and* a son's daughter or daughters h.l.s. See *Sir.* pp. 24-25.

9. FULL BROTHER'S SON.

10. CONSANGUINE BROTHER'S SON.

11. FULL BROTHER'S SON'S SON.

12. CONSANGUINE BROTHER'S SON'S SON.

Then come remoter male descendants of No. 11 and No. 12, that is, the son of No. 11, then the son of No. 12, then the son's son of No. 11, then the son's son of No. 12 and so on in like order.

IV. — DESCENDANTS OF TRUE GRANDFATHER h.h.s.:

13. FULL PATERNAL UNCLE.

14. CONSANGUINE PATERNAL UNCLE.

15. FULL PATERNAL UNCLE'S SON.

16. CONSANGUINE PATERNAL UNCLE'S SON.

17. FULL PATERNAL UNCLE'S SON'S SON.

18. CONSANGUINE PATERNAL UNCLE'S SON'S SON.

Then come remoter male descendants of Nos. 17 and 18, in like order and manner as descendants of Nos. 11 and 12.

19. MALE DESCENDANTS OF MORE REMOTE TRUE GRANDFATHERS — in like order and manner as the deceased's paternal uncles and their sons and son's sons.

(1) Sharers	(2) Normal Share		(3) Conditions under which the normal share is inherited	(4) This column sets out— (A) Shares of Sharers Nos. 3, 4, 5, 8 and 12 as varied by special circumstances; (B) Conditions under which Sharers Nos. 1, 2, 7, 8, 11 and 12 succeed as Residuarys.
	of one	of two or more collectively (b)		
1. FATHER	1/6	..	When there is a child or child of a son h.l.s.	[When there is no child or child of a son h.l.s., the father inherits as a residuary: see Tab. of Res., No. 3.]
2. TRUE GRANDFATHER [sec. 62, cl. (a)].	1/6	..	When there is a child or child of a son h.l.s. and no father or nearer true grandfather.	[When there is no child or child of a son h.l.s., the Tr. G.F. inherits as a residuary, provided there is no father or nearer Tr. G.F.: see Tab. of Res., No. 4.]
3. HUSBAND	1/4	..	When there is a child or child of a son h.l.s.	1/2 when no child or child of a son h.l.s.
4. WIFE (c)	1/8	1/8	When there is a child or child of a son h.l.s.	1/4 when no child or child of a son h.l.s.
5. MOTHER	1/6	..	(a) When there is a child or child of a son h.l.s., or (b) when there are two or more brothers or sisters, or even one brother and one sister, whether full consanguine or uterine.	1/3 when no child or child of a son h.l.s., and not more than one brother or sister (if any); but if there is also a wife or husband and the father, then only 1/3 of what remains after deducting the wife's or husband's share
6. TRUE GRANDMOTHER [sec. 62, cl. (c)].	1/6	1/6	A. Maternal—when no mother, and no nearer true grandmother either paternal or maternal. B Paternal—when no mother, no father, no nearer true grandmother either paternal or maternal, and no intermediate true grandfather.	
7. DAUGHTER	1/2	2/3	When no son.	[With the son she becomes a residuary: see Tab. of Res., No. 1.]
8. SON'S DAUGHTER h.l.s. [sec. 62, cl. (f)]. e.g.	1/2	2/3	When no (1) son, (2) daughter, (3) higher son's son, (4) higher son's daughter, or (5) equal son's son (d).	When there is only one daughter, or higher son's daughter but no (1) son, (2) higher son's son, or (3) equal son's son, the daughter or higher son's daughter will take 1/2 and the son's daughter h.l.s. (whether one or more) will take 1/6, i.e. 2/3—1/2 [With an equal son's son she becomes a residuary: see Tab. of Res., No. 2].
(i) Son's Daughter	1/2	2/3	When no (1) son, (2) daughter, or (3) son's son.	When there is only one daughter the son's daughter (whether one or more) will take 1/6, if there be no son or son's son. [With the son's son she becomes a residuary: see Tab. of Res., No. 2].
(ii) Son's Son's Daughter	1/2	2/3	When no (1) son, (2) daughter, (3) son's son, (4) son's daughter, or (5) son's son's son.	When there is only one daughter or son's daughter, the son's son's daughter (whether one or more) will take 1/6, if there be no (1) son, (2) son's son or (3) son's son's son. [With the son's son's son she becomes residuary: see Tab. of Res., No. 2.]
UTERINE BROTHER or SISTER	1/6	1/3	When no (1) child, (2) child of a son h.l.s., (3) father or (4) true grandfather.	
1. FULL SISTER	1/2	2/3	When no (1) child, (2) child of a son h.l.s., (3) father (4) true grandfather, or (5) full brother.	[With the full brother she becomes a residuary: see Tab. of Res., No. 5.]
2. CONSANGUINE SISTER	1/2	2/3	When no (1) child, (2) child of a son h.l.s. (3) father, (4) true grandfather, (5) full brother, (6) full sister, or (7) consanguine brother.	But if there is only one full sister and she succeeds as a sharer, the consanguine sister (whether one or more) will take 1/6, provided she is not otherwise excluded from inheritance. [With the consanguine brother she becomes a residuary: see Tab. of Res., No. 7.]

b) The collective share is always divided equally among those to whom it is allotted.

c) A Mahomedan can have as many as four wives at a time.

d) If there be a son's son and a son's son's daughter, the former is a higher son's son in relation to the latter. If there be a son's son and a son's daughter the former is a lower son's son in relation to the latter. And if there be a son's son and a son's daughter or a son's son's daughter, the former is an equal son's son in relation to the latter, both being equally removed from the deceased.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
End Semester Examination – 7th & 9th Semester – 2014 & 2013 Batch

Gender and Law

Full Marks: 55 marks

Time Allowed: 3 Hrs.

Part I: Answer any two questions: 20x2=40 marks

1. “Feminist engagements with law has meant reconceptualisation and reframing of the role, tenets and objectives of law.” Elucidate the statement explaining how feminist jurisprudence has not only critiqued legal principles and foundational concepts; but has reconstructed jurisprudence in new ways. 20
2. Using a feminist lens, critically analyze any two branches of law from the following using statutory and case laws: Constitutional law, Family Law, Labour Law and Human Rights Laws. 20
3. While criminal laws in India have been subject to gendered critique, it is much more difficult to engage in a critical appraisal of gender neutral legal frameworks like contracts/corporate/business and financial laws/ administrative laws etc. Do you agree with the statement? Using feminist analytical tools, engage in critical analyses of both these terrains of law stating clearly where similar critical assumptions can be made about both these branches of law and where you need to adopt separate argumentative frameworks to dissect the two different branches of law. 20
4. Feminist politics/ theories/jurisprudential schools is not a monolith. Different schools, assumptions, debates and solutions reflect the diversity in feminist thoughts and practices. Elaborate upon how these different strands have influenced law making. 20

Part II: Answer any one question: 15 marks

5. Write short notes on any three: 5X3=15 marks

- a. Strategic essentialism
 - b. Reflexivity
 - c. Intersectionality
 - d. Masculinities
 - e. Queerness
6. Gender and Law is going beyond the man women binary. Elucidate how queer politics has engaged with the legal framework pushing it to acknowledge that doing gender does not mean to engage with problems of women alone. How has the Indian legal framework responded to the challenges thrown up by the queer movement. 15

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 3rd Semester – 2016 Batch

INDIAN PENAL CODE

Full Marks – 70 marks

Time Allowed: 3 hours

Students are allowed to carry bare act (without commentary)

and case list (citation of cases in alphabetical order)

No clarification may be sought

(Attempt All Questions)

INSTRUCTION

- Read the question very carefully before attempting to write the answer.
- You may attempt question in any order (i.e; it is not necessary to maintain the chronology) but you have to attempt all the sub parts of a question before moving on to the next question. For example, if you want to attempt question no. 1, you should attempt all the sub parts of question no.1 before moving on to question no. 2 or 3.
- The answer number should be marked exactly as it is given in the question paper. For example, if you want to attempt the first part of question no. 1, you should write 1(a).
- Start the new answer in a fresh page. For example, if all the sub parts of answers are accommodated till page no. 5 of your answer script, you should start next answer from page no. 6 even if you have written only couple of lines in page no. 5.
- Answers should be supported with the relevant provisions of the IPC and decided cases. However, you should not copy the entire provision from of the respective Section of IPC. It is sufficient to highlight the essential ingredients of the relevant section. Along with the legislation and cases, you may also substantiate your answer with the help of hypothetical examples. Preference will be given if the names of the parties are properly cited for the decided cases and marks will 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. Ideally, you should check the marks allotted for the individual question or its sub-part before attempting to write answer so that you can frame your answer accordingly.

QUESTION NO. 1

[10 x 2 = 20 Marks]

Incident

Ratan, a renowned dramatist, is charged for an offence of rape u/s 376 of the IPC. He met the victim, Damini, through their common friend in 2014. Since then, they were in constant communication via text messages. Ratan was alcoholic and Damini was aware of his excessive drinking habit. In fact, on several occasions, they consumed alcohol in restaurants and other places. On one such occasion, after consuming alcohol in the Café, they kissed each other in the company of other friends. On 28.03.2015, Damini had called Ratan requesting him to arrange for tickets of his performance which was to be staged a day after. Ratan invited her over to his house for dinner. She visited the house of Ratan at around 9.00 p.m. The door was opened by Ashish, a friend of Ratan. Damini found Ratan to be in an intoxicated and sad state. Damini was asked to go to the office room of Ratan. After waiting there for about 20 minutes, Damini came out of the office room and sat beside Ratan. She hugged him and asked about the reason for his sadness. At that point of time, Ratan is said to have told Ashish to leave the room and they (Ratan & Damini) started chatting. It has been alleged by Damini that thereafter Ratan kissed her, to which she responded by saying that she did not think that it was what he needed. Ratan kept on kissing Damini and telling her about her being a great woman. He also disclosed his intention of sucking her to which she promptly denied. Ratan and Damini were seated on the couch. Damini has then alleged that Ratan tried to pull down her underwear and she kept on pulling it up. Damini was immobilized by Ratan who forced oral sex upon her. Damini has stated she was scared because of the strength of Ratan and to avoid injury she pretended an orgasm. Ratan tried to repeat what he had done but in the meantime the doorbell rang and the two friends of Ratan returned. Thereafter, Damini wanted to leave and so she booked a OLA cab and simultaneously texted her friend, Manish. She told one of the friends of Ratan that she wanted to go but was asked by him to stay back for a while as in case the wife of Ratan (Anusha) did not return, she will have to feed Ratan. Damini, in the event of the driver of the OLA cab not locating the house of Ratan, wanted to get a rickshaw but she was dissuaded and was told that it was dangerous for her in the night to take a rickshaw ride. The wife of Ratan in the meantime returned and Ratan asked Damini to go. Taxi was fetched by Ashish. When Damini got into the car, she immediately called Danish and told him about what had happened between her and Ratan. She has stated in her complaint that she wanted to take legal action against Ratan for his act but did not want to go through the medical examination. On 30.03.2015, Damini sent an e-mail to Ratan. The content of the email is being extracted below:

"I tried calling you, but was unable to get through, I want to talk to you about what happened the other night. I like you a lot. You know that I consider you a good friend and I respect you, but what happened the other night wasn't right. I know you were in a very difficult space and you are having some issues right now, but Saturday you really went too far. You kept asking me if you could suck me and I knew you were drunk and sad and things were going awful. I knew that this wasn't going to help things and I told you many times I didn't want to. But you did become forceful. I went along, because I did not want things to escalate, but it was not what I wanted. I was just afraid that something bad would happen if I didn't. This is new for me. I completely own my sexuality and I consider you a good friend. I like you. I am attracted to you, but it really made me feel bad when this happened. I haven't known what to say to you since then, I wasn't sure if I would say anything. In the end I consented, but it was because of pressure and your own force physically on me. I did not want things to go bad. I

have only decided to tell you how I feel for your own wellbeing. I am afraid that if you don't realize that this is unacceptable, you may try this on another woman when you are drunk and she will not be so understanding. I do love you and wish you well. I want the best for you, but I also need you to know doing what you did the other night is unacceptable. I hope this doesn't affect our friendship, but am willing to deal with the repercussions if it does."

Damini has deposed that on the receipt of the e-mail referred to above, Ratan expressed his sincerest apologies ["My deepest apologies"]. On 12.04.2015, Damini again sent the following email to Ratan:

You have taken away my confidence. You have taken advantage of my kindness. You were supposed to be my friend. Instead you manipulated me. You hurt me. I said no. I said no many times. You didn't listen. You pinned my arms. You pulled my underwear down. In the past two weeks I have blamed myself. I have spent the last two weeks crying, processing. I have thought about death. I have been trying to figure out what I could have done differently, but I couldn't do anything differently. I have spent the past two weeks protecting you, like I did that night. The only thing I know is I didn't do anything wrong but that doesn't matter. I am scared now. I am screwed up now. I used to own my sexuality. You took that from me, you forced me to do something I did not want to do. I stopped struggling because I was scared. I wanted to get out. I did get out. So, remember this, what you did that night wasn't one night, what you did that night continues to affect me and my suffering, my pain. It's on your hands, when I carry this forward in life. It is your sin that I carry forward. It is your sin that I have to overcome. You disgust me"

On the same day i.e. on 12.04.2015 Damini received an e-mail from the wife of Ratan which is as hereunder:

"Hi Damini, I chanced upon your email you sent Ratan today. I am forced into the situation of checking his mail because he isn't available at the moment and we still need to figure out our show schedules.

I am deeply disturbed by your email. What you have described is an ordeal. I cannot imagine how you have dealt with it so far. Needless to say, that I stand with you. If you require any help of any nature including legal, I will assist. This is completely unacceptable behaviour, especially for me since it happened under my roof. You'd obviously wonder why I have not confronted Ratan with this but instead I am writing to you directly. The reason for that is that Ratan is in a rehab. I don't know how and when it would be appropriate to speak with him. The issue is also complicated by the fact that he is a Bi-polar depressive. I really don't know how to express how responsible I feel. I have already spoken with his psychiatrist, and we both feel that this matter should be reported to the authorities if you so wish.

Please find me and his family with you in the process of healing, as I hope the process will be of healing.

Deeply troubled.

Anusha."

Damini replied to the above e-mail in the following words:

"Anusha, I am sorry you found out in this way. I know that this is very painful for you too. You are not responsible for anything that happened to me. You must not take responsibility for his actions. They are not your actions. They are his. Ratan is the only one responsible. As you can see I am angry and hurt and processing this is very difficult right now. I cannot do it on my own at the moment and I do not have the resources to figure out how to begin the healing process. I need to get help and support

for this. Just please do me a favour and do not blame this on his bi-polar condition, at least in my presence. I know about the condition, but sexual assault has nothing to do with bi- polar and everything to do with power. The assertion of power over another human being."

Anusha wrote back to Damini as reproduced:

"Hi Damini! I hope that you will be able to overcome this horrible incident. As I said before, his brothers and I will completely support you in whatever you wish to do about it. I understand how angry you must be and therefore misread my categorical position on such matters. The reason I mentioned Bi-polar is because that is the reason why I don't have access to Ratan and therefore I am unable to confront him at present".

Argument of the Defence

The main argument presented on behalf of Ratan was that it was a consensual act. It has been suggested that the e-mail of Damini on 30.03.2015 clearly depicts that there was some kind of an affectionate/intimate relationship between Ratan and Damini. A day after the alleged occurrence, Damini was communicating with Ratan that she liked him and that she considered him to be a good friend and respected him but, what happened on the night of 28.03.2015 was not right. Damini had herself offered an explanation for the same and had stated that she knew that Ratan was in a difficult space and was having some issues. However, simultaneously, she stated that on 28.03.2015, Ratan went really too far. She had also stated that Ratan was drunk and was continuously asking for sexual favours but she had declined and had expressed that she did not want to go for it. However, Ratan became forceful and Damini alleges to have gone along because she did not want the matter to escalate. She thereafter said that it was not what she wanted and it was only because of the fear of something bad happening to her if she went along. In the same breath, Damini has stated that the experience was new for her but she still remained attracted to Ratan. She felt bad with what had happened and she did not know how to say this to Ratan. She was not even sure that she would confront Ratan with this happening. Thereafter, Damini has clearly stated that "in the end she consented, but it was because of pressure and the physical force of Ratan on her". Since she did not want the things to go bad, she decided to tell Ratan that she felt strongly for the well being of Ratan. However, to what she was subjected to, was unacceptable and in case Ratan tried this with another woman while under intoxication, she would not be as understanding. Later, Damini had also written to Ratan that she hoped that this incident would not affect their friendship but she was willing to deal with the repercussions if at all it took place. So, even if the act was not with her consent, she actually communicated something which was taken as a consent by Ratan.

Consent as defined under Section 375 of the IPC includes non-verbal and verbal communication. It has been argued that what has been communicated to Ratan at the relevant time is important. It was suggested that it was communicated to Ratan that there was consent because of the following circumstances:

- (a) Damini had been in the company of Ratan and continued to be so even when she knew about his drinking habits and also when he was heavily drunk and befuddled on that day. Damini had exchanged kisses and hugs with Ratan in the past. Damini had accepted a kiss from Ratan even while Ratan was in the company of his wife and the wife had, for a brief period, gone out of the room, on an earlier occasion.
- (b) Damini had been cracking jokes and indulged in playful banter immediately prior to the occurrence.
- (c) During the act, Damini feigned orgasm.

(d) Prior to the act, Ratan had asked her for sexual favours to which she did not stoutly resent or deny.

(e) Damini continued to remain in the company of Ratan.

(f) That Damini was under fear, was absolutely unknown to Ratan, (refer to Section 90 of the IPC which provides that a consent is not such a consent if it is given by a person under fear and injury or under a misconception of fact and if the person doing the act knows, or has reason to believe that the consent was given in consequence of such fear or such misconception.)

(g) The conduct of Damini, post occurrence, namely her remaining in the house when other friends came back to the house of Ratan.

(h) Damini did not communicate about this occurrence to either friends or Anusha, the wife of Ratan who later arrived in the house and lastly the e-mail dated 30.03.2015.

With reference to the e-mail dated 30.03.2015, it has been argued that the e-mail was affectionately remonstrative that Ratan went a bit too far on the other night and that Damini went along and feigned orgasm. The history of intimacy and the unabashed liking/attraction of Damini towards Ratan may have given an impression to Ratan of consent. The orgasm which was feigned by Damini, avowedly for the purposes of preventing further damage to her, may have been taken by Ratan as willingness on the part of Damini because it understood/misunderstood as a non-verbal communication of consent. Absence of any real resistance of any kind re-affirms the willingness. An expression of disinclination alone, that also a feeble one, may not be sufficient to constitute rape.

In the present case, the unwillingness of Damini was only in her own mind and heart but she communicated something different to Ratan. If that were not so, Damini would not have told Ratan that he had gone too far on that night. At what point of time, during the act, did she not give the consent for the same, thus, remains unknown and it can safely be said that Ratan had no idea at all that Damini was unwilling. It is not unknown that during sexual acts, one of the partners may be a little less willing or, it can be said unwilling but when there is an assumed consent, it matters not if one of the partners to the act is a bit hesitant. Such feeble hesitation can never be understood as a positive negation of any advances by the other partner.

In his statement recorded during the trial, Ratan has admitted that Damini had sent him an e-mail to which he had replied as "my deepest apologies". He has stated that it was written only after reading the first two lines of the e-mail as Ratan was busy that morning and was constantly in communication with other artists and writers regarding his performance. The first impression of Ratan after going through 2-3 lines of the e-mail dated 30.03.2015 was that Damini was upset because full attention was not given to her on the last night. Only after the entire e-mail was read by him later that he realized the necessity of calling Damini and telling her that there never was any intimacy between him and her and that it shall never be and he did not want to continue any alliance with her.

So far as the conduct of Damini is concerned, it has been argued, that she has deliberately avoided to come with clean hands before the police and before the court. It was suggested that she deleted the WhatsApp messages to destroy inconvenient evidence and has made best efforts to conceal the deletion of the first communication after the alleged incident. The telephone was handed over to the police on 07.07.2015 only. She also concealed a pretty long conversation between Ratan and herself on 30.03.2015 soon after the exchange of the email. Damini, it has been argued, cannot be believed as she is the sole witness/victim of the occurrence but her evidence is not of a stellar quality. From a conspectus of the entire of facts and circumstances and the arguments advanced on behalf of the parties, what is clearly indicated is that Damini had become very familiar with Ratan in recent past and had opportunity to interact with him on several occasions. The alcoholism of Ratan was not a

secret for Damini. The relationship extended beyond a normal friendship. According to her own version, physical contact with Ratan in the nature of a kiss or a hug was being accepted by Damini without any protest. In fact, on one occasion, while Damini was in the company of Ratan and his wife and the wife of Ratan had been moving from one room to another, Damini and Ratan both had taken a bold step of kissing each other. True it is that such past conduct will definitely not amount to consent for what happened in the night of 28.03.2015, if at all it had happened, as for every sexual act, everytime, consent is a must. The consent does not merely mean hesitation or reluctance or a "No" to any sexual advances but has to be an affirmative one in clear terms.

The WhatsApp communication between Damini and Ratan on 30.03.2015 signifies that what happened in the night of 28.03.2015 was not acceptable to her because it was something which she never wanted. The communication further reads that Ratan, on that night went too far. This obviously means that there were some earlier encounters which may not have been of such intensity or passion but physical contact in some measure was accepted. Under such circumstances, this Court is required to see as to what was communicated to Ratan. It is a matter of common knowledge that different persons have different inclinations for sexual activity and immediately preceding the act, there are different ways of people of responding to the advances, entreaties or request.

Findings of the Court

Instances of woman behaviour are not unknown that a feeble 'NO' may mean a 'YES'. If the parties are strangers, the same theory may not be applied. If the parties are in some kind of prohibited relationship, then also it would be difficult to lay down a general principle that an emphatic NO would only communicate the intention of the other party. If one of the parties to the act is a conservative person and is not exposed to the various ways and systems of the world, mere reluctance would also amount to negation of any consent. But same would not be the situation when parties are known to each other, are persons of letters and are intellectually/academically proficient, and if, in the past, there have been physical contacts. In such cases, it would be really difficult to decipher whether little or no resistance and a feeble NO, was actually a denial of consent.

The questions which arise are whether or not there was consent; whether Ratan mistakenly accepted the moves of Damini as consent; whether the feelings of Damini could be effectively communicated to Ratan and whether mistaking all this for consent by Ratan is genuine or only a ruse for his defence. At what point of time and for which particular move, Ratan did not have the consent of Damini is not known. What is the truth of the matter is known to only two persons namely Ratan and Damini who have advanced their own theories/versions.

In order to answer the aforesaid questions, it would be necessary to see what the word "consent", especially in relation to sexual activity, connotes. In normal parlance, consent would mean voluntary agreement of a complainant to engage in sexual activity without being abused or exploited by coercion or threats. An obvious ingredient of consent is that, as consent could be given, it could be revoked at any time; rather any moment. Thus, sexual consent would be the key factor in defining sexual assault as any sexual activity without consent would be rape. There is a recent trend of suggesting various models of sexual consent. The traditional and the most accepted model would be an "affirmative model" meaning thereby that "yes" is "yes" and "no" is "no". There would be some difficulty in a universal acceptance of the aforesaid model of consent, as in certain cases, there can be an affirmative consent, or a positive denial, but it may remain underlying/dormant which could lead to confusion in the mind of the other.

In an act of passion, actuated by libido, there could be myriad circumstances which can surround a consent and it may not necessarily always mean YES in case of YES or NO in case of NO. Everyone

is aware that individuals vary in relation to exposing their feelings. But what has to be understood is that the basis of any sexual relationship is equality and consent. The normal rule is that the consent has to be given and it cannot be assumed. However, recent studies reveal that in reality, most of the sexual interactions are based on non-verbal communication to initiate and reciprocate consent. Consent cannot also be analysed without taking into account the gender binary. There are differences between how men and women initiate and reciprocate sexual consent. The normal construct is that man is the initiator of sexual interaction. He performs the active part whereas a woman is, by and large, non-verbal. Thus, gender relations also influence sexual consent because man and woman are socialized into gender roles which influence their perception of sexual relationship and expectation of their specific gender roles with respect to the relationship. However, in today's modern world with equality being the buzzword, such may not be the situation. Today, it is expected that consent be viewed as a clear and unambiguous agreement, expressed outwardly through mutually understandable words or actions. Inherent in it is the capacity to withdraw the consent by either party at any point of time. Normally, body language or a non-verbal communication or any previous activity or passivity and in some cases incapacitation because of alcohol consumption, may not be taken as consent. However, in the present case, as has been stated, Ratan has not been communicated or at least it is not known whether he has been communicated that there was no consent of Damini.

There is yet another aspect of the matter which has caught the attention of this Court. The wife of Ratan had a chance to read the communication between Damini and Ratan and after coming to know about the alleged incident, she had corresponded with Damini wherein she had informed her that Ratan had been under a rehabilitation regimen for his bipolar mental condition. Damini had, but rubbished such an explanation by stating that the occurrence had to do more with the physical power of Ratan than the mental condition. However, it would be necessary to know as to what a bipolar disorder in a human being entails. Bipolar disorder is one of the most severe of the mental illness. It is a brain disorder which impairs a person mood, energy and basic ability to function. Symptoms of the mania include increased energy or restlessness; extreme irritability; inability to concentrate; poor judgment and at times aggressive behaviour. In some cases, impatience and volatility have also been noticed. There are symptoms of depression in a person suffering from bipolar disorder. Though no specific plea has been taken about the bipolar disorder of Ratan but from the evidence available on record, there appears to be some hint that Ratan suffered from the same. Ratan has been stated to be, on the day of the incident, crying and crying so loud and bitterly that nasal mucus was dripping down till his moustache. This is how Damini has described the state of Ratan sometimes prior to the alleged incident. On the asking of Damini about the reason for his sadness, Ratan is said to have told her that it concerns his wife and mother. Though the mental makeup/condition of Ratan may not be a ground to justify any act which is prohibited under law, but the same can be taken into consideration while deciding as to whether Ratan had the correct cognitive perception to understand the exact import of any communication by the other person. Since no evidence has been led on this aspect, any foray into this field would only be fraught with speculative imagination, which this Court does not intend to undertake.

But, it remains in doubt as to whether such an incident, as has been narrated by Damini, took place and if at all it had taken place, it was without the consent/will of Damini and if it was without the consent of Damini, whether Ratan could discern/understand the same. Under such circumstances, benefit of doubt is necessarily to be given to Ratan. Hence, he is acquitted of all the charges.

Aggrieved by the above decision, Damini preferred an appeal.

Prepare a case for the appellant with the help of decided cases and relevant provisions of the Indian Penal Code under the following heads:

- a) Argument of defence
- b) Findings of the court

QUESTION NO. 2

[7 x 2 = 14 Marks]

- a) A robbery took place in a residential building at around 2.00 p.m. The witness gave the statement to the police that there were five persons who entered the building, all appeared to be in their 30s and were wearing clothes of different colour – red, blue, green, black and yellow. Five persons were arrested in connection to this offence and were charged for the offence of dacoity. In the identification parade, the identity of two of them was established beyond reasonable doubt but that of the other three were doubtful. The court convicted those whose identity were proved for dacoity. The Supreme Court of India in Pragan Singh vs. State of Punjab &Ors.: (2014) 14 SCC 619 had the occasion to examine as to how memory works and whether there should be complete reliance on such human memory even after a lapse of time has held as hereunder:
“...First, memory does not work like a video recorder. Instead, when a person witnesses some complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires fragments of information from the environment. These fragments are then integrated with other information from other sources. Examples of such sources are: information previously stored in memory that leads to prior expectations about what will happen, and information-- both information from external sources, and information generated internally in the form of inferences--that is acquired after the event has occurred. The result of this amalgamation of information is the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not "cast in concrete". Rather, a memory is a highly fluid entity that changes, sometimes dramatically, with the passage of time. Every time a witness thinks about some event--revisits his or her memory of it--the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g. when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event...” In the light of the above statement discuss the validity of the decision of court.
- b) The accused and the prosecutrix were deeply in love. He promised to marry her on a later date. She was 19 years college student and was aware of the fact that they belonged to different religion and proposal of their marriage would be opposed by the families in the era of recognition of ‘Love Jihad’. Yet she started cohabiting with him consciously. The accused was charged u/s 376 on the ground that the prosecutrix gave the consent out of misconception of fact. The trial court acquitted the accused and held that the consent on her part could not be said to be under a misconception of fact i.e; false promise to marry, but she also desired for it. Also, false promise is not a fact under the Indian Penal Code. Aggrieved by the decision of the court, an appeal is preferred. Decide the case in the light of the provision of IPC and relevant cases.

QUESTION NO. 3

[6 x 6 = 36 Marks]

- a) The desk of the director has three drawers arranged vertically. He always keeps the tender documents in the first drawer. The officer who shared the office of the director, shifted the tender documents in the third drawer with the intention of taking it away in the future. Whether the officer has committed any offence under the IPC?
- b) 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. Whether they have committed any offence under the IPC?
- c) The dispute took place between the landlord and the tenant on sharing of water. The latter was not happy with the excessive rate charged by the former for supply of water. There were exchange of abuses and slapping between them. In the meantime, another tenant, an old man, intervened and asked the parties not to fight. The tenant, who was involved in the fight with the landlord, picked up an iron bar and gave a blow on the head of the old man. As a result, the deceased fell down and died. The accused has been charged u/s 302 of IPC. He has pleaded for exception of sudden fight. Decide the matter with the help of a decided case.
- d) Anjali, a married woman, is an assistant professor in JNLU, a law university. She has been in extra marital affair for a couple of months. Narain, a 4th year LLB student of JNLU, failed by 2 marks in a subject taught by Anjali and consequently he has to repeat the course from the first year. He placed his request for promotion to the Vice Chancellor but it was denied. Since then, he became a victim of substance abuse. The Vice Chancellor came to know about the vulnerability of Narain and tried his best to counsel him for giving up all the bad habits. However, Narain continued the addiction and became very weak – physically as well as mentally. In the meantime, the Vice Chancellor requested Anjali to increase 2 marks so that Narain qualify for the final year of the course. Being a very strict teacher, Anjali did not accede to the request of the Vice Chancellor. Thereafter, the Vice Chancellor threatened Anjali to disclose her extra marital affair to other colleagues if she would not pass Narain. Whether the Vice Chancellor has committed any offence under the IPC?
- e) X is the husband of Y but he contracted marriage with Z during the life time of Y. The marriage is solemnised in the house of P (friend of X) by Q (a priest). The court convicted X, P and Q for the offence of bigamy by the virtue of Section 34 of IPC. The case has been taken up by the appellate court. Decide the case with the help of relevant provisions of IPC.
- f) An undertrial prisoner of murder was trying to break the jail. He was caught by the constable while he started to scale over the wall of the jail, which would have led him to the main road. Ultimately, he was inside the jail boundary. He apprehended the constable with a small knife. The jailor and an officer reached the spot. At this moment, the prisoner attempted to take the constable as human shield. The jailor ordered the officer to shoot. The officer shot the prisoner and the bullet pierced through his heart, leading to death on the spot. The officer has been charged u/s 302 of IPC. He has pleaded his case under Exception 3 of Sec. 300 of IPC. Decide the case.

Intellectual Property Rights, Biodiversity and Agriculture

Time: Three hours

Full Marks: 60

(Answer any five questions including **question no. 1**, which is compulsory)

1. (A) “Intellectual property rights are both claimed and contested from a rights perspective and therefore it becomes imperative to inquire into the ‘justness’ of their premises.”

In view of the above inquire into the ‘justness’ of the claim of intellectual property rights over biological resources.

(B) “There is a drastic shift in the legal treatment of plant genetic resources from the early 1980s to 2001. In 1983, a proposal was floated to treat all plant germplasm as open access, or as the “common heritage of [hu]mankind” including patented or otherwise protected (under PVPA certificates) cultivar of the industrial countries of the North. Within a decade, this treatment had been abandoned and an approach that treated plant genetic resources as “sovereign national property” was adopted, first in the CBD and then in the 2001 ITPGR. There is a tension between genetic conservation regimes, such as the CBD, and trade regimes, such as TRIPS. However, both manage to reconcile intellectual- property protection for crops in one way or the other.”¹

In view of the above statement critically evaluate the development of international law for protection of intellectual property rights over plant genetic resources.

[4+8= 12 marks]

¹ Keith Aoki, “Seeds of Dispute: Intellectual Property Rights and Agricultural Biodiversity” 3(1) *Golden Gate University Environmental Law Journal* 159-160 (2009).

2. “Guided by these canons of construction, this Court has read the term ‘manufacture’ in §101 in accordance with its dictionary definition to mean ‘the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery.’”.....Similarly, “composition of matter” has been construed with its common usage to include “all compositions of two or more substances andall composite articles, whether they be the results of chemical union, or of mechanical mixer, or whether they be gases or fluids, powders or solids.In choosing such expansive term as “manufacture” and “composition of matter”, modified by the comprehensive “any”, Congress plainly contemplated that the patent laws would be given wide scope.....The laws of nature, physical phenomena, and abstract ideas have been held not patentable.....Thus, a new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter. Likewise, Einstein could not patent his celebrated law that $E=mc^2$ nor could Newton have patented the law of gravity. Such discoveries are “manifestation ofnature, free to all men and reserved exclusively to none.”Judged in this light, respondent’s micro-organism plainly qualifies as patentable subject-matter. His claim is not to a hitherto unknown natural phenomenon, but to a non-naturally occurring manufacture or composition of matter.....a product of human ingenuity “having a distinctive name, character [and] use”.²

Critically analyze the above statement in India with special reference to *Diminaco A.G. v. Controller of Patents and Designs*.³

[12 marks]

3. (A) Do you think that plant variety protection as form of IPRs is more appropriate than a utility patent system considering the nature of Indian economy particularly in view of agricultural development? Justify your answer.

² *Diamond v. Chakraborty*, 447 US 303 (1980)

³ IPLR 2002 Jul 255 (Cal).

(B) “Plant variety protection through IPRs regime was introduced under the assumption that such protection to commercial breeders will lead to greater food production, food security, and development of new plant varieties, which will further the fulfillment of basic human needs.”

Make a reality check of the above assumption from Indian perspective.

[4+8= 12 marks]

4. “Human rights approach to indigenous peoples’ intellectual property, and possibilities to reconcile the apparent conflict between traditional knowledge and plant IPRs receiving increasing attention in the past few years. The issue of protection of indigenous people’s traditional knowledge, which they assert as their intellectual property, and their human rights have been addressed in several international organizations and fora.”

In view of the above critically discuss the legal approach for protection of traditional knowledge with special reference to the national legislative initiatives in this regard.

[12 marks]

5. (A) “Keeping in mind the estimated 110 million farming families mainly comprising small and marginal land holders and their appreciable role in conserving and improving the plant material and associated knowledge, India uses the *sui generis* option to construct legislation that establishes plant breeders’ rights and articulates a concept of farmers’ rights as well. Although in some ways the Indian legislation conforms quite closely to international agreements, in other ways departs substantially from them.⁴ For example, whereas UPOV accords PBRs only to

⁴ While introducing the Protection of Plant Varieties and Farmers’ Rights Bill in the Parliament, the then Agriculture Minister, explained the objectives of the proposed legislation thus:

The concept of Plant Breeders’ rights arises from the need to provide incentives to plant breeders engaged in the creative work of research which sustains agricultural progress through returns on investments made in research and to persuade the researcher to share the benefits of his creativity with society. A system of plant breeders’ rights encourages better and mission-oriented research for development of varieties that are fully suited to a given agro-climatic region. India has developed commendable strength in agricultural research. Indian breeders working, mainly, in the public research system have developed a large number of new varieties. In the absence of plant breeders’ rights, these varieties would be freely available to others for exploitation. New varieties developed on

varieties that are novel or new, the Indian Act also makes extant or existing varieties eligible for protection. A number of provisions and concepts in TRIPS, UPOV, the IUPGR and CBD broadly inform or directly constitute key elements for the Act. India used the *sui generis* option to construct legislation that establishes PBRs on the UPOV model and articulates a concept of farmers' rights that derives from the IUPGR, to balance the interests of commercial plant breeders, farmers, and indigenous people.”

Considering the above statement critically evaluate the efficacy of the national legal regime for protection of plant varieties.

(B) Does the requirement of “effective sui-generis system” under TRIPS Agreement for protection of plant varieties give too much flexibility? Give reasons for your answer.

[10+2=12 marks]

6. Write short notes:

- a. Regulation of access to biological resources
- b. Ethical and moral issues in plant IPR
- c. GM crops and Indian Agriculture

[4X3= 12 marks]

the basis of these varieties could get protected in other countries without any benefit accruing to Indian institutions/organisations, whereas the availability of varieties developed in countries which provide for plant breeders' rights would be restricted in India. Therefore, putting in place a system of plant breeders' rights through law in India provides protection to the plant varieties developed by public research system. A system of the plant breeders' rights in the country would also encourage foreign companies to organise buy-back production of seeds in India for export to their countries without any fear of unauthorised use of their genetic material. The objective of the proposed legislation is to give a significant thrust to agricultural growth by providing an effective system for the protection of plant varieties and farmers' rights which will stimulate investments for research and development, both in the public and the private sectors, for the development of new plant varieties by ensuring appropriate returns on such investment. It will also facilitate the growth of the seed industry in the country through domestic and foreign investment which will ensure the availability of high quality seeds and planting material to Indian farmers. The proposed legislation recognizes the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution through benefit sharing and protecting the traditional rights of the farmers.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
End-Semester Examination – 9th Semester – 2013 Batch

ELECTIVE SUBJECT

INTELLECTUAL PROPERTY RIGHTS, INTERNATIONAL TRADE & HUMAN RIGHTS LAW

Total Marks: 40

Time Allowed: 3 hours

PART I

Answer ANY 2 of the following:

(15x2)

Q1. *“Intellectual property is important, but the appropriate intellectual property regime for a developing country is different from that of an advanced industrial country. The TRIPS scheme failed to recognise this. In fact, intellectual property should never have been included in a trade agreement in the first place...”* – Joseph E. Stiglitz (2005)

Elucidate upon the evolution of the notion of “*Knowledge Mercantilism*”, contrast it against the market imperatives today, and opine upon whether the above assertion sits well with the prevailing free-market paradigm.

Q2. From *Diamond v. Chakrabarty* to the *Myriad Genetics* case, - the debate regarding the inherent element of morality in allowing a patent over (arguably ingenuous) modifications / “improvements” made to what essentially are products of Nature, continues to rage.

Opine upon this ongoing impasse between Bioethics and individual financial incentives for the furtherance of biotechnological research, taking into consideration, both the conflicting points of view.

Q3. It is a long-held and vigorously defended position historically that, the granting of a time-bound monopoly (preferential) status to a piece of intellectual property/asset works directly in aid of incentivisation of creativity and original thinking. While this may indeed have held good in bygone eras, - given the level of technical and informational sophistication that we as a global community have achieved, - a situation akin to the “*Tragedy of the Anti-Commons*” may not necessarily be a figment of theory.

Do you agree with the above position? Defend your stance, with respect to **each** of the main branches of Intellectual Property (*viz*: Trade Marks, Copyright and Patents) with appropriate justifications and illustrations.

PART II

Answer ANY 1 of the following: (10)

Q1. Comment, with suitable illustrations, - on the conflicting perspectives that are reflected through advocacy for maintenance of the prior art domain *versus* the according of due protection to indigenous clusters of intangible traditional cultural expressions.

Q2. Critically analyse the ‘*Neem* case’, and identify the lessons to be drawn from its legacy for substantiating latter-day discussions on the issue of bioprospecting *versus* biopiracy.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 7th & 9th Semester – 2014 & 2013 Batch

INTERNATIONAL COMMERCIAL ARBITRATION

Full Marks: 60

Time: 3 Hours

Instructions:

(a) Students are allowed to carry the Bare Act of Arbitration & Conciliation Act, 1996.

(b) Students are allowed to carry list of cases with 3-4 bullet points.

1. (i) Argue for or against the below stated statements with appropriate reasons and authorities:- (3+3=6)

(a) Where the Arbitral Tribunal was constituted by the parties without judicial intervention, the Arbitral Tribunal could determine all jurisdictional issues.

(b) Soon after filing the civil suit, the defendant filed an application to invoke the arbitration proceedings and continued with the court proceedings as well. Does it amount to the waiver of the right to arbitrate?

(ii) Under Section 50 of the Act, an appeal can be filed by a party against orders passed under Section 45 and 48 of the Act. No second appeal can be filed against the order passed under this section.

What is the remedy available to the aggrieved party in this regard? (4)

2. In the contract between X and Y the following arbitration clause was stipulated:

“All disputes, controversies or claims arising out of or in connection with this contract including the validity, invalidity, breach, or termination thereof, shall be finally resolved by an Arbitral Tribunal according to the provisions of Indian law. The seat of the arbitral tribunal shall be Delhi, India.

The language of the arbitration proceedings shall be English.”

Assuming that the arbitral tribunal had been already constituted and after its constitution, it becomes apparent that one of the appointed arbitrators, Prof. Shah, had published a

paper concerning the legal issues relevant for the given case - his views being, however, clearly in favour of one of the parties , i.e, Y.

a. Does this act give rise to justifiable doubts as to Prof. Shah's independence or impartiality? (5)

b. Who is the competent authority to decide upon a possible partiality of Prof. Shah? (5)

c. Mention Pre and post 2015 Amendment of the Arbitration and Conciliation Act, 1996 in this regard. (5)

3. When can a Court refuse enforcement of a foreign award? What are the challenges in the enforcement of Foreign Award in India? After the recent 2015 Amendment, is the future of international commercial arbitration assured in India? (5+5+3=13)

4. Amit, Samuel and Peter entered into a partnership deed on 3rd April, 1994 for running a hotel in India. Samuel and Peter are foreign residents. As the hotel was in India and Amit was also an Indian citizen, he was entrusted with the administration of the 'Hotel'. The Partnership Deed contains an arbitration clause, which stipulates resolution of disputes by means of arbitration.

While Amit was entrusted with administration of the hotel, Samuel and Peter alleged that Amit had failed to make regular deposits of money into the common operating bank account and had fraudulently siphoned off an amount of INR 50,00,000 in favour of his son without the knowledge and consent of the other partners and in this manner, the money was misappropriated from the common fund.

It is further alleged that the Amit kept the hotel account books with him and did not show it to the other partners for their examination whenever asked. Samuel and Peter also sent legal notices in this regard but it did not deter Amit to continue to act in the same manner by not depositing the day to day collections in the account. It is also alleged that Amit's wife's younger brother named Pankaj was a member of Bar Council of Tamil Nadu and was also a Vice-Chairman of All India Bar Council, New Delhi. In Chennai, the Central Bureau of Investigation (C.B.I.) raided the houses of the said Pankaj and his co-brother Shekharan and seized Rs.35,00,000/- cash from them. As Pankaj was aware of

the disputes between Amit, Samuel and Peter in respect of the 'Hotel', a false statement has been given by Pankaj before C.B.I. to the effect that the seized money of Rs.35 lakhs belonged to the 'Hotel'. It is reliably learned that Amit had also, on receipt of summons, appeared before the C.B.I. in New Delhi and given a false statement as if the said seized money of Rs.35 lakhs belonged to the 'Hotel' which was taken to Chennai to purchase a property. This led to the issuance of another notice by Samuel and Peter to Amit stating that the money seized by the C.B.I. belong only to Pankaj and not the 'Hotel'.

In the meantime, Samuel and Peter filed a civil suit seeking right of administration of the hotel. Opposing this Amit sought reference of the dispute to arbitration under Section 8 of the Arbitration & Conciliation Act, 1996. The Court rejected Amit's application on the ground that the dispute involved allegations of fraud. Aggrieved by the decision, Amit preferred an appeal.

- a) Is fraud arbitrable in India? Also, mention the current legal position with respect to International Commercial Arbitration in this regard.
- b) Prepare the arguments for all the parties in the above case.
- c) Decide this case with appropriate reasons and authorities. (2+5+5=12)

5. Write Short Notes: (Any two) (5+5 =10)

- (a) Wednesbury principle
- (b) Emergency Arbitrator
- (c) Commercial

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 9th Semester – 2013 Batch

International Finance

Total Marks: 50

Time Allowed: 3 Hrs.

Section A

All Sections are compulsory.

10

Draft: A Conditions Precedent Clause OR

An Agent's Warranties Clause

Section B

Please answer **any three** out of the four questions in this Section. 10*3=30

1. Carclays Bank approaches the The Royal Irish Bank as the Agent Bank. Carclays requires a syndicated loan to fund a highway project on a P2P basis in a developing country. How will the Agent Bank float the syndicate? What is the process that Carclays and Royal Irish need to follow in such a case ensure that the regulatory structure is in place? (Note: The highway project is based in India). 5+5=10
2. Is the current crowdfunding regime in India sufficient to address the requirements of more than 1 billion potential donors many of whom may not be sufficiently literate or aware of the laws? 10
3. In a syndicated loan, what is the relationship between the borrower and the Lead Bank? Does the lead Bank owe a fiduciary relationship to any other party other than the borrower? Explain with reference to decided cases. 5+5=10
4. What is an executory contract? When a dispute arises in an executory contract can it settled by set- off or Netting? (Answer must take into account mutual Debts). 5+5=10

Section C

Answer **any two** out of three.

(5*2=10)

1. What are "flawed assets"? How do they affect security interest? Can security interest get extinguished?
2. What are the remedies available to the minority lenders in a syndicated loan if the majority decided to act against them?
3. How is forward rates different from expected future spot rates in terms of currency exchange?

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
End Semester Examination – 9th Semester – 2013 Batch
International Humanitarian and Refugee Law

Total marks: 50

Time Allowed: 3 Hrs.

Question No. 1 (Compulsory): Write Short Notes (Answer any 4 out of 5 Short Notes, 4X2.5= 10 Marks)

- a. *hors de combat*
- b. Martens Clause
- c. Legal Status of ICRC
- d. Persecution
- e. The Foreigners Act, 1946

(Answer any 4 out of 5 Questions, 4X10= 40 Marks)

Question No. 2:

- a. “How a judicial system views international law in general is an important factor in understanding its approach to principles of IHL.” Analyze this statement with reference to India. (5)
- b. Explore the Common Article 3 of the Geneva Conventions of 1949. (5)

Question No. 3:

“Just two weeks into his deployment in Iraq, Chris Kyle found himself providing guard to Marines traveling into Baghdad. While on sniper patrol, from a rooftop Kyle observed an Iraqi woman in the street pull something from beneath her clothes and tug at it. He described the scene to his platoon chief, who quickly realized that the woman was setting a grenade for the approaching Marines. The chief told him to shoot and, hesitantly, Kyle obeyed. It was the first and only time he shot anyone other than a male insurgent in Iraq.” - Analyze this scenario with the help of principles of distinction, proportionality, military necessity and humanity. (10)

Question No. 4:

Discuss the standards of refugee protection set out in the Common European Asylum System. (10)

Question No. 5:

“It has been a concern among legal scholars of India that, considering its past experience with UNHCR, it may not be suitable to become a party to the 1951 Refugee Convention and the Protocol.” - Analyze this statement. Provide reasons for accepting or rejecting this statement. (10)

Question No. 6:

“In a case before the High Court, both petitioners are citizens of Myanmar belonging to the ethnic Chin community. They entered India in 2009 and 2011 respectively along with their families and were issued refugee certificates by UNHCR in New Delhi valid until 2017. On the basis of the refugee certificate issued by UNHCR, the Ministry of Home Affairs (MHA) issued them with

long-term visas (LTVs). However, the petitioners were convicted under the Narcotic Drugs & Psychotropic Substances Act, 1985 by a competent court and served prison terms. After their release from prison, the MHA detained them in a camp and started procedures for deportation. The petitioners contended that if they were to be deported to Myanmar, they would face persecution and their lives would be threatened. The MHA contended that given the conviction of the petitioners, they represented a threat to the security of the nation, and that their involvement in drugs also posed a threat to the social fabric, so the decision was taken by the MHA to deport them.” –*You are the lawyer of both these petitioners. What would be your arguments before the High Court against the order of deportation? Subsequently why or why not you use similar arguments for Rohingya refugees in India?* (10 Marks)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 7TH & 9TH Semester – 2013 & 2014 Batch

INTERNATIONAL MARITIME LAW

Full Marks – 70 marks

Time Allowed: 3 hours

Question No. 1

[35 Marks]

Patel is the owner of a ship named 'Dark House'. Patel applied for insurance for Chennai-Kolkata voyage to the India Insurance, an insurance company. However, it was denied. The company noticed that in the last few years several vessels of Patel incurred loss due to fire and insurance companies had to pay huge amount of indemnities. Thereafter, Patel approached Hindustan Insurance. The proposal was refused due to chaotic situation in the Mumbai port. Finally, the vessel has been insured by the Bharat Insurance. Some of the relevant clauses of the insurance contract are:

Clause No. 3: Insured Perils Clause – “The insurance would cover loss or damage arising out of perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detentions of princess and people, jettison, barratry and any other perils of the like nature.”

Clause No. 13: Legality Clause – The ship should not carry cargo or engaged in activity which is against the law and public policy of India

The ship was carrying the following cargoes under the contracts of affreightment through bills of lading:

- i) Five tonnes (5000 kilograms) of iron – Mr. John was the cargo owner and the market price of the iron at the time of the shipment was Rs. 100 per kilogram.
- ii) 1000 pieces of wood of equal size – Mr. Kalim was the cargo owner and the market price of the wood at the time of the shipment was Rs. 500 per piece.
- iii) Two tonnes (2000 kilograms) of fishes – Mr. Sanjay was the cargo owner and the market price of the fish at the time of the shipment was Rs. 300 per kilogram.
- iv) 500 Kilograms of Wheat – Mr. Smith was the cargo owner and the market price of the wheat at the time of the shipment was Rs. 50 per kilogram.
- v) 500 Kilograms of Rice – Mr. Mohan was the cargo owner and the market price of the rice at the time of the shipment was Rs. 200 per kilogram.

The cargo was loaded from Chennai and the destination was Kolkata port. The distance between the ports is about 1500 nautical miles and it generally requires 15 days to complete the journey. In this voyage, the vessel generally takes halt at the Mumbai airport for

refuelling and checking the fittings. The civil war was going on in Mumbai between two rival political groups on the day of the execution of the insurance contract and Mumbai Port was declared red alert area by the Govt. of Maharashtra. As per the newspaper report, the estimated death toll was 100 and out of which 15 people died near the Mumbai port and about 25 people suffered from grievous injuries in a clash between the crew of one of the vessels and the people who were the permanent residents of that place. The cargoes were also looted by hooligans.

The estimated market value of the ship at the time of the execution of the insurance contract was Rs. 10,00,000 but was insured for Rs. 10,11,585/- The vessel left the Chennai port on 28.02.2014 at 11.00 p.m with a crew strength of fifty one. After covering the distance of about 200 nautical miles, the captain saw a small vessel which was left stranded. Nobody gave any signal for seeking assistance but the captain deviated from the agreed course with the intention of saving human life. After reaching near the distressed vessel, the captain saw that there were only five members of the crew. The rest of the members of crew and passengers were rescued safely in the lifeboat. The five members were on the vessel to guard the cargoes. The captain of the distressed vessel requested the captain of Dark Horse to assist them in loading the cargo in their lifeboats. The latter assisted the former and got the reward of Rs. 50,000/- After the rescue operation, Dark House came back to the agreed route and continued for around 270 nautical miles and then deviated towards the Vishapatnam port to pick up two persons. The Vishakapatnam port was not the port of mandatory stoppage. The two persons were picked up and the vessel sailed for the destination.

After covering few more miles, the captain experienced some unusual sound from the back portion of the ship. The engineer checked the vessel and found that a nut and bolt was damaged which was used for the purpose of attaching that portion with the main body of the vessel. The attached nut and bolt was replaced in the previous voyage. The engineer on board informed the captain that at any point of time the back portion of the ship would get detached from the main part of the ship because the nut and bolt was in very bad shape. There would be high risk of sinking of ship in case of sudden detachment. Therefore, after consultation with some senior members of the crew, the captain decided to remove the back portion of the ship before it actually get detached causing danger to the vessel and the cargoes. Without any further delay, the back portion of the vessel, which was made of iron, was detached from the main body and was thrown in the sea for making the vessel lighter. The vessel travelled about another 100 miles without the back portion and after that the vessel was floating at a relatively slow pace. It was found out that the sea water was entering through the back portion, making the ship heavier and created difficulty in floating. The Mumbai port was only 100 nautical miles away. To make the ship more lighter, 1500 kilograms of iron and 200 kilograms of woods were jettisoned.

The vessel sailed for another 65 nautical miles and then it was stranded. The water continued to enter through the back portion of the ship. There was an apprehension that the vessel would sink. Therefore, the captain requested the shipowner to immediately contact the

towage company for the purpose of towing the ship to the Mumbai port. Accordingly, the shipowner contacted the towage company and the latter sent the team for towing the vessel. The team successfully helped the vessel to reach the Mumbai port. However, in the process, 100 kilograms of wheat and 300 kilograms of rice were damaged. The vessel reached at the Mumbai port in a fully damaged condition.

The situation at Mumbai port was better but the red alert was still on. The police officials were checking all the vessels thoroughly as there was intelligence report that some terrorists would enter Mumbai through the sea. The police checked Dark House and found a powdery substance and suspected it as brown sugar. The analysis report confirmed it was brown sugar. The ship owner and the captain pleaded ignorance. The ship was arrested and special inquiry committee was appointed. After hearing the witnesses, the inquiry committee came up with the finding that there was collusion between Mr. Kalu, one of the members of the crew and Mr. Malu, the drug dealer. The criminal action was initiated by the Mumbai police against Kalu and Malu. The shipowner and the captain got the clean chit.

Mohan claimed a certain sum of rupees for the partial loss of ship but the insurer (Bharat Insurance) denied the claim on the following grounds:

- i) Non Disclosure of the following facts:
 - a) Previous losses on several occasions due to fire which was something unusual
 - b) Refusal by the two insurance companies for to insure
 - c) Non-disclosure of civil war at the port of unloading
 - ii) Two unreasonable deviations namely;
 - a) Deviation for assisting the distressed vessel without reason to believe that human lives were in danger
 - b) Deviation to pick up persons on board from the Vishakapatnam port
 - iii) The portion of the vessel was sacrificed because the vessel was not seaworthy
 - iv) Failure to comply with Clause No. 13 of the contract for carrying brown sugar
 - v) Loss was not covered by the insured peril as defined under Clause No. 3
 - vi) Misrepresentation in disclosing the value of the ship by deliberately over-valuing it.
- Hence, it was a breach of the implied warranty of full disclosure of material fact

Questions

i) Prepare the statement of claim on behalf of Patel against the Bharat Insurance by countering the various defences taken by the Insurance Company. Cite the relevant provisions of the Marine Insurance Act, 1963 and decided cases [25 Marks]

ii) Prepare the claims of the cargo owner/s, who suffered loss in the voyage. Identify the persons/partied against who, claimant may claim [10 Marks]

[25 + 10 = 35 Marks]

ANSWER ANY THREE OF THE FOLLOWING

Question No. 2: Short Notes

(3X5 Marks= 15)

- a. Doctrine of Hot Pursuit
- b. Jurisdiction over Exclusive Economic Zone
- c. Common heritage of mankind
- d. Conservation of living resources

ANSWER ANY TWO OF THE FOLLOWING

Question No. 3

(10 Marks)

Comment on the salient features of the Convention of the Law of the Sea 1982. Indicate the protection provided to landlocked and archipelagic states.

Question No. 4

(10 Marks)

Discuss the marine pollution provisions provided under the UNCLOS III with the help of decided cases.

Question No. 5

(10 marks)

Comment on the division of continental shelf between adjacent states in the aftermath of the decision of the North Sea Continental Cases, 1969

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 5th Semester – 2015 Batch

INTERPRETATION OF STATUTES

Full Marks – **55** marks

Time Allowed: 3 hours

ALL QUESTIONS ARE COMPULSORY

1. A well established rule of interpretation is that a beneficial statute should be given a purposive construction, to further legislative intention, if literal interpretation thwarts it. Its meaning can be extended to matters which come within the spirit or reason of the law or within the evil which the law seeks to suppress. Court is entitled to be generous towards the persons on whom the benefit has been conferred. It is the duty of the court to interpret a provision, especially the beneficial provisions liberally so as to give it a wider meaning rather than a restrictive meaning. The Persons with Disabilities Act, 2016 is one such legislation enacted to protect the rights of the disabled in India.

Discuss the underlying principles evolved by the Supreme Court in protecting the rights of disabled people with the help of decided cases. **10 marks**

2. The rule of strict construction of penal statutes as modified in modern times is not so rigid. The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed substantially by the same rules. Penal statutes have to be interpreted “having regard to the subject matter of the offence and the object of the law it seeks to achieve....”

Explain the evolving trend of the Supreme Court in dealing with the offences relating to (a)cruelty to women and (b) acid attack cases in India. **10 marks**

3. It is a well settled position in law that recourse to external aids can be taken in order to interpret a particular provision of the statute. International conventions and foreign judgments played very a crucial role in creating positive rights as well as development of law. For instance the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 of the constitution (K. S Puttaswamy v. Union of India). Similarly the Polluter Pays principle has been held to be a sound principle by this Court (Indian Council for Enviro- Legal Action vs. Union of India). In this case the Court observed that "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation."

Comment on the approach followed by the Supreme Court of India in following the principles of flexibility in accommodating those principles into domestic law. **10 marks**

4. "A Statute which takes away or impairs any vested right acquired under existing laws or which creates a new obligation or imposes a new burden in respect of past transaction will not be treated as retrospective."- Apply this principle to the following:
- a. Explain the judicial trend with respect to retrospective operation of tax laws in India? **3 marks**
- b. Examine the principles associated in determining the constitutionality of retrospective application of tax laws? **3 marks**

5. Security and Exchange Board of India Act, 1992 has been enacted with the objective of protecting the interest of investors in the securities and of promoting the development and to regulate the securities market and for matters connected therewith or incidental thereto.

Under Section 29 of the SEBI Act, the Central Government is empowered to frame rules for carrying out the purposes of the Act. Under Section 30 of the SEBI Act, the SEBI is empowered to frame regulations consistent with the SEBI Act and the rules have been made to carry out the purposes of the Act.

Section 31 of the SEBI Act, however, provides that "Every rule and every regulation made under this Act shall be laid, as soon as or may be after it is made, before each House of

Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session, immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation”.

By virtue of section 30 of the Act, SEBI authority came out with SEBI (Stock Brokers and Sub Brokers) Rule 2010. Under which rule, SEBI took an action against company named XYZ for not complying the said provision. The company challenged the very existence and competence of the rule on the ground that as per section 31 of the SEBI act it has not been laid before parliament and hence it is has no force of law.

Advice the company on the following:

- a. Whether rule framed by SEBI, that were not laid before the parliament within a period of thirty days is valid or not. If so why? **4 marks**
-
6. Write short notes on any three of the following themes **3 x 5 = 15 marks**
 - a. The principle governing repeal by implication with the help of a few illustrations
 - b. Presumption in case of Re-Enactment
 - c. Rule governing the interpretation of vested rights
 - d. Reading down
 - e. Precedents Sub-silento
 - f. Rule governing the interpretation of the legislative powers

The W.B. National University of Juridical Sciences
End-semester Examination – 7th & 9th Semester – 2014 & 2013 Batch

Elective subject - **Introduction to Research Methodology**

Time : 3 Hours
Maximum score : 30 marks

General Instructions

- A. All questions are compulsory.**
- B. You are permitted to consult the slides that were distributed in the course of the lectures**
- C. You are expected to rely on the question paper as is. No clarifications may be sought**
- D. What is being tested here is your understanding of concepts& the length of your answer is irrelevant for marking. Use of illustrations or examples to drive home your point is highly recommended.**

PART I (7.5 marks each)

1. Write short notes on the following concepts
 - a. Internal and External Validity
 - b. Scaling
 - c. Nomological Networks

PART II (15 marks)

2. Create an appropriate research design for the purpose of examining the discriminatory effects of any civil law system (i.e. anything which is not penal) in India.

Note :

- a. Your examination must necessarily be (1) an empirical one and (2) must involve the collection of primary data.
- b. Your answer must explain the research question(s), hypothesis (if, any) and your approach towards data collection to answer these questions
- c. You don't have to design the tools for data collection, but you must state what tools will you use for what purpose.

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 7th Semester – 2014 Batch

INTELLECTUAL PROPERTY LAW - I

Full Marks – 70

Time Allowed – 3 Hrs.

BARE ACT (COPYRIGHT ACT - WITHOUT COMMENTS) IS ALLOWED

ANSWER ALL QUESTIONS

1. Explorer, a private coaching organization offers coaching to hundred new students every month. Each student is given a photocopied text book (cover to cover) as study material. Publisher of text book has filed copyright infringement case against Explorer. Argue for both side and Decide. 10
2. Tuhin trained two monkeys to dance to popular Hindi film songs. Although both monkeys dance as per training but sometime depending on their mood, make some variations in their steps. Tuhin organized rehearsal for monkeys in empty auditorium the day before the final event. Organizers recorded the monkey dance through cctv installed in the auditorium without consent of Tuhin and uploaded that in You Tube. Advise Tuhin regarding steps to be taken by him and consequences thereof. 10
3. Karan, Producer of an old black and white film decided to make a colour version of the film and released it. Director of the old film saw the new film in cinema hall and felt that it destroyed the very essence of the film and sued the Producer. Decide. 10

4. Two lyricists wrote lyric of a film for Rs. 50000 and two composes composed music of the same film for Rs. 50000. The producer of the film earned ten crore rupees from cinema hall by showing this film and he also earned two crore rupees from a telephone service provider by allowing them to use one song of the film as a caller tune. Calculate earning of lyricist, composure and producer in both pre and post 2012 situation and offer your comments. 10

5. Adhir has drawn an architectural plan of a building which will make the building earth quake proof. Mihir has reproduced this feature of Adhir's building in his building. Adhir has sued Mihir requesting Court to demolish Mihir's building. Decide. 10

6. Shilpa has given oral instructions for performing yoga which has been recorded in a sound recording. Being inspired with the popularity of the sound recording Raj Publication has copied these instructions in a book and published it. Advise both Shilpa and Raj Publication. 10

7. Copyright in CLAT question papers are owned by each organizing Law School. Universal Publication has collected these questions from each Law School and arranged them chronologically and published it. Examine Copyrightability of Universal's publication. 10

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
End-Semester Examination – 9th Semester – 2013 Batch

Issues in Legal and Political Philosophy

Total Marks - 50

Time Allowed – 3 Hours

Note: Remember! Answer the questions as posed, and argue well, that is, your arguments must be relevant to the question, comprehensible and clear.

(No clarification can be sought on the questions)

Section I

Answer any one of the following questions:

Q.1. Hart claimed to be a socio-legal positivist in his descriptive approach in *The Concept of Law*. Tamanaha argues that Hart failed in achieving this aim. Do you agree with Tamanaha? Explain. Is it possible to construct legal positivism in a manner that will render it more compatible with a sociological approach that better fits the complex and variable situation of law in society today? (20 Marks)

Q.2. Explain CLS as a critique of formalist and objectivist mode of reasoning in legal positivism. Do you consider CLS to be successful in criticizing the idea of legal formalism? Explain. Use any substantive laws or judicial decisions from India in support of your arguments. What do you think is the greatest weakness of the CLS method? Explain. (20 Marks)

Section II

Answer any two of the following questions:

Q.3. John Gardner in *Law as a Leap of Faith* challenges the widely held theoretical presumptions about the differences between natural law and legal positivism. Critically evaluate Gardner's comparison of Kelsen's *Pure Theory of Law* with the premise of natural law. (15 Marks)

Q.4. Gardner's deconstruction of the offence of rape confronts and rejects the wrongness rooted in many accounts that we consider in theorizing it. The failures of these accounts are used to develop and defend the view that rape is wrong as the sheer use of another human being, as a 'denial of the status of subject and its substitution with the status of object'. What are the possible implications of his views for the law, if any? Explain. (15 Marks)

Q.5 Nussbaum argues that a decent liberal society (in a Rawlsian sense) that aspires to equality and justice for all would fail in this purpose if individuals aren't ready to sacrifice for the common good. To sustain democratic institutions, Nussbaum claims, a liberal society should cultivate the emotions that underpin imagination and sympathy for others, and the way to do this is through education and the arts. Critically evaluate her claims. Do you think art and literature can help cultivate such emotions and through it a shared sense of value for human life in society? Explain. (15 Marks)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 5th Semester – 2015 Batch

JURISPRUDENCE

Full Marks – 70 marks

Time Allowed: 3 hours

Note: Remember! Answer the questions as posed, and argue well, that is, your arguments must be relevant to the question, comprehensible and clear.

(No clarification can be sought on the questions)

Section I

Answer any two of the following questions:
(Limit your answer to a maximum of 500 words)

Q.1. Bentham, Rawls and Milton Friedman had opposing views on equality and redistribution of income and wealth. Explain. How do you think Bentham, Rawls and Milton Friedman will react to the question of race-based/class-based affirmative action in college admissions or such reservations for jobs or promotions? Explain critically. **(20 Marks)**

Q.2. There is a central incompleteness in the idea of 'freedom' as explained and theorized by many philosophers you studied in the course. Sen transformed the traditional philosophical understanding of 'freedom', linking it to well being of individuals and their capabilities, Nussbaum gave it a greater gender sensitivity and Individual Deprivation Measure added a superior empirical foundation. Explain. **(20 Marks)**

Q.3. Communitarianism was an idea that came as a critical reaction to Rawlsian liberalism in '*A Theory of Justice*'. How do you think communitarians would react to Rawls' idea of '*Overlapping Consensus*', which he developed later? Would they settle their dispute with Rawls now? Explain critically. **(20 Marks)**

Section II

Answer any two of the following questions:
(Limit your answer to a maximum of 400 words)

Q.4. Critically explain realism and critical legal studies as a reaction against legal positivism and formalism. What do you think is the greatest weakness of CLS as a school of thought? Explain. **(15 Marks)**

Q.5. Do you think Immanuel Kant would consider patriotism as a moral virtue? Explain critically. What would be your greatest critique of Kant's categorical imperative? Explain. **(15 Marks)**

Q.6. Kelsen and Hart differed on the ultimate source and criteria of validity of laws. Do you consider Kelsen to be successful in his antireductionism? Explain. Critically explain how Kelsen's *grundnorm* is different from Hart's rule of recognition. **(15 Marks)**

THE W. B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2017 – 7th Semester - 2014 Batch

LABOUR AND INDUSTRIAL LAW-II

Time Allowed – 3 Hours

Full Marks- 70

INSTRUCTIONS

1. The paper is divided into two parts- Part I comprises 2 compulsory questions. Part II consists of 3 questions, of which you are to attempt any 2.
2. You may answer the paper in any order, but answer one Part at a time, and number the questions accurately. The internal questions in Part II may be answered in any order of your choice.
3. NO CLARIFICATIONS MAY BE SOUGHT.
4. This is an OPEN BOOK exam. You are allowed access to all material you desire to carry, except those stored electronically.

ALL THE BEST

Part I- Compulsory (40 marks)

1. Indus is a sovereign secular democratic nation ruled by a benevolent dictator. It is a multicultural, multilingual country located in South-East Asia, which has just achieved independence after two centuries of colonial rule. The State has scarce resources and a burgeoning population with poor literacy. Indus is an agrarian economy, with a huge majority of its population being employed in agriculture as labourers, a third of whom are women. Around 25% of the population owns landed property, and 88% reside below the poverty line. Less than 5% of the population work in organised employment. Indus' contribution to global GDP is less than 3%.

The dictator, worried about the abysmal condition of the economy, is contemplating a host of reforms. As part of this exercise, he is keen on framing a workable policy for providing social security to the nation which best suits its needs. You are the Principal Secretary to the dictator, and have been tasked with the following:

- a) Identification of key stakeholders (groups or classes of citizens) as beneficiaries, justifying in each case why their needs mandate recognition;
- b) Propose a legislative framework which serves the interest of the diverse demography, basing it on any one or more of the various economic models of social security available;
- c) Justify the model you propose, citing reasons behind it being the best available alternative;
- d) Identify the drawbacks, if any, of your model.

Assume that Indus is politically and socio-economically similar in all respects to India in 1947.

[7+8+5+5 = 25 marks]

2. Amit is a worker, employed by a contractor, Nitish, at a construction site where a statue of Insanji, a local godman, was being built. The structure that was being built was next to a lake, the banks of which were muddy and slippery and hence, the workers on the very first day of joining were expressly prohibited from going near it. Naren, who was Amit's friend and co-worker, went near the banks of the river to smoke, during the official lunch break. Unfortunately, Naren slipped and fell into the river. Being unable to swim, he shouted for help. Amit, on hearing his cries, rushed to rescue him. While Naren escaped unscathed due to his friend's heroics, Amit himself suffered serious injuries and was hospitalized. The builder, HSBC Developers, when informed of the incident, refused to pay compensation claiming that Amit wasn't their employee, and any liability must be dealt with by Nitish, as per the terms of the agreement between them. However, Nitish, sensing trouble, has gone missing.

Can Amit's claim succeed?

[15 marks]

Part II- Answer any TWO questions (30 marks)

3. "Some of the most important sex discrimination cases in India (and elsewhere) have been brought to the Court in the context of service and labour law. *Nargesh Mirza* initiated a constitutional jurisprudence where the rules of service law overshadowed rigorous constitutional analysis, and were even giving primacy over the latter. This, as we shall see, would lead to a progressive undermining of constitutional analysis under the non-discrimination guarantee of Articles 15 and 16."

-Gautam Bhatia (2015)

Do you agree with the author's view that the judgement in *Nargesh Mirza* led to a 'progressive undermining of constitutional guarantees'? Justify with reference to decided cases.

[15 marks]

4. "In a tragic farce, sanitation workers often unionize to fight for the right to keep their jobs. With privatization, they could lose the little security that government employment offers. So, they fight for the right to die in their manholes, for this privilege to be theirs alone. They demand reservation for their sub-caste to keep these jobs."

-Mary Marcel Thekaekara (2009)

In light of judgements by the Supreme Court and various High Courts, comment on the constitutionality of manual scavenging in India. Highlight the dilemmas faced by the State in regulating this inhumane practice. Do you feel the practice continues due to necessity?

[15 marks]

5. Write short notes on:

[5x3= 15 marks]

- i. Theory of 'notional extension'
 - ii. 'Functional Integrality' test
 - iii. Feminization of Labour
-

THE W. B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2017 – 7th Semester - 2014 Batch & 9th Semester – 2013 Batch

LAW AND IMPOVERISHMENT

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.
-

1. “The paradox of rights-based approach to poverty lies in the fact that while the approach is particularly significant in a context of political dysfunction, the same dysfunction also undermines its efficacy.”
Comment with the help of examples. [Mark 15]
2. “Insisting that courts should adopt an assertive role in social rights adjudication in order to protect the poor is unjustified.”
Does the experience of India, South Africa and Brazil with adjudication of socio-economic rights support this statement? [Marks 15]
3. “Oppression designates the disadvantage and injustice some people suffer not because a tyrannical power coerces them, but because of the everyday practices of a well-intentioned liberal society.”
Would this statement be apposite for regulatory attempts to deal with urban poor in India? [Marks 10]
4. Subjecting Aadhaar and Cash Transfer to the touchstone of Capabilities Approach may require a fundamental reorientation of present policies on Aadhaar and Cash Transfer.
Do you agree? Please substantiate your answers with reference to impact of these schemes on welfare schemes. [Marks 10]

THE W. B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination - Third Semester – 2016 Batch

Legal History I

Full Marks - 70

Time Allowed – 3 Hrs.

A. **Answer any five long questions:** 10 x 5 = 50

1. Analyse the units of ancient Indian society to demonstrate how society functioned in the *Vedic* age. Did the organs of the tribal assembly in the Vedic Age function democratically?

6 + 4 = 10

2. Examine the nature of kingship and royal functions in ancient India. Did the councillors and officials represent royal power?

6 + 4 = 10

3. Enumerate the different types of courts in ancient India. Explain how strict adherence to *dharma* contributed to the building of a rationale behind the establishment of a strong judiciary in the Vedic Age.

7 + 3 = 10

4. Explain the concluding stages of the judicial procedure in Hindu law. Did the rule of law closely inform the ancient Hindu judicial system? Did the trial method in ancient India reveal a highly developed legal system?

4 + 3 + 3 = 10

5. Trace the origins of quasi-feudalism and feudalism in ancient Indian society? Does a close look at the salient features of Indian feudalism reveal a more authoritarian system than European feudalism? Was feudalism in Bengal unique?

3 + 3 + 4 = 10

6. Explain the causes for the emergence of the *varna* system in ancient India? What are the salient features of the *varna* system? What is the relationship between *varna* and *jati*?

4 + 3 + 3 = 10

B. **Answer any four short notes:** 5 x 4 = 20

7. What are the *Kalpasutras*? Examine the different classes of *sutras* that emerged out of the *Kalpasutras*?

2 + 3 = 5

8. Analyse, in brief, the administrative machinery of the *Sakyan* republics? Explain the nature of the *Sakyan* state?

2 + 3 = 5

9. Trace the origins and functions of *panchayats* in ancient Hindu law. Examine the nature of governance in the villages of ancient India.

2 + 3 = 5

10. Trace, in brief, the salient features of pastoralism in ancient Indian economy. Did pastoralism represent a highly developed stage in the growth of the ancient Indian economic structure?

2 + 3 = 5

11. Explain, in brief, the trial process in Hindu law. From when and under whose rule did the profession of pleaders emerge in ancient India?

3 + 2 = 5

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

END SEMESTER EXAMINATION- MONSOON SEMESTER 2017

LEGAL METHODS

Full Marks-50

Time Allotted- 3 Hrs.

General Instructions

- A. Reading time of fifteen minutes is allowed**
- B. All questions are compulsory.**
- C. No written or printed reference or study material, including notes or texts are permitted.**
- D. Mobile phones, tablets, laptops and other electronic devices are prohibited in the examination centre.**
- E. If questions appear unclear please write your responses on the basis of explanations or assumptions as you consider appropriate, in each case clearly stating such explanations or**

1. Having found his factory productivity and efficiency falling over the past five years, Mr Agrawal, the managing director of Omkar Foods Limited has issued the following rule ("Order") to all employees:

Of late factory efficiency has deteriorated. Profits are reduced and there is concern about the longterm viability of the business. I have observed lack of attention to work, casual attitude of employees, late attendance and frequent breaks during office hours. These result in low productivity, disrupt workplace discipline and endanger attention to quality control. From now on therefore, non-work activity by any employee is prohibited and breaks other than 30 mins for lunch and 15 mins for teatime will require my approval.

Within a week four persons have been charged with violation of the Order. They are as follows:

Haridas Pal, executive director and chief of sales - charged with listening to music on headphones while working.

Abdus Salam, assistant manager - charged with going home to visit his wife who is ill.

Siddharth Nair, telephone operator - charged with taking an extra one (1) minute to complete lunch.

Sarthak Behuria, security guard - charged with possession of a packet of cigarettes while on duty.

As a defence lawyer to each of these accused persons please write a short memorandum of not more than 500 words for each case advocating how the person charged is not guilty under the Order.

(4 x 5 = 20 marks)

You are advised to clearly articulate your reasoning as well as the rules of statutory interpretation applied (if any) in stating your arguments. You may use assumptions of fact provided you clearly state those.

2. Please study the judgment provided in Annexure I to this question paper.

(30 marks)

Based on your study please answer the following questions.

- (a) Please articulate the material facts (4)
- (b) Please articulate the legal issues (4)
- (c) Please articulate the ratio / holding (4)
- (d) Please articulate one orbiter (4)
- (e) Please explain why and how you made a distinction between your responses in (c) and (d). (4)
- (f) Please write a dissenting judgment of no more than 800 words. (4)
- (g) What distinctive aspect of the common-law system is demonstrated in this judgment? (2)
- (h) Under what circumstances would the doctrine of res judicata apply or be relevant in the context of this judgment? (2)
- (i) Is it possible to argue that judgments such as these are inconsistent with self-determination and autonomy of peoples - in the context of lawmaking? Please substantiate with reasons. (2)

Annexure I

Blyth v. Birmingham Waterworks Co.
Court Of Exchequer
11 Exch. 78, 156 Eng. Rep. 1047 (1856)

JUSTICE ALDERSON

This is an appeal by the defendants, the Birmingham Waterworks Co., from a decision of the judge of the Birmingham County Court in an action tried before a jury, and brought by the plaintiff to recover for damage sustained by him by reason of the negligence of the defendants in not keeping their water-pipes and the apparatus connected therewith in proper order.

The defendants were incorporated by statute (7 Geo. 4) for the purpose of supplying Birmingham with water. By section 84 of their Act it was enacted, that the company should, upon the laying down of any main-pipe or other pipe in any street, fix, at the time of laying down such pipe, a proper and sufficient fire-plug in each such street, and should deliver the key or keys of such fire-plug to the persons having the care of the engine house in or near to the said street, and cause another key to be hung up in the watch-house in or near to the said street. By section 87, pipes were to be eighteen inches beneath the surface of the soil. By section 89, the mains were at all times to be kept charged with water. The defendants derived no profit from the maintenance of the plugs distinct from the general profits of the whole business, but such maintenance was one of the conditions under which they were permitted to exercise the privileges given by the Act. The main-pipe opposite the house of the plaintiff was more than eighteen inches below the surface. The fire-plug was constructed according to the best known system, and the materials of it were at the time of the accident sound and in good order.

The apparatus connected with the fire-plug was as follows: The lower part of a wooden plug was inserted in a neck, which projected above and formed part of the main. About the neck there was a bed of brickwork puddled in with clay. The plug was also enclosed in a cast iron tube, which was placed upon and fixed to the brickwork. The tube was closed at the top by a moveable iron stopper having a hole in it for the insertion of the key, by which the plug was loosened when occasion required it. The plug did not fit tight to the tube, but room was left for it to move freely. This space was necessarily left for the purpose of easily and quickly removing the wooden plug to allow the water to flow. On the removal of the wooden plug the pressure upon the main forced the water up through the neck and cap to the surface of the street.

On February 24, a large quantity of water, escaping from the neck of the main, forced its way through the ground into the plaintiff's house. The apparatus had been laid down 25 years, and had worked well during that time. The defendants' engineer stated, that the water might have forced its way through the brickwork round the neck of the main, and that the accident might have been caused by the frost, inasmuch as the expansion of the water would force up the plug out of the neck, and the stopper being encrusted with ice would not suffer the plug to ascend. One of the most severe frosts on record set in on January 15, 1855, and continued until after the accident in question. An encrustation of ice and snow had gathered about the stopper, and in the street all round, and also for some inches between the stopper and the plug. The ice had been observed on the surface of the ground for a considerable time before the accident. A short time after the accident, the company's turncock removed the ice from the stopper, took out the plug, and replaced it.

The trial judge left it to the jury to consider whether the company had used proper care to prevent the accident. He thought that, if the defendants had taken out the ice adhering to the plug, the accident would not have happened, and left it to the jury to say whether they ought to have removed the ice. The jury found a verdict for the plaintiff for the sum claimed.

I am of opinion that there was no evidence to be left to the jury. The case turns upon the question, whether the facts proved show that the defendants were guilty of negligence. Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. The defendants might have

been liable for negligence, if, unintentionally, they omitted to do that which a reasonable person would have done, or did that which a person taking reasonable precautions would not have done. A reasonable man would act with reference to the average circumstances of the temperature in ordinary years. The defendants had provided against such frosts as experience would have led men, acting prudently, to provide against; and they are not guilty of negligence, because their precautions proved insufficient against the effects of the extreme severity of the frost of 1855, which penetrated to a greater depth than any which ordinarily occurs south of the polar regions. Such a state of circumstances constitutes a contingency against which no reasonable man can provide. The result was an accident, for which the defendants cannot be held liable.

JUSTICE MARTIN

I think that the direction was not correct, and that there was no evidence for the jury. The defendants are not responsible, unless there was negligence on their part. To hold otherwise would be to make the company responsible as insurers.

JUSTICE BRAMWELL

The Act of Parliament directed the defendants to lay down pipes, with plugs in them, as safety-valves, to prevent the bursting of the pipes. The plugs were properly made, and of proper material; but there was an accumulation of ice about this plug, which prevented it from acting properly. The defendants were not bound to keep the plugs clear. It appears to me that the plaintiff was under quite as much obligation to remove the ice and snow which had accumulated, as the defendants. However that may be, it appears to me that it would be monstrous to hold the defendants responsible because they did not foresee and prevent an accident, the cause of which was so obscure, that it was not discovered until many months after the accident had happened.

Verdict to be entered for the defendants.

MEDICINE & PUBLIC HEALTH LAW

Total Marks: 40

Maximum Time: 3 hours

EXAMINEES ARE NOT PERMITTED TO CARRY ANY SUPPLEMENTARY MATERIAL INTO THE EXAM OTHER THAN A NON-ANNOTATED COPY OF THE COMPILATION PROVIDED TO THEM EXPLICITLY FOR REFERENCE PURPOSES.

PART I

Answer ANY 2 of the following: (10x2)

- Q1.** Commencing with the Universal Declaration of Human Rights, progressing to the Declaration of Alma-Ata, and finally culminating in the Sustainable Development Goals, - identify, analyse and discuss the various facets implicit in the post-globalisation concept of health. How far does India's draft Nation Health Policy (2015) comply with the same?
- Q2.** Trace the evolution of the Hippocratic Oath from its original form to the modern version. Identify - with appropriate justifications sourced from all relevant legislative instruments and judicial utterances, - those points, which you feel are key to lending it optimum social relevance, in terms of establishing the key contours of the "Doctor-Patient Relationship".
- Q3.** Comment on the impact that *Roe v. Wade* had on contemporary society. Do you consider its legacy legally relevant to present-day India? Explain your position in light of the competing and conflicting rights discourse, as especially underscored when the established Constitutional ethos is juxtaposed against Sections 3, 4 and 5 of the Medical Termination of Pregnancy Act, 1971.

PART II

Answer ANY 2 of the following: (10x2)

- Q1.** Rekha is a middle-aged widow who works as a domestic help to earn herself a livelihood. During the course of one of her sessions, she feels a certain tremor developing in one of her hands. She, very typically, chooses to ignore this, until it reaches a point when it

actually begins to interfere with her ability to satisfactorily perform ‘professional’ chores. It is then that Rekha elects to visit her nearest Government clinic, whereupon, she is diagnosed with a neurological condition that has a great chance of being cured through surgery.

During the course of this consultation, the attending physician also informs her of the statistical presence of a narrow margin of risk, given that every individual’s constitutions responds uniquely to such neurosurgery. Rekha however, already being under considerable stress and worry over the prospect of this debilitation costing her, her job and livelihood, - immediately conveys her readiness for said operation, which is carried out perfectly as per established rules.

Nevertheless, during the course of the immediate post-operative period, Rekha begins to notice the onset of numbness at her fingertips, which when medically examined, indicate the early onset of partial paralysis.

Incensed and outraged, Rekha sues her doctor for having failed to secure a free, full and valid consent from her prior to commencing with the surgical procedure, and demands a hefty compensation for not only the ‘physiological injury’ sustained by her, but also the very strong probability of being rendered permanently unemployable, as a consequence.

Advise Rekha apprising her of all the possible pros and cons that she may have to face in law.

Q2. Pheroze, a 17-year old, has a documented history of neurological ailment, drug abuse, and has suffered periodic bouts of clinical depression. However, while he has recently been declared “clean” by his attending (private) physician, - he has nevertheless been advised admittance at a full-fledged psychiatric facility to ensure a steady and complete recovery from his malaise. Accordingly, Pheroze’s father, a distinguished politician and a single parent, - admits him to the best psychiatric specialist (State-run) hospital in town, where he is assured of round-the-clock care and surveillance. It so happens that on one occasion, - in between shifts, and after being administered his last dosage of the day, - Pheroze climbs out of his bed, undoes the French window nearest to it and jumps to his death.

Pheroze’s father sues the hospital, the medical team attending to his late son, and the individual nurses on duty at his ward, with gross criminal negligence amounting to manslaughter.

Opine and rule.

Q3. Dr. Tanya Ray is a very promising young physician who specialises in geriatrics. As part of her practice, she associates herself, among other organisations, - with a state-of-the-art retirement home. Eventually, she moves into the premises as the full-time in-house doctor of said home.

Among all the residents there, it is one Ms. Aparna Iyer, a retired diplomat, and unmarried, - who has enjoyed a long, eminent and a highly successful career, - and with whom there develops a unique bond, wherein Ms. Iyer insists that she should be attended to, solely and exclusively by Dr. Ray, - thereby resulting in a very high degree of mutual understanding and trust existing between the two, akin almost, to a quasi-filial relation.

It so happens that, Ms. Iyer has also been diagnosed with early-stage cancer, and has, on repeated occasions made it widely known to her fellow residents, caretakers, and obviously to Dr. Ray as well, - her emphatic espousal of “do not resuscitate” orders, to the extent of asserting that, “withdrawal of life support” or “euthanasia under instruction” were very much options she would surely favour, should the situation arise.

With passage of time, Ms. Iyer’s health begins to decline steadily, until there comes the day when she categorically instructs Dr. Ray to “do whatever may be needful” to put her out of her misery, should her age and disease debilitate her to the point of indignity.

As expected, Ms. Iyer duly succumbs to the ravages of advanced cancer as the metastasis progresses, until she reaches a point where she is in a state of continuous pain, utter dependence and, being in a fully lucid and cogent state of mind, - experiences excruciating indignity every waking moment. She endeavours to remind Dr. Ray of her desire for an “assisted suicide” of sorts, but, as the nursing staff are witness, Dr. Ray spares no pains to ensure her patient’s life and well-being for as long as possible.

However, after it becomes obvious that Ms. Iyer’s condition has deteriorated beyond any help whatsoever, - she expires rather abruptly of a massive cardiac arrest.

But the deceased never having had any history of cardiac disease, - her estate suspects ‘foul play’ (such as, a probable injection of salt solution, which would cause the identical effect, without leaving behind any trace whatsoever) in bringing about Ms. Iyer’s demise, and sues Dr. Ray for criminal negligence resulting in murder, with the retirement home being complicit in the same.

Examine and rule.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – VII Semester LL.B. - November 2017

Outer Space Law

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 texts (without commentary) of Space Treaties.
- (iii) Answer **question no. 7 and any four among the remaining six** questions.

1. Point out the limitations on the freedom of exploration, use and scientific investigation under space law. Elaborate upon the concerns in the interpretation of Article 6 of the Moon Agreement.

4 + 4 = 8 Marks

2. Whether the Cosmos 954 incident set any precedent in terms of liability for damage caused by space activities? Substantiate by analyzing the legal arguments of the States involved.

8 Marks

3. “Given the difficulties in the field of space insurance, gradual move towards the creation of space liability fund is advisable. It stands as an interesting option available for rebalancing the interests of different stakeholders in the existing imbalanced space liability regime.” Substantiate.

8 Marks

4. “UNIDROIT System of satellite financing suffers from several inherent limitations, which take away the practical utility of the System. Added to this, the possible conflict with the existing UN space treaties makes it redundant in protecting the interests of financiers of space activities.” Elaborate with the reasons.

8 Marks

5. How Russian space legislation stands apart from similar efforts in other jurisdictions? Evaluate by analyzing specific provisions.

8 Marks

6. Write short notes on the following

- (a) Jurisdictional concerns in dealing with infringement of patents in outer space
- (b) Concerns in norms of registration under Article II of the Registration Convention 1975

4 x 2 = 8 Marks

7. Cosmo Inc. is a private space company incorporated in the State of Dexito. It owns Broad-Sat, a broadcasting satellite launched from a Dexito’s facility and registered therein. Bx2, Bx8, Bx9 and Bx12 are the separately identifiable components of Broad-Sat, which are pledged as collateral for procuring loans from M/s. Dexo Investors, M/s. Space Solutions, Mr. Latov Xaxa, Ms. Susan George, Mr. Fabro Mendis and Mr.

Rand Gregory. Following are the details of the financial arrangements between the above creditors and Cosmo Inc. in this case.

- (i) M/s. Dexo Investors has paid a loan of \$ 8 billion to Cosmo Inc. on 18 March 2013. The contract was entered at Dexito and the security interest was registered on the above-mentioned date in the UNIDROIT Registry.
- (ii) M/s. Space Solutions has lent \$ 6 billion to Cosmo Inc. on 6 July 2013. The contract was entered at Revaland, which is the place of incorporation of M/s. Space Solutions. The parties have agreed Revaland's law as applicable law under the UNIDROIT System and the said security interest was registered on 7 February 2016 in the UNIDROIT Registry.
- (iii) Cosmo Inc. has borrowed \$ 2 billion from Mr. Latov Xaxa on 15 August 2013. The contract was entered at Dexito and the security interest was registered on 15 February 2016 in the UNIDROIT Registry.
- (iv) Ms. Susan George is the divorced wife of Mr. Latov Xaxa and was aware of the prior existing unregistered security interest of Mr. Latov Xaxa. She financed \$ 1 billion to Cosmo Inc. on 23 September 2014 and registered the security interest on the same day in the UNIDROIT Registry. The contract was entered between the parties at Dexito.
- (v) Mr. Fabro Mendis has lent \$ 2 billion to Cosmo Inc. on 1 December 2014 and yet to register his interest in the UNIDROIT Registry. The contract was entered at Dexito.
- (vi) Cosmo Inc. has borrowed \$ 1.5 billion from Mr. Rand Gregory on 14 April 2015. The contract was entered at Dexito and the security interest was registered on the above-mentioned date in the UNIDROIT Registry.

In order to cater to the demands of increased users of broadcasting signals, the Cosmo Inc. decided to upgrade the capacity of Broad-Sat by constructing and adding to it a separate module, Bxy2. For this, the Cosmo Inc. borrowed \$ 4 billion from M/s. Best Financers by creating a prospective international interest on Bxy2. The contract was entered at Dexito and the prospective international interest was registered in the UNIDROIT Registry on 3 June 2015. The module Bxy2 is subsequently constructed and added to the existing satellite on 23 April 2016 (which is the date of prospective international interest becoming international interest).

On 10 May 2016, the Supreme Court of Dexito delivered its final judgment on a longstanding dispute between Cosmo Inc. and Mr. Drench Libera relating to unlawful acquisition of the latter's property by the former. The judgment, which is in favour of Mr. Drench Libera, created an interest in favour of him to the tune of \$ 2 billion in Broad-Sat.

After Bxy2 is attached to Broad-Sat, the satellite started to witness some technical glitch. Though the satellite is functional, the service output of the satellite started to decrease, resulting in sharp worldwide decline in the clients of Cosmo Inc. The decline in the clients coupled with the expensive operative costs of the satellite lead to huge losses to Cosmo Inc. in a short span of time. Consequently, hitherto wealthy Cosmo Inc. started to make defaults in the repayment of loans to all creditors. Following are the details of the loan amount due to the creditors at present.

- | | | |
|-------|-----------------------|-----------------|
| (i) | M/s. Dexo Investors: | \$ 3 billion |
| (ii) | M/s. Space Solutions: | \$ 3 billion |
| (iii) | Mr. Latov Xaxa: | \$ 1 billion |
| (iv) | Ms. Susan George: | \$ 1 billion |
| (v) | Mr. Fabro Mendis: | \$ 1.75 billion |

- (vi) Mr. Rand Gregory: \$ 1.25 billion
- (vii) M/s. Best Financers: \$ 4 billion
- (viii) Mr. Drench Libera: \$ 2 billion

The security interest holders have started to proceed against Cosmo Inc. to get back their money. The experts estimate the value of Broad-Sat to be approximately at \$ 14 billion as per the current market prices.

In the light of above circumstances:

- (a) Enlist the security interest holders on the basis of their priority by applying the norms of the UNIDROIT system. Supplement your answer with appropriate reasons.
- (b) Parties are contending that M/s. Space Solutions security interest cannot be recognized, since it is created at Revaland. Do you agree with this argument? Substantiate.

Note: * UNIDROIT system referred under this problem means UNIDROIT Convention on International Interests in Mobile Equipment 2001 (UNIDROIT Convention) and Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets 2012 (Space Protocol).

** Entry into force of the UNIDROIT system is presumed to be on 1 January 2013 for the purpose of this problem.

*** Dexto is a party to the UNIDROIT system. Revaland has signed the instruments, but yet to ratify.

**** Dexto has deposited a declaration under Article 39(1) of the UNIDROIT Convention about the executive and judicial actions during the time of ratification.

10 + 3 = 13 Marks

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

END SEMESTER EXAMINATION- MONSOON SEMESTER 2017

POLITICAL SCIENCE - I

Full Marks-50

Time Allotted- 3 Hrs

Q1) Answer any four of the following:

(4x10=40 Marks)

- a) "Political philosophy mainly dwelled on the logic of the grounds and limits of political obligation." In the light of this statement explain the traditional approach to the study of Political Science by analyzing the philosophical, historical and legal-institutional sub-approaches. (10)
- b) Explain the significance of the Social Contract Theory regarding the origin of the state highlighting the views of John Locke. Do you think that Locke was one of the pioneers of individualism? (3+5+2=10)
- c) Explain the intellectual foundations and achievements of the Behavioural school of Political Science. (5+5=10)
- d) Explain critically the origin and development of the Pluralist Theory of Sovereignty by referring to the views of Harold J. Laski and Mac Iver. In this context, also highlight, the characteristic features, merits and demerits of this Theory. (3+3+4=10)
- e) Discuss the implications and shortcomings of the Theory of Force regarding the origin of the state. Do you think this theory is obsolete in the 21st century? Give reasons for your answer. (4+4+2=10)
- f) What do you mean by 'Good Governance'? Explain the different indicators for good governance. (5+5=10)

Q2) Answer any two Short Notes: (2x5=10)

- a) Power, Authority and Legitimacy
b) Feedback in Politics
c) Marx on Class

Protection of Animal Rights

Full Marks - 60 Marks

Time Allowed – 3 hours

Discussions may be drawn from relevant legal provisions (Biodiversity Act, EPA, Wildlife Protection Act, etc.) and case laws.

Answer the following

(15marks)

1. Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017 has led to the destruction of what little remains of a dignified life and livelihood for farmers. In the light of the provisions under Part III & IV of the Indian Constitution, do you agree/disagree to this statement?

Answer any three of the following

(15*3=45marks)

2. The placard on Jade's gate clearly writes 'Beware of Dogs'. Jade's pet dog is a Beagle, known to be one of the most friendly dog species. Ben, the 13 years old neighbor of Jade had always teased the dog, at times poking the dog with a stick and many times throwing pebbles at it. On one such occasion, the dog out of sheer discomfort jumped at the boy, the latter hit himself hard on the cement floor thereby sustaining injuries on his forehead and a fractured elbow. Ben's parents have filed a case against Jade on two counts- (a) negligence (b) liability of the pet owner. You as the advocate for Jade, argue the case against these two counts. (5+5=10). Will Jade's counter the allegations on grounds of animal cruelty committed by Ben be sustainable? (05)
3. (a) Currently in India, experimentation on animals is covered under the provisions of Prevention of Cruelty to Animals Act, (PCA Act) 1960 and the Rules under the amended Act of 1998 and 2001. This is implemented through a committee called "Committee for the Purpose of Control & Supervision of Experiments on Animals (CPCSEA)". It is a statutory body which was established in 1964 under Section 15(1) of Chapter 4, of the PCA Act under the Ministry of Environment Forest & Climate Change. Discuss the various guidelines adopted by the CPCSEA in this regard. (08marks)

(b) Supporters of the use of animals in experiments, such as the British Royal Society, argue that virtually every medical achievement in the 20th century relied on the use of animals in some way. The Institute for Laboratory Animal Research of the United States National Academy of Sciences has argued that animal research cannot be replaced by even sophisticated computer models, which are unable to deal with the

extremely complex interactions between molecules, cells, tissues, organs, organisms and the environment. Animal rights and some animal welfare organizations—such as PETA and BUAV—question the need for and legitimacy of animal testing, arguing that it is cruel and poorly regulated, that medical progress is actually held back by misleading animal models that cannot reliably predict effects in humans, that some of the tests are outdated, that the costs outweigh the benefits, or that animals have the intrinsic right not to be used or harmed in experimentation.

How do you think can this conflicting interest be balanced? (07marks)

4. A total of 1,144 people were killed between April 2014 and May 2017 by roaming tigers or rampaging elephants, according to statistics released by the environment ministry. Conflict is already one of the biggest conservation challenges. The human conflict with tigers has gradually increased since the 1970s, when India launched a nationwide tiger conservation program that carved out sanctuaries in national parks and made it a crime to kill a big cat. The shrinking of good quality habitats and access of the animals to movement corridors is absolutely critical for India's conservation efforts and the future of its iconic mammals.

As a wildlife conservationist, you are required to- (a) argue why killing of tigers/elephants/rhinos is a justified crime in India (b) taking into account legal provisions and instruments (if any) draw up suggestions on how to effectively counter the challenges faced to both human and animals alike especially when **natural calamities** strike. (7+8=15)

5. 3 cows, 4 bulls and 5 buffaloes were to be transport by road from village A to Town market B, a distance of 400kms. These cattle were fed 06 hrs before being transported in a truck which had no overhead roof. The truck stopped to feed the cattle after 3.5hrs into the journey, the next stoppage was the destination itself. On arrival, it was found that 1 cow and 1 buffalo had taken ill due to dehydration.

In the light of the Transport of Cattle Rules, 1978 have the requirements of the rules to transport the cattles followed? Is there any difference in the requirement(s) for transporting poultry animals? Is the health certificate issued by a veterinary a necessity? (6+6+3=15)

6. 20 Himalayan quail (*Ophrysia superciliosa*) an endangered bird species in India has been captured and caged by AXP, an illiterate villager in Uttarakhand with the intention to sell it in a trans- border 'tradefair on animals'. Unaware that the quail is a protected species AXP gets arrested under relevant provisions of the law.

With a special focus on the various legal framework in India, in particular the relevant provisions of CITES argue why the accused should be held liable. Had AXP sold the quails before being arrested, is there any possibility of arresting him still? Give suggestion as to fill (any) vacuum in the existing laws to counter poaching of endangered animals more effectively in India. (5+5+5=15)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 5TH Semester – 2015 Batch

PIL & HUMAN RIGHTS

Full Marks - 60 marks

Time Allowed: 3 hours

1. Write Short Notes on any four of the following

4x5=20 marks

- a. Preemptory Norm of International Law.
- b. Doctrine of *rebus sic stantibus*
- c. Universal Crimes.
- d. Calvo Clause
- e. Implied Recognition
- f. Acquisition of Nationality.

Answer any four Questions

2. Explain the place of general principles of law recognized by civilized nations as a source of International Law. Explanation should be substantiated with the help of decided cases. 10 marks

3. Comment on the doctrine of basic rights and duties of states under International Law with the help of decided cases. 10 marks

4. a. Attribution and Breach are the two main elements of an internationally wrongful act – Discuss with the help of decided cases. 4 marks

b. Two undercover intelligence agents of Country X played an instrumental role in sinking a ship harboured in one of the city ports of Country Y. The ship was registered in Country Z. The sinking of the ship led to the killing of a photographer belonging to country Z. The city port of Country Y was also destroyed. The agents of Country X were eventually apprehended by the

authorities of Country Y. The matter was referred for arbitration wherein Country Y demanded reparation and Country X wanted extradition of its agents. The arbitrator allowed Country Y a hefty compensation and asked it to transfer the two agents to a military facility (maintained by Country X) for three years. After a couple of months, Country X unilaterally decided to take back both the agents on health grounds. Country Y objected to this move and said that Country X had breached its international obligations by unilaterally transferring the agents without the explicit consent of Country Y. Country X denied international responsibility. The matter was again referred to an arbitral tribunal.

- (a) In light of the given facts, what possible defences could Country X invoke before the second tribunal?
3 marks
- (b) If you would have been an arbitrator in the concerned case, what would have been your judgment?
3 marks

5. Comment on the developments on the Law of the Sea after the decision in the Anglo-Norwegian Fisheries case 10 marks

6. a. Analyze the position of individuals under International Law with the help of decided cases. 6 marks

b. Analyze the Asylum Case between Columbia and Peru. 4 marks

7. Explain in detail the powers of Security Council under Chapter VII of the Charter of United Nations. 10 Marks

THE W. B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2017 – 7th Semester - 2014 Batch

SECURITIES LAW

Instruction to the Examinees

Examinees are allowed to refer to the module on **The Securities Law-I, Companies Act, 2013 and Securities Contracts (Regulation) Rules 1957** during the exam.

This Question Paper is divided into three parts i.e. PART – A, PART-B and PART-C. PART- A is **compulsory**, answer any **one** of the questions from PART-B and write short notes on any **One** topic in Part -C.

Total marks – 50 marks

Time Allowed – 3 hours

PART – A

This part is Compulsory (answer both the question in this part)

2X16 =32 marks

1. Accurate Logistics Ltd. (hereinafter ALL) is an unlisted promoter company, of a listed company named Ace Power ltd.(hereinafter APL). At present APL, is listed both in NSE and BSE .

The shareholding pattern of the erstwhile APL as on March 31, 2017 (as noted from the Annual Report 2016-2017 of APL) was as under:

Category	No. of shares held	% of shareholding
Promoter*	90,56,48,230	93.00
Public**	6,81,41,410	7.00
Total	97,37,89,640	100.00

* *ALL.(promoter unlisted company)*

** *Institutions (0.12%) and Non-institutions (6.87%)*

SEBI, in April 2017, ordered APL to reduce its promoter’s stake to a maximum of 75% from the current 93%, else the directors (including independent directors) on Board of APL shall not be allowed to occupy the position of Board Of Directors of other listed companies, the directors (including independent directors) shall be barred from dealing in securities of APL etc.

Following this order of SEBI, APL and ALL obtained approval of the Calcutta High Court to a scheme of amalgamation (between APL and ALL), which had the following important points:

- a) ALL, an unlisted sole promoter entity of APL, which held 93% of the shareholding in APL had transferred 24.69% of equity shares of APL to an irrevocable investment trust, viz. ALL Trust, having independent trustees.
- b) Thereafter, ALL will be amalgamated with APL,
- c) Trustees of ALL Trust will hold the Investment Division of ALL, in an irrevocable trust and shall also manage the ALL Trust in an independent manner, and
- d) Trustees of ALL Trust will constitute members of 'public' in relation to any and all the investments held by ALL Trust.

The shareholding pattern of APL for the quarter ending on June 2017 post amalgamation (as observed from the NSE website) was as under:

Category	No. of shares held	% of shareholding
Promoter	66,52,19,568	68.31
Public*	30,85,70,072	31.69
Total	97,37,89,640	100.00

**The shareholding of the ALL Trust (24.69%) in APL is also included in the Public Category.*

Subsequent to the transfer of shares by ALL to the ALL Trust, APL had been filing its shareholding pattern with the stock exchanges *inter alia* disclosing the promoter shareholding as 68.31% and public shareholding as 31.69%. APL vide letter dated June 03, 2017, addressed to NSE, (a copy of which was marked to SEBI) informed that by the said transfer by ALL of 24.69% equity share capital comprising of 24,04,28,662 equity shares of Re. 1 each to an irrevocable investment trust (ALL Trust) resulted in the reduction of the promoter shareholding of APL from 93% to 68.31% and the public shareholding has increased from 7% to 31.69%. Accordingly, APL asserted that they achieved the Minimum Public Shareholding (MPS) requirement on May 30, 2017.

On June 03, 2017 passed an order against the promoter and/or directors of APL for failing to adhere to the Minimum Public Shareholding (MPS) order issued by SEBI previously. The said *Order of SEBI inter alia* directed as under:

- a) freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding in the above mentioned non-compliant company, till such time the company complies with the minimum public shareholding requirement.
- b) prohibit the promoters/ promoter group and directors of the non-compliant company from buying, selling or otherwise dealing in securities of the company i.e.APL, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time the company complies with the minimum public shareholding requirement.

- c) restrain the shareholders forming part of the promoter/promoter group in the non-compliant company i.e. APL, from holding any new position as a director in any listed company, till such time these company complies with the minimum public shareholding requirement;
- d) restrain the directors of non-compliant company i.e. APL from holding any new position as a director in any listed company, till such time the company complies with the minimum public shareholding requirement.

Against the order of SEBI dated June 03, 2017, APL argued that it has duly complied with MPS standard whereby its promoters hold only 68.31% stake in the company.

Analysing the facts of this case and applying appropriate provisions of law, decide whether

- i. 24.69% shareholding by ALL Trust can be construed as 'public' shareholding
- ii. SEBI's action against APL for not adhering to MPS standards, is justified? Advise SEBI, with regard to the steps to be taken, if any, to strike off the said component in the scheme of amalgamation.

Argue on both sides and write a reasoned judgement.

8+8 =16 marks

- 2. A dispute arose between the appellant (who is an individual and also an investor in the securities market) and SEBI. In this case, the Appellant made certain purchases of shares of a listed company in BSE and NSE, between October and December, 2012, for which the regulator SEBI issued a 'Show Cause Notice' (hereinafter 'SCN') following the due procedure of law. According to the regulator SEBI, the appellant violated the securities market norms, in the course of his purchase of shares by accessing the Indian securities market.

In reply to the aforementioned SCN the appellant submitted that he had no intention to violate any rule or Regulations enacted by the regulator. The entire transaction value of purchases and sale of the shares did not exceed Rs. 55,000/-. It was further submitted that the transaction was neither made with a view to make any disproportionate gain or unfair advantage nor was it for the purpose of causing any loss to investors. The default, if any, was a technical default that did not call for any penal action.

Dissatisfied with the explanation offered by the appellant to the SCN issued by the regulator, SEBI imposed a monetary penalty of Rs 11 lacs upon the appellant citing the reason that there is no dispute that there was violation of mandatory securities market Regulations by the appellant, and that in any case, a penalty of Rs. one crore could have been imposed on facts, whereas, in fact, the regulator penalized the Appellant with a penalty of 11 lacs only, which cannot be said to be excessively harsh or unreasonable.

The appellant maintained that it is clear that the violation of the applicable securities market norms being only technical, and not involving any disproportionate gain to the Appellant, or unfair advantage or loss to any investor, SEBI was not, in the first instance, correct in imposing

any penalty at all. According to the Appellant the defaults that were made were technical, and were made on three days only, and there was no repetitive nature of any default as well.

The brief facts of the case being that appellant being the Promoter and Director of the listed company had purchased 57,180 shares of the Company on October 08, 2012; 50,000 shares of the Company on December 19, 2012 and 50,000 shares of the Company on December 20, 2012. Following this, the appellant also failed to meet the required 'initial' and 'continual' disclosures of interest(s) or holding(s) by directors, officers and substantial shareholders in the listed company within two working days of the acquisition of shares. Neither did the said listed company take measures to disclose or inform the stock exchanges about the changes in shareholding structure of the company. The appellant failed to make the disclosures as required by the SEBI norms. The transactions of the appellant and the violations committed by him can be summarized as follows:

- a) On 8-Oct, 2012 purchased an amount of 57,180 shares,
- b) on 19-Dec- 2012, purchased 50000 shares and
- c) on 20-Dec-2012 again purchased 50,000 shares

By virtue of and post the completion of the aforementioned transactions the appellant has now acquired shares exceeding 5% of the total shares in the said listed company.

Regarding the issue of not making the required disclosures, the appellant in his argument has submitted that he had no intention of suppressing the fact of purchase and sale of shares. The appellant has also submitted that his act of omission of making disclosure to the stock exchange may be viewed leniently.

Analyzing the facts, arguments provided in this case and applying appropriate provisions of law, write a reasoned judgment imposing appropriate penalties (if any) on the party for violating the securities market norm (if any). 16 marks

PART-B

Answer any **one** question from this part

1x10 = 10 marks

3. Critically analyse the role of sebi as regulator of capital market in India 10 marks
4. Discuss the various types of equity instruments that can be offered and/ or allowed to be traded in registered stock exchanges in India. 10 marks

PART – C

5. Write short notes on any **one** of the following topics

1x8 = 8 marks

- a) Clearing, Netting and Settlement of Trades in Stock Exchanges
- b) Types of Issues in capital markets

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

END SEMESTER EXAMINATION- MONSOON SEMESTER 2017

SOCIOLOGY – I

Full Marks-60

Time Allotted- 3 Hrs.

Each question has to be completed before you proceed to the next question. Incorrect numbering of the questions will entail marks deduction. Attempt the exact number of questions asked for. Do not answer more than the number required since marks may be deducted.

Part A: Essay Type questions: Any 2

2x20=40 marks

1. Do you think that the dominance of the medical profession is based on its power to define illnesses? Explain Foucault's concept of discipline in this context. (10+10)
2. What are the main characteristics of mechanical and organic solidarity? What is meant by anomie? What was the focus of the classic study on Suicide? (5+5+10)
3. Critically assess the contribution of Max Weber to the study of modern organizations. Using the concept of Bentham's Panopticon, comment on how the concept can be related to the study of modern organizations? (10+10)

Part B: Critically Comment on the following sentences: Any 2

2x10=20 marks

4. 'The fundamental sociological problem is not crime but the law, not divorce but marriage, not racial discrimination but racially defined stratification, not revolution but government.' (10)
5. 'The focus of classical criminology is very much on the relationship between crime, justice and punishment, rather than with explaining why certain individuals become offenders.' (10)
6. According to Chodorow, masculinity, rather than femininity, is defined by a loss and male identity is formed through separation. (10)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination – 9th Semester – 2013 Batch

Sports Law

Time Allowed: 3hrs

Full Marks: 50

Primary documents viz. World Anti-Doping Code; Court of Arbitration for Sport Code; National Sports Code 2011; International Olympic Committee Charter and the FIFA Statutes are permitted to be carried inside the examination hall. Additionally Case List, bearing only the names of the cases and articles, without any other comment or information, is permitted to be carried inside the examination hall. Please read the questions carefully. Questions have to be attempted from all the three parts viz. Part-A; Part-B; Part-C, as per the instructions given within those sections. There shall be no clarifications of doubts or queries during the examination. Please give only relevant arguments and use only relevant authorities.

Part-A

Answer any one of the following two questions:

Q.1 FIFA in December 2010 awarded the 2022 World Cup to Qatar. The tournament will commence from November 21 to December 18, 2022. Player X, who is susceptible to heat injury, is troubled by the decision of FIFA to award the World Cup to Qatar. Though the winter temperatures in Qatar will dip below 30 degree Celsius, X's doctor has recommended avoiding the same since it will cause him suffocation and exhaustion. Further X is likely to lose stamina and suffer permanent damage to his subcutaneous tissues. That will disable Mr. X from playing competitive professional football. Additionally, Mr. X's club, Arenal, also has severe objections to the scheduling of the World Cup. Being a regular in the English Premier League, the scheduling of the 2022 World Cup will upset its team plan. Since its players, numbering five, have to be released for the National duty, the club will loose on preparation time. English Premier League's entire schedule have to be changed and that means Arenal will have tougher chances in the Premier League.

Both Mr. X as well as Arenal take FIFA to the Court of Arbitration for Sports raising a dispute pertaining to the scheduling of the 2022 FIFA World Cup. Additionally they challenge the awarding of the 2022 World Cup to Qatar by which FIFA disregarded the health concerns of the football players. Importantly they challenge the holding of a winter football World Cup, since traditionally it has always been a summer World Cup.

Frame an Opinion based on the existing literature as to the outcome of this dispute. Support your reasons with relevant authorities.

[10+10=20]

Q.2 Gal Xenon is a player who loves to play cricket. She started playing cricket since the age of ten, during her school days. As she was growing up she realized that she was different in terms of her sexual orientation. This realization however did not stop her from playing cricket. Soon she was playing for her State and College team. Neither her team mates nor her coach had any problem with the fact that she was a lesbian. However the National Cricket Board of Swaziland has members, who are excessively conservative. They accordingly have passed a rule which states that:

“In order to protect the spirit of the game of cricket, no person who is not a heterosexual, will be eligible to play cricket in any form. The rule is applicable equally to both male and female players. It is hereby mandated that all the cricket players, both at the National and International level, shall undergo sexual orientation tests.”

This rule came into force with effect from 1 January 2017, by which time Gal was aiming to play for the Women’s National Cricket Team. She was appalled with the new rule and has decided to challenge the same before the High Court of Swaziland. For the purpose of this dispute, the governing law vis-à-vis both substantive as well as procedural matters is the Indian Law.

Frame an opinion on the dispute. Support your answer with relevant authorities. [10+10=20]

Part-B

Compulsory Question:

Q.3 Rahulkar is a cricket player who plays for India. Board of Control for Cricket in India (BCCI) is the National Governing Body for cricket in India. BCCI has committed itself to be World Anti-Doping Code (WADA) compliant. It has accordingly framed rules for conducting anti-doping tests and the eradication of doping within cricket. National Anti-Doping Agency (NADA) is the designated Anti-Doping rules enforcement agency within India. Rahulkar has to undergo routine doping tests, as per the BCCI rules. On 1st September 2017 when Rahulkar was required to submit his blood samples for testing, he refused. Rahulkar being an important member of the Indian National Team, this refusal was condoned by BCCI. On 15th September 2017, another notice was sent to Rahulkar to give his blood sample for testing, but again he refused to comply. BCCI pleaded with Rahulkar but he was adamant and argued that due to personal reasons, he will not give his blood sample for testing. BCCI reluctantly accepted Rahulkar’s argument and thereafter decided to exempt Rahulkar from all future anti-doping tests. NADA took notice of this attitude of BCCI towards Rahulkar and sought explanation. Further NADA demanded that all the cricketers are henceforth to be tested by NADA. They referred to the mandate issued to them by WADA, by virtue of which they are authorized to test all athletes including cricketers. BCCI however refuses to accede to the demand of NADA. BCCI further argues that it is not a National Sports Federation (NSF), hence it’s outside the jurisdiction of NADA.

In the light of the above dispute between NADA/WADA v BCCI, frame a legal opinion identifying all the relevant points. Support your opinion with relevant authorities. [10+10=20]

Part-C

Answer any one of the following two questions:

Q.4 In *National Collegiate Athletic Association v. Board Of Regents Of the University Of Oklahoma and University of Georgia Athletic Association*, why did J Stevens of the Supreme Court of the United States of America, refused to apply the *per se* analysis to NCAA's plan for televising college football? What were the findings of the majority in so far as the effect of the said plan on competition was concerned? [5+5=10]

Q.5 In its judgment dated July 18, 2016 in the matter of *BCCI v Cricket Association of Bihar*, what were the findings of the Supreme Court of India vis-à-vis the issue of implementing the RM Lodha Committee Report? [10]

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
END SEMESTER (MONSOON, 2017) EXAMINATION – 9TH SEMESTER – 2013 BATCH

PRINCIPLES OF TAXATION LAWS

Total Marks- 65

Total Time- 3hrs

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

1. "Taxes do fall but not all the taxes in the ambit of Article 301 of the constitution". Critically examine the statement with the help of relevant constitutional provisions and decided cases.

13

2. Answer followings-

- a. There is XYZ Co. in which Mr. Mungerilal acquires 8% equity shares and his Brother Mr. Mirchilal acquires 12% equity shares on July 1, 2016 and September 1, 2016 respectively. Mrs Hasheena, wife of Mr. Mungerilal is employed in the XYZ Co. as a clerk for which she holds the Bachelor Degree in Arts since May 1, 2016. She is getting the salary of Rs 50,000 per month. Mr. Mungerilal is also employed in the company but from October 1, 2016 and getting the salary of Rs. 40,000 per month. Mrs Hasheena also received Rs. 90,000 as interest on loan from the Company on March 31, 2017. Discuss the tax implication in the hand of Mr. MUNGIERIAL and Mrs. Hasheena for the A.Y. 2017-18.
- b. Mr A is in love with Ms. B and soon is going to get married. In anticipation of marriage Mr A transfers a house property "X" and certain shares in a Company valued at Rs. 5 lakh to B free of cost on 13th November 2015. Mr A and Ms B get married on November 14, 2015. Immediately after the marriage because of certain disputes they approach the competent Court of law and get the Decree of Judicial Separation on March 1, 2016 and since the both are living separately. Mrs. B gets the rent from the property "X" Rs. 80,000 and dividend of Rs. 90,000 on March 31, 2017. Discuss the tax implication the hand of Mr. A and Mrs. B for the relevant Assessment Year.
- c. Mr. "X" and Mrs "Y" are in "living-in relationship" since January 1, 2000. They get a girl child named " Z" on April 1, 2003. Mr. "X" and Mrs "Y" are residing separately. Ms. "Z" is living with her mother. On July 1, 2017, Ms. "Z" gets Rs 60,000 as interest from a fixed deposit made in her name by Mr. "A". She also gets another income of Rs. 80,000 from winning in KAUN BANEGA CARORPATI QUIZ

COMPETITION on September 5, 2017. During the P.Y 2017-18 Mr. "X" gets salary income of Rs 3 lakh and Mrs "Y" gets the salary income of Rs. 1 lakh. Discuss the tax implication for the relevant A.Y. in the hand of Mr. "X", Mrs. "Y" and Ms "Z".

4.5+4.5+4=13

3. Answer the followings-

- a. Critically examine the provisions of chargeability of income under the head "income from house property" with the help of suitable illustration(s).
- b. Mr. "A" purchases a house under installment system from the DLF HOUSING CONSTRUCTION CO. LTD ON January 16, 2016. Under the system, he is liable to pay monthly installments which consists principal sum and interest. The installments are being paid by his wife. Can Mr. "A" Claim the amount of interest portion in the installment as deduction under income tax? If yes, under which head and upto what amount?

9+4=13

4. Answer the followings-

- a. Critically examine the implication of provision of Section 51 and section 56(2)(ix), I.T. Act, 1961 with suitable illustration(s).
- b. "Year of chargeability of capital gain is the year of transfer of capital assets and not the year of receipt of consideration or otherwise". Critically comment on it.

8+5=13

5. Discuss the significance of residential status of assessee under Income Tax Act, 1961. Also Critically examine the tests for determination of residential status of individual under I.T Act, 1961. Refer statutory provisions and illustrations.

5+8=13

6. Answer the followings-

- a. Mr. Himmatwala, an employee of NUJS, Kolkata furnishes the following information for the PREVIOUS YEAR 2017-18 as under-
 - i. Basic salary Rs. 30, 000pm
 - ii. Dearness Allowance (DA) Rs. 20,000 as per terms of employment
 - iii. HRA Rs. 12,000pm
 - iv. Residing in a rented house in Howrah and paying rent Rs. 6000 pm
 - v. Income from "seedling and saplings" grown in nursery by him Rs. 3 lakh.

Compute the income tax liability of Mr. Himmatwala for the relevant A.Y.

- b. Elucidate the concept of "Marginal Relief" under Income Tax Act.

9+4=13

7. Critically examine the Income Tax Act provisions as to allowability of "unlawful loss or expenditure" suffered or incurred in carrying a lawful or unlawful business or profession. Refer statutory provisions and cases.

13

8. Write short notes on **any two** of the followings-
- a. Taxation of gift in India
 - b. General principles as Set off of losses.
 - c. "Depreciation" under PGBP head of income.
 - d. "There is needed to make distinction between tax and fees for legislative purpose". Critically comment.
 - e. Difference and implication of "exempted good" and "zero rated goods" in GST with suitable illustration.

6.5+6.5=13

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

END SEMESTER EXAMINATION- MONSOON SEMESTER 2017

THE LAW OF TORTS

Full Marks-60

Time Allotted- 3 Hrs

SUBSTANTIATE ALL ANSWERS WITH SUITABLE CASE LAWS

Part A – ALL QUESTIONS IN THIS PART ARE COMPLUSORY

1. Lock Eyes is a popular restaurant in Soho, London. Mario, its owner, prides himself on its mellow atmosphere and friendly staff. However, behind the scenes, there is a different story. Bert, the restaurant's wine steward and Dillon the head chef [who rustles up speciality dishes, contractually, every summer at Lock Eyes] have fallen out over Bert's wine choices for Dillon's signature pastas. Eventually Dillon's quick temper gets the better of him—he grabs an empty wine bottle and hits Bert across the back of the head, severely injuring him. At this time, Cadbury Blacker, the local librarian, who performs in the evening at the restaurant, is setting up equipments for her regular evening set of singing 80s rock music. As she begins on the first strains of 'Sweet Child O' Mine' Dillon storms out of the kitchen, trips over a lead Cadbury that has negligently failed to tape down, and breaks his ankle. Meanwhile, Biggles is walking around the bar talking to the customers. He is employed as a host to make the guests feel comfortable, and is a well-known figure at the bar. Mario has borrowed Biggles from his friend Buffon [who has become a restaurateur recently, after giving up football]. Buffon pays Biggles's wages. Bella has been coming to the bar for a few weeks and Biggles has been particularly welcoming. He often encourages her to stay late to help him tidy up and then gives her a lift home in his sports car. After one such occasion Bella complains that Biggles has sexually assaulted her. A subsequent criminal investigation upholds her claim. Do Bert, Dillon and Bella have any claims for compensation against Mario? Discuss in light of the principles of vicarious liability.

(3x4=12 marks)

2. (a) Rachael invested £600,000 in Read-Sing-Sign, a children's charity bookshop in Oxford, after speaking to Amanda, her friend, who was an auditor. Amanda had prepared the financial report for the trustees of the shop, but had showed it to Rachael 'off the record'. Amanda's report showed that the bookshop was doing well and made good annual profits. It later transpired that the audit was inaccurate as Amanda had failed to include a few unpaid debts in the figures. Meanwhile, Rachael, who was relying on a £200,000 inheritance from her grandfather in order to be able to pay for her share of the shop, was told by the solicitors dealing with her grandfather's will that it was invalid, and the terms of his previous will - which left everything to a local cats' home - would have to be followed. This was because Rachael's grandfather had failed to sign both copies of the latest version of the will. However,

upon inspection Rachael found that the solicitor's copy was the one filed without checking for her grandfather's signature. Advise Rachael as to the likelihood of success of any claims in negligence that she may have against the auditor and the solicitor respectively, focusing on the concept of duty of care.

(3+3=6 marks)

(b) Kate and Iris spent the afternoon in Bond Street, looking at wedding dresses. Before heading home they visited a new champagne bar to celebrate finding 'the one' and had a drink too many. Iris then offered Kate a lift home in her car, assuring Kate that she was fit to drive. On the journey home Iris lost control of the car and crashed into a lamp post. Kate suffered minor cuts and bruises and was taken to the hospital. At the hospital Kate contracted an infection in a cut to her right arm. The doctor on duty decided not to treat the infection with antibiotics immediately as he had read a report in a medical journal which stated that, according to latest medical practice, it is better to allow the body 'time to heal' following a trauma. Kate's right arm becomes partially paralysed. Kate wants to sue for damages, for the full extent of her injury. Advise Kate in this regard, taking into account the possible defences that could be raised.

(6 marks)

3. Following months of speculation the legendary indie guitar band - Blinking Idiot are about to embark on a reunion tour of the UK. They are performing a warm-up gig at a small intimate venue, when a spotlight falls onto the stage causing a massive explosion killing the band members: Madeleine, Amish and Dave. Unfortunately, the lighting rig (onto which the spotlight was fitted) had been negligently maintained by Rack & Horse Lighting. The sight is particularly gruesome. Hannah, Amish's wife, is watching the gig from the VIP area of the venue. She is physically unharmed, but later suffers nightmares and depression. This is particularly traumatic for her as she had previously suffered from depression, but had sought help and recovered. Pete, Madeleine's brother, is listening to the live radio broadcast of the gig from his hotel room in Paris. He hears the explosion and can hear Madeleine screaming. He rushes to the airport, managing to catch a flight that is just leaving, and arrives at the hospital three hours after the accident. Unfortunately, Madeleine's body has not yet been moved to the morgue and is still covered in blood and grime from the explosion. He develops post-traumatic shock disorder. Lucy has attended every Blinking Idiot gig in the UK and has travelled to a number of their overseas concerts. She is a founder member of their fan club and regularly contributes to their fan magazine. She always tries to stand as close as possible to the stage. She was not hurt by the explosion but has since been overcome with grief. Tim was one of the first on the scene. He is a trainee ambulance man and rushes to the stage to rescue the band members, but sees that there is little he can do. He spends the next two hours comforting distraught fans. He later suffers from recurring nightmares and panic attacks.

Advise Hannah, Pete, Lucy and Tim as to whether they have any viable claims for compensation, from the incident.

(4x3=12 marks)

Part B

ANSWER ANY TWO QUESTIONS IN THIS PART

4. Henry, Mark, Mary, and Anne are sitting in the students' union bar discussing their outfits for the forthcoming 'Law Society Spring Ball'. Thomas, Mary's ex-boyfriend, walks by and says quietly to Henry, 'I'll get you! No one steals my girl and gets away with it'. Although Henry is not particularly upset by this, he decides to teach Thomas a lesson. When no one is looking, he deliberately trips Thomas. Thomas falls over but is not hurt. Meanwhile Mark and Anne have sneaked into the bar's store room for checking its contents. On seeing this, Thomas locks the store room door. It remains locked until Rafe, the bar man, comes on duty some time later and unlocks it. Mark and Anne have no knowledge that they were locked in. You are asked to advise the parties as to whether they have any claims in any of the trespass to the person torts, elaborating only on the elements of the torts in question. (4x3= 12 marks)
5. Write a detailed note on the evolution of the law relating to State Liability under Article 300 of the Constitution of India, with reference to suitable cases. (12 marks)
6. Critically analyse ANY ONE of the following cases: (12 marks)
- (a) Chairman Railway Board V. Chandrima Das
- OR
- (b) Jay Laxmi Salt Works V. State of Gujarat

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

End Semester Examination: 9th Semester – 2013 Batch

TRADEMARK LAW

Full Marks: 50

Time Allowed: 3 Hrs.

Note: Answer any 5 of the following Questions

Total marks: 50

1. It has been almost two decades after India is into its new trademark law regime having brought its trademark law in compliance with TRIPS agreement. We have seen in the recent past where in certain brands are given recognition and registration while not been in strict compliance of principles of trademark law such as “graphical or visual representation”. Discuss in the current context and give your opinion on whether Indian trademark law requires any further changes in its substantive or procedural elements in protecting innovative trademarks such as sound marks smell marks and the like which cannot probably fulfill the requirement of graphical representation. Support your answer with the help of case laws. (10*1=10)
2. ‘Oppo’ is a known smart phone which is having good market in India. The producers of ‘oppo’ smart phone have registered ‘oppo; the camera phone’ as their trademark. It is observed that; the business promotions of the said product, package and the advertisements indicate to the consumer that; ‘oppo’ is a camera phone and it is best for taking photos and ‘selfies’. Where as it is well known fact that now a day’s every smart phone irrespective of company, price and capacity has cameras and can be used for taking photos and selfies. In this context, other well known smart phone companies such as “LAVA’ ‘LENEVO’ ‘SAMSUNG, ‘NOKIA’ want to move objections to the trademark registry on the registration of trademark ‘oppo; the camera phone’. It is also contended that the trademark is descriptive as the registered title, product and the advertisement are giving enough description about the product in the context and therefore the registration shall be revoked. Analyze the present case in the context of ‘descriptive trademark’ while presenting the settled law in this regard with the help of decided case laws. (10*1=10)
3. Discuss in brief the process of registration of trademarks in India while emphasizing on the absolute grounds on the basis of which registration of trademarks could be rejected by the registrar of trademark? Whether the trademark registry can reject the trademark application on the basis of absolute grounds without any further proof. Support your answer with the help of decided case laws. (10*1=10)
4. www.neeruganti.com is a registered domain name of a well known law firm which is known for providing legal and compliance services in and around Bangalore.

www.neeruganticonsultancy.com is also a registered domain name of another prominent law firm which also provides for legal consultancy services. The first firm is opposing the registration of the domain name of the second firm on the ground of similarity and intends to move for revocation of the registration of the domain name of the second firm. Advise and give your opinion on the matter to the first law firm in the light of established principles and practices with the help of decided case laws. Discuss whether principles of trademark law could be applied in the matters of assessing similarity of domain names. (10*1=10)

5. Why do you think that; 'distinctive character' is considered as the basic threshold under trademark law in recognizing propriety of trademarks? Elaborate the role of concept of 'distinctive character' in the determination of validity of a trademark with the help of decided case laws. (10*1=10)
6. Adidas is a famous sports goods company which has registered a trademark 'Madidas' for its newly produced brand of shoes. Over the years 'Madidas' brand of sports goods garnered good reputation in the market. Nike, another famous sports goods company which has also got its own share in the market with proven credibility of its brand with an established consumer base. Nike launched its new brand of shoes for which it has applied for 'vadidas' as their trademark. The matter is before the trademark office pending a decision. What is your opinion on the above trademarks? Do you think that both the above marks are deceptively similar? Discuss the rules of comparison in this regard for assessing similarity of trademarks with the help of decided case laws and illustrations. (10*1=10)
7. Write short note on any FOUR of the following: (2.5*4=10)
 - a. Nation Wants to Know: The brand war
 - b. Trademark for movie Characters
 - c. Certification mark: What does it certify?
 - d. IP Appellate Board and its Functioning
 - e. Trademark as business identifier