

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

END SEMESTER EXAMINATION: MONSOON SEMESTER 2019

NOVEMBER 2019

1. Advanced Constitutional History I
2. Agricultural Law
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THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 – 5th Semester – 2017 Batch

Advanced Constitutional History of India I

Full Marks – 70

Time Allowed: 3 hours

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

1. Trace the historical antecedents of the civil rights movement in Modern India. Was Part III of the Indian Constitution dealing with the Fundamental Rights based on the Bill of Rights of the American Constitution? **7 + 3 = 10**
2. Alladi Krishnaswamy Aiyar, commenting on the absence of a socio-economic outlook in the India Constitution, said, “The constitution, while it does not commit the country to any particular form of economic structure or adjustment, gives ample scope for future legislatures and the future parliament to evolve any economic order and to undertake any economic legislation they choose in public interest”. Examine the genuineness of this statement with reference to the commitments of the framers of the Indian Constitution. **10**
3. Examine the political circumstances under which the word ‘Socialist’ was inserted in the Indian Constitution. Did the inclusion of the word ‘Socialist’ in the Indian Constitution contribute to the changing of the basic structure of the Constitution? **4 + 6 = 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 of India 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 Indian 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 questions:

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 importance of the National Planning Committee (1938) in the Indian Constitution? Briefly mention the founding of the Planning Commission in India. **3 + 2 = 5**

9. To whom and to what extent is equal justice and free legal aid guaranteed in the Indian Constitution? **1 + 4 = 5**

10. Explain the causes leading to the inclusion of constitutional remedies in the Indian Constitution. Under which articles are they guaranteed? **4 + 1 = 5**

11. 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**

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. MONSOON SEMESTER 2019 END SEM 4TH YEAR -07TH SEMESTER EXAMINATION

AGRICULTURAL LAW

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. National Agricultural Development Programme, 2007;
 - b. Kobe Beef;

2. The present petition is an appeal against the judgment of the Allahabad High Court allowing the writ petition filed by the 1st respondent 'ABC' holding that the agricultural land comprised in village Para falling within the boundary of Lucknow Maharjajjka was exempt under the Urban Land (Ceilings Regulations) Act, 1976 (for short 'the Act'). Issue involved in this appeal is very narrow. After the enforcement of the Act on February 17,1976 1st respondent filed return under Section 6(1) of the Act before the Competent Authority constituted under the Act. First respondent gave details of his properties and one such property was land measuring 16 Bighas 1 Biswa 7 Biswansis in village Para. The Competent Authority after examining the return sent a draft statement to the 1st respondent showing the land in village Para as agricultural land. However, he proposed this land to be surplus land after applying the parameters fixed under the Act. In this appeal we are not concerned with other properties of the 1st respondent. Against the order of the Competent Authority 1st respondent filed an appeal before the District Judge, Lucknow under Section 33 of the Act who dismissed the appeal. Feeling aggrieved the 1st respondent filed writ petition in the High Court. By the impugned judgment the High Court held that the agricultural land in village Para could not be declared as surplus land and could not be taken into account while determining the ceiling limit. The decisions of the Competent Authority and the District Court were set aside and the matter was remanded back by the High Court to the Competent Authority for determining of surplus land, if any, in the light of the observations and findings recorded in the judgment. The question that arises for consideration is: was the land in village Para which is subject matter of the proceeding used mainly for agricultural purposes at the relevant time, being the date when the Act came into force? To answer this question we may have to refer to various definitions as contained in Section 2 of the Act relating to master plan (Clause h), urban agglomeration (Clause, n), urban land (Clause o), urbanisable land (Clause p) and vacant land (Clause q). But before that we may refer to an affidavit dated August 13,1976

filed by the 1st respondent before the Secretary, Local Self Government, Lucknow for the purpose of seeking exclusion of the land in village Para from the "ceiling operations". In this affidavit the 1st respondent stated that he was doing brick kiln business and had his "Bhatta" at village Para, tehsil and district Lucknow and that the brick kiln was covering an area of 16 Bighas 1 Biswa 7 Biswans is out of which brick kiln was actually operating in about 7 to 8 Bighas with brick kiln structure in 2 Bighas and 8 Bighas of land was still available for earth digging for the purpose of brick kiln. 1st respondent further said in this affidavit that the business of brick kiln had been carried out in his family from the time of his father and was one of the chief sources of his livelihood. He said under the Act the area covered by the brick kiln business was not specifically excluded but the Government had power to exempt the same. He further explained that brick kiln business could not be done unless substantial area for digging the earth and for drying of the manufactured 'Kachcha'. bricks was available and area was also required for huts of the brick-layers for their residences. Area was also needed for stacking the manufactured bricks. 1st respondent, therefore, prayed that his ' Bhatta' land which was in Chak No. 1341 in village Para be ordered to be excluded from the ceiling area. This affidavit of 1st respondent showed that the land in question was being used mainly for the purpose of brick kiln business. Master plan of Lucknow prepared under the Uttar Pradesh Urban Planning and Development Act, 1973 inclusive of the village Para has been brought to the record. It shows that the land in question is falling within the limits of Lucknow Nagar Mahapalika, hence this appeal before you. Decide the case. [20]

3. In this batch of writ petitions, the main question that falls for determination, is whether the provisions of Chapter IIB of the West Bengal Land Reforms Act, 1955 (Act X of 1956) inserted by the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act III of 1971), and replaced by the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII of 1972) with retrospective effect from February 15, 1971, which provide for a fixation of ceiling on agricultural holdings and for matters ancillary thereto, are violative of the second proviso to Article 31A(1) of the Constitution. The challenge in particular is to the validity of the definition of the term 'family' contained in Section 14K(c), the fixation of ceiling limits of a raiyat Under Section 14M(1), the provision for lands held by the members of a family being clubbed Under Section 14M(2), the avoidance of transfers by Section 14P, the fixation of a ceiling limit on orchards Under Section 14O(2), the vesting of surplus land in the State Under Section 14S(1), the penal consequences for failure to file a return provided for in Section 14T(4), the imposition of a restriction on transfers Under Section 14U and the absence of a provision for payment of compensation for acquisition of homestead Under Section 14V. It would be convenient to refer, in the first place, to the legislative changes brought about in the State of West Bengal in furtherance of the Directive Principles enshrined In Article 39(b). It is urged that the lowering of the ceiling area of agricultural holdings by Section 14M from 25 acres, which the petitioners as raiyats were entitled to retain under Section 4(3) of the Act, since deleted by the President's Act 3 of 1971 and Act 12 of 1972, to seven standard hectares, in the case of a raiyat having a family consisting of more than five members infringes Articles 14, 19(1)(f) and 31(2) of the constitution. The submission is that such

lowering of the ceiling area, in the case of a raiyat, is tantamount to acquisition of land, within the ceiling limits applicable to him and, therefore, Section 14V of the Act which provides for payment of compensation according to the provisions contained in Chapter III of the West Bengal Estates Acquisition Act, 1953, and not for payment of compensation at a rate equivalent to the market value thereof, offends against the second proviso to Article 31A(1). It is further urged that the restriction on transfer of land by a raiyat imposed by Section 14U is an unreasonable restriction and, therefore, offends against Article 19(1)(f). The validity of Section 14(5) by which property belonging to a private trust or endowment, is treated to be property belonging to the beneficiaries, i.e., shebait, and each such shebait to be a raiyat to the extent of the share of his beneficial interest in the said trust or endowment, is assailed on the ground that it abridges the fundamental rights guaranteed by Article 26. Lastly, it is said, the fixation of a ceiling area by Section 14M, at a flat rate, irrespective of the nature and quality of the soil at 2.50 standard hectares in the case of a raiyat, who is an adult, unmarried person, or the sole surviving member of a family; 5.0 standard hectares in the case of a raiyat having a family consisting of two or more members, but not more than five members, and 7.0 standard hectares in the case of a raiyat having a family consisting of more than five members, is wholly arbitrary, unreasonable and void. Decide the case. [20]

4. Anil has filed a Public Interest Litigation (PIL) before the Supreme Court requesting the court for interpreting the relevant provisions of various statutes, such as the Agricultural Produce (Grading and Marking) Act, 1937 (including Rules), Protection of Plant Varieties and Farmers' Rights Act, 2001, Organic Agricultural Produce Grading and Marking Rules, 2009 and Food Safety and Standards Act, 2006 in relation to high yielding variety (HYV) and Genetically Modified Organisms (GMO) seeds that both are different and consumer must know the health ill effect of GMO seeds and India should ban the manufacturing of GMO seeds. Moreover, National Bank for Agriculture and Rural Development Act, 1981 can finance the GMO project and there is no prevention available in the Act. Decide the case with the help of relevant legal materials. [20]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 –9th Semester – 2015 Batch

Banking Law

Full Marks - 55

Time Allowed: 3 hours

All Questions are compulsory

1) Write short notes on:

- a) Legal provisions regarding endorsements
- b) Features of negotiable instruments
- c) Dishonour of Negotiable Instruments

[5x3= 15 Marks]

2) Bongaon Financial Holdings Limited wants to set up a bank. Bongaon Financial Holdings Limited is a wholly owned subsidiary of Bongaon Financial Services Limited, the largest micro finance organization in India. Its public shareholders include International Finance Corporation, FIG Investment Company, Small Industries Development Bank of India (SIDBI), and a few individuals. Assuming that Bongaon Financial Holdings needs license to start a banking business, discuss the procedure for applying for a banking license under the New Bank Licensing Policy, 2013.

[10 Marks]

3) Discuss the 2008 global financial crisis in brief and the measures taken in India to address the consequent slowdown in economy.

[10 Marks]

4) A customer hired a bank locker and kept her jewellery in it. It was stolen by a thief who broke into the locker room of the bank. Is the banker liable? Discuss a banker's duties as a bailee, with the help of a decided case.

[10 Marks]

5) *'Islamic banking' is popularly known as 'non-interest banking' in the Western part of the world.* How far is it justified to say that the word "interest" has just been replaced with "profit"? Discuss the features of Islamic Banking in the light of such an assumption.

[10 Marks]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 – 7th & 9th Semester – 2014 & 2015 Batch

Child Rights Law

Full Marks- 50

Time Allowed: 3 hours

You can attempt any Part first but you will have to complete all the components of a question and the entire part before attempting any other question or the other part of the question paper. If you are attempting question 5, you will have to answer all the questions serially. Marks will be deducted for mixing up parts

Part I: Answer any two questions: 20 x 2=40

1. Elaborate on the idea that childhood is a social construct. In this context, analyze how disciplines of social sciences (including sociology, history, psychology and social work) and neurodevelopmental models analyze childhood(s) differently and point out the ways these analyses overlap. 20

2a. Childhoods studies and child rights are intrinsically connected. Do you agree? Argue your case by historically mapping the development of a child rights framework. Also discuss whether national and international legal frameworks on child rights use learnings from childhood studies in specific laws. In the national legal framework (constitutional law, criminal law, labour law, family law) is there any understanding of evolving capacity of the child that derives from the neurodevelopmental models and acknowledges that children have rights? 10

b) Critically analyze the United Nations Convention on the Rights of the Child (UNCRC) as a holistic universally accepted document on child rights. Elucidate the significant provisions of universal Age of the Child, Evolving capacity, Best Interests of the Child and Participation Rights of the Child in different settings in this regard. Do you think that specific child rights and child protection laws in India subscribes to these concepts and demonstrate by examining various provisions of child protection and child rights laws in India. 10

3. The Juvenile Justice (Care and Protection) Act 2015 is the umbrella legislation on child rights in India. Examine the major differences between the JJ Act 2000 and JJ Act 2015. Elucidate how the JJ Act derives from the UNCRC citing specific provisions of the Act and also critically analyze the major contentious provisions in the Act. 20

4. Both the Prohibition of Child Marriage Act, 2006 and Protection of Children from Sexual Offences Act, 2012 reflect the ongoing debate on age of sexual consent. While the former has its historical moorings in the colonial period, the latter is a recent legislation rooted in the UNCRC. Elaborating on the history of the enactments, demonstrate how both the legislations separately or when they overlap invoke the problematic of sexual 'consent' of minors and . 20

Part II: Answer any one question: 10

5. Answer all the questions in short sentences or a few words.

- a) What are the three provisions of Preliminary Assessment under JJ Act 2015 (3)
 - b) Whether, where and by whom will a POCSO victim who has parents capable of taking care of the child be produced? (2)
 - c) Who is a Child Welfare Officer (1)
 - d) Where will a POCSO victim get emergency medical care and where will he/she have his/her medical examination? (2)
 - e) What are the major exceptions of the Child Labour Prohibition Law, 2016 (2)
6. The Right to Education Act 2009 is landmark legislation on developmental rights of children. Critically analyze the achievements and failures and challenges of RTE and suggest recommendations for successful implementation of the Act. 10

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. End Semester (Monsoon) Examination 2019 – 9th Semester – 2015 Batch

CLINIC – I

Full Marks – 40

Time Allowed: 3 hours

Section A (This Section is Compulsory) 10 marks

Please draft a Complaint based on the following facts: (You can add a few facts as long as they are in consonance with the given facts)

1. Rahul marries Neha on April 2, 2017 at New Delhi. At the time Rahul was 20 and Neha was 19. Subsequently on attaining 21 years on March 1, 2018, Rahul refuses to repudiate the marriage. Subsequently he married Simran on July 2, 2018. He leaves Delhi for Mumbai on September 3, 2018. But he keeps communicating that he is going to come back and set up a matrimonial home with Neha. Neha wants to file a Suit against Rahul for adultery and desertion. Draft the complaint.

Section B

Answer any two out of three questions:

(10*2=20)

(All questions are for ten marks each).

1. Why should Clinical legal Education be taught in Law schools? What has the experience on clinical legal education been in different countries?
2. Answer the following: (All questions are for 2.5 marks each).
 - a) What are the consequences of not stamping a document that should have been stamped? 2.5
 - b) What are the kind of documents that need to be registered under The Registration Act, 1908? 2.5
 - c) What do you mean by notarising a document? Who can notarise documents? 2.5

- d) What is meant by attestation of documents? What a note on drafting a List of Dates. 2.5
3. What are the following: (Explain with reference to their transferability). (2.5 marks each).
- a) A bill of exchange
 - b) A promissory note
 - c) A Vakalatnama
 - d) A power of Attorney

Section C

- Write Short Notes: (5 marks each) (Any two). (5*2 = 10)
4. A) Client Counselling
- b) Abstention from work by advocates
 - c) Pecuniary and Territorial Jurisdiction of Courts and Court Fees

West Bengal National University of Juridical Sciences
End Semester Examination Monsoon Semester 2019- 20
LLB Elective Course- Commercial Instruments

All Questions carry equal marks. Full Marks - 50
Instructions: Kindly write legibly and clearly
Time allowed 3 hours

Q 6. is compulsory. Answer any Four of the rest.

1. Prashant, the holder of a bill of exchange, transfers it to Anil without consideration who in turn also transfers it to Reema without consideration. Reema, then transfers it to Ravinder for consideration who in turn transfers it to Yuna without consideration. State giving reasons whether Yuna can recover the amount on such instrument from Ravinder or from Prashant. Consider recovery as between remote as well as immediate parties. Delineate the role and liability of each party vis a vis each other on the instrument.
2. Explain the rights and remedies available to a payee in case of bouncing of an electronic fund transfer as per the provisions of PSS Act 2007.
3. The PLAT finance company after having issued a cheque in favour of a depositor TB informs the depositor not to deposit cheque as well as informs the bank to stop payment. Examine with reference to the provisions of Negotiable instruments Act whether it is an offence under the Act.
4. Banks refusal to pay funds to beneficiary on the basis that the named beneficiary does not conform to the name of the drawn documents as well as additionally due to discrepancies between the LCs and the presentation documentation. Argue on behalf of the bank using UCP norms.
5. Letters of Credit are a modern day amalgamation of Bills of Lading and Bills of Exchange. Do you agree/disagree? Give reasons for your answers.
6. Compare and Contrast the following: Choose any two
 - a. Drawer v/s Accommodator
 - b. Holder v/s Holder in Due Course
 - c. Restrictive Endorsement v/s Conditional Endorsement

CONSTITUTIONAL LAW – I

Full Marks – 60

Time Allowed – 3 Hours

ANSWER ANY THREE OF THE FOLLOWING QUESTIONS. ALL SUB-PARTS OF THE SAME QUESTION ARE TO BE ANSWERED TOGETHER.

1. a) Read the following news item and critically evaluate the judgement, in terms of settled principles of constitutional jurisprudence, and established precedents. In doing so, throw light on the limits of the inherent powers of the Supreme Court, and the Court's justifications for invoking it at times to even override statutory provisions. (12)

“Marriage can be dissolved if it breaks down irretrievably: Supreme Court

Amit AnandChoudhary | TNN | Updated: Oct 10, 2019, 10:26 IST

NEW DELHI: Though 'irretrievable breakdown of marriage' is not a ground for divorce under the Hindu Marriage Act and Special Marriages Act, the Supreme Court has, in a significant ruling, said divorce can be granted if a marriage is totally unworkable, emotionally dead and beyond salvage.

Coming to the rescue of a man fighting a legal battle for divorce for the last two decades as his plea was rejected by a lower court and Andhra Pradesh high court after his wife refused to consent for separation, a bench of Justices S K Kaul and M R Shah invoked the SC's inherent powers under Article 142 to do "complete justice" and allowed the petition saying the marriage had broken irretrievably.

In the case before the SC, the couple had been living separately for the last 22 years after their relationship ran into rough weather just a few years after marriage in 1993.

The apex court in a series of verdicts has asked the Centre to amend the law to introduce irretrievable breakdown as a ground of divorce but the law remains unamended and divorce is denied even if a couple are not living together for years and their relationship bruised beyond repair. This effectively denies them an opportunity to explore life afresh as their marriage survives in law even if not

in substance. Even the Law Commission, in its reports in 1978 and 2009, recommended the Centre to take "immediate action" to amend the laws with regard to "irretrievable breakdown" where a "wedlock became a deadlock". As the Centre failed to act on the suggestions, the apex court has from time to time invoked Article 142 to grant divorce even though existing laws do not recognise the ground for divorce. "This court, in a series of judgments, has exercised its inherent powers under Article 142 of the Constitution for dissolution of a marriage where the court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted," the court said.

The SC said, "In the present case, admittedly, the husband and wife have been living separately for more than 22 years and it will not be possible for the parties to live together. Therefore, we are of the opinion that while protecting the interest of the respondent wife to compensate her by way of lump sum permanent alimony, this is a fit case to exercise the powers under Article 142 to dissolve the marriage between the parties."

The bench rejected the wife's plea that the marriage cannot be dissolved without her consent and granted relief to husband after noting that all efforts to continue the marriage had failed and there was no possibility of a reunion because of the strained relations between the parties. "If both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both the parties can move the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties does not agree... only then the powers under Article 142 of the Constitution are required to be invoked to do the substantial justice between the parties, considering the facts and circumstances of the case," the bench said.

b) The Union Cabinet has decided that there needs to be a systematic move towards having simultaneous elections in India, wherein the Parliamentary and Assembly elections shall be conducted together. The Union Home Minister therefore writes a letter to all state governments asking them to consider the proposition of recommending

to the Governor the dissolution of their respective Assemblies at such times that will allow simultaneous conducting of the Lok Sabha and Vidhan Sabha Elections in those states. While most states ruled by the present dispensation in principle agreed to the proposal, some governments run by political parties which form the opposition in the centre refused to comply by the letter. Visibly miffed, the Union Government categorically instructed the Governors of the states to recommend the imposition of President's Rule in the non-complying states.

Moreover, the Union Government is considering options of bringing about a Constitutional Amendment providing for holding of simultaneous elections. It is also contemplating introduction of certain retrospective amendments to the Representation of Peoples Act, 1951 that would facilitate the holding of such simultaneous polls. They are also contemplating inserting the said amendment into the Ninth Schedule of the Constitution.

Analyse the constitutional viability of the said events, in light of established principles, precedents and provisions. (8)

2. a) The State of West Bengal enacted the West Bengal Higher Education (Regulation of Standards) Act, 2019 (*hypothetical*) which aims to hold a common entrance test to select candidates for professional courses in the State. The Law is challenged on the ground that it interferes with the Parliament's legislative powers under Entry 66, List I.

The relevant entries are:

List I, Entry 66: Coordination and determination of standards in institutions of higher education.

List III, Entry 25: Education, including technical education, medical education and universities subject to provisions of entries 63, 64, 65 and 66, List I.

With reference to principles of constitutional interpretation and appropriate precedents, analyse the state legislation in terms of its legislative competence. (12)

- b) On the expiry of five years, the Lok Sabha stood dissolved and the Prime Minister was asked to continue as the care taker Prime Minister until fresh elections were held. In this interim period the President sanctioned the prosecution of a Minister in the

Union Council of Ministers despite the express refusal by the Council of Ministers earlier (before the dissolution of the Lok Sabha) to grant sanction to prosecute under Section 197 Code of Criminal Procedure, 1973. Is this action of the President acting on his own discretion valid? Analyse with reference to appropriate precedents. (8)

3. a) In the case of *Krishna Kumar Singh v. State of Bihar*, Justice D.Y. Chandrachud, speaking on behalf of the majority, opined:

“The theory of enduring rights which has been laid down in the judgment in Bhupendra Kumar Bose and followed in T Venkata Reddy by the Constitution Bench is based on the analogy of a temporary enactment. There is a basic difference between an ordinance and a temporary enactment. These decisions of the Constitution Bench which have accepted the notion of enduring rights which will survive an ordinance which has ceased to operate do not lay down the correct position.”

Are you in agreement with the opinion expressed by the Hon’ble Judge? Articulate your views with reference to relevant constitutional provisions, principles and precedents.

(12)

- b) The state of Haryana enacted a law (*hypothetical*) prohibiting the sale of liquor. The law also laid down that the procedure and principles of evidence for trial of offences under this law would be different from those contained in the Cr.P.C. and the Indian Evidence Act, 1872, both central laws in the Concurrent List. Is this law valid? Which principle of interpretation of legislative lists will you apply? The relevant entries are:

List II, Entry 8: Intoxicating liquors, that is to say, the production, manufacture, possession transport, purchase and sale of intoxicating liquors.

List III, Entry 2: Criminal procedure, including all matter in the Code of Criminal Procedure at the commencement of this Constitution.

List III, Entry 12: Evidence and oaths..... (8)

4. a) Mr. Vijay Deenanath Chauhan was the Leader of Opposition in the Uttar Pradesh Legislative Assembly. Just about three months to go for the dissolution of the term of the House and holding of fresh elections, he decided to suddenly quit his party and join the ruling government. Not only that, he was immediately offered a plum Ministerial position in the State Government. His old political party, the *Bua-BabuaSangh*(BBS) immediately wrote to the Speaker of the State Legislative Assembly asking him to take action against Mr. Chauhan under the provisions of the Anti-Defection Law. They also made a representation before the Governor to not swear in Mr. Chauhan as it would amount to a complete abdication of constitutional morality. The ruling party on the other hand contradicts the claim arguing that the complaints are completely baseless and the Governor is well within his constitutional prerogatives to swear in Mr. Chauhan. Upon recommendations of the State Cabinet, the Governor fixed a date for the swearing-in of Mr. Chauhan. The Speaker meanwhile did not take any decision on the defection matter, claiming that he needs more time to come to his decision. Aggrieved, the leader of the BBS decided to file a writ petition, asking the Court to issue writs of Mandamus to the Governor to not allow Mr. Chauhan to be sworn in, and to the Speaker to expedite the decision in the defection matter.

With reference to appropriate precedents, advance logically and constitutionally tenable arguments from both sides. (12)

b) In his much-debated dissenting opinion in the *Supreme Court Advocates on Record Association v. Union of India* (NJAC) case, Chelameswar, J., made the following observations with respect to the basic features of the constitution vis-à-vis the basic structure doctrine:

“The expressions “basic structure” and “basic features” convey different ideas though some of the learned Judges used those expressions interchangeably.

The basic structure of the Constitution is the sum total of the basic features of the Constitution;

[...]

The abrogation of any one of the basic features results normally in the destruction of the basic structure of the Constitution subject to some exceptions;

As to when the abrogation of a particular basic feature can be said to destroy the basic structure of the Constitution depends upon the nature of the basic feature sought to be amended and the context of the amendment. There is no universally applicable test vis-à-vis all the basic features.”

How far are you in agreement with the views expressed by the Learned Judge? Analyse, citing appropriate references to the context. (8)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. MONSOON SEMESTER 2019 END SEM 4TH YEAR -07TH SEMESTER EXAMINATION
CONSUMER LAW

Full Mark: 60

Time Allowed: 3 Hours

Students are NOT allowed to carry any document for reference during the examination

(Attempt All Questions)

No clarification may be sought during examination

Question No. 1

[12 + 8 = 20 Marks]

a) Akash booked online ticket through Bookmytrip.com on 4.6.2019 for travelling from Amritsar to Mumbai by making payment of Rs. 13,033/-. It was a single ticket having booking ID No. NF292075634790. He received the online travel ticket for June 5, 2019, which was in two parts i.e. Amritsar to Delhi having ticket No. PNRHJN3X via Air India Airlines Flight No. AI-462 with departure time at 14:15 and arrival time at Delhi Airport at 15:30 and Delhi to Mumbai having ticket No. PNRJ74ZPS via Indigo Airlines 6 E-129 with departure time at 17:40. It was further averred that Akash boarded the flight of Air India Airlines at Amritsar as per the schedule. After the door of the plane was closed and it was about to take off and had moved a bit, there was an announcement of some technical defect in the plane and the passengers were asked not to de-board from the plane. However, even after an hour the flight did not take off. Having realized at that juncture that he would be missing the next connecting flight i.e. New Delhi to Mumbai, which was of Indigo Airlines, Akash immediately made a call to helpline of Bookmytrip.com at 15:20 and requested it to reschedule the flight from New Delhi to Mumbai. However, it demanded another amount of Rs. 7,000/-, as travel expenses from Akash. It was further averred that the Flight of Air India Airlines bearing No. AI-462 got delayed for more than 3 hours and it reached New Delhi at 19:00 hours. Akash had also contacted the Air India counter and sought alternative flight but they refused to do the same on the ground that the connecting flight was of different carrier. So they could not help but provided a delay certificate. Akash once again called up Bookmytrip.com to resolve the issue but no alternative arrangements were made by both Bookmytrip.com or Air India Limited. Thereafter the complainant approached the counter of Indigo Airlines and narrated the whole story. They demanded a sum of Rs. 16,000/- for the ticket. The passenger went from pillar to post and called to Bookmytrip.com several times but no assistance was rendered by them or by the Air India. Everything remained in vain. It was further averred that the complainant arranged another flight of Air India Airlines from New Delhi to Mumbai by paying Rs. 17,000/-. After reaching the destination the Akash wrote letters to concerned officials of Bookmytrip.com, Air India and Indigo airlines but none of them responded nor redressed his grievances. Alleging deficiency in service on the part of the opposite parties Akash has filed a consumer complaint before the District Forum claiming refund of the price of the ticket amounting to Rs. 13,033/- along with refund of Rs. 17,000/- as price of the additional ticket purchased by him. Compensation of Rs. 1,00,000/- from each of the opposite parties on account of mental harassment, agony and financial loss and litigation expenses was also claimed. Upon notice, opposite parties appeared and filed their respective written versions as follows:

Defence of Bookmytrip.com or BMT [Opposite party No.1]

Opposite party No.1 in its written version submitted that it is in no manner responsible for delay in the flights and its role is restricted only to the extent of issuance of tickets. It was admitted that the complainant through its online portal booked ticket from Amritsar to Delhi via Air India Flight No. AI-462 and Delhi to Mumbai via Indigo Airlines Flight No. 6E-129. The complainant had filed the complaint on the ground that the Air India flight from Amritsar to Delhi was delayed due to some technical fault and resultantly the complainant missed his connecting Indigo flight from Delhi to Mumbai. Opposite party No.1 is in no manner connected with the operation of the flights and it cannot be held responsible for the delay in the flights. As per the Force Majeure Clause, opposite party No.1 cannot be held liable for any damages, whatsoever. The relevant clause has been reproduced in its reply and is reproduced hereunder for facility of reference:

"Force Majeure Circumstances: The user agrees that there can be exceptional circumstances where the service operators like the airlines, hotels, the respective transportation providers or concerns may be unable to honour the confirmed bookings due to various reasons like climatic conditions, labour unrest, insolvency, business exigencies, government decisions, operational and technical issues, route and flight cancellation etc. If BMT is informed in advance of such situations where dishonour of bookings may happen, it will make its best efforts to provide similar alternative to its customers or refund the booking amount after reasonable service charges, if supported and refunded by that respective service operators. The user agrees that BMT being an agent for facilitating the booking services shall not be responsible for any such circumstances and the customers have to contact that service provider directly for any further resolutions and refunds.

The user agrees that in situations due to any technical or other failure in BMT services committed earlier may not be provided or may involve substantial modification. In such cases, BMT shall refund the entire amount received from the customer for availing such services minus the applicable cancellation, refund or other charges, which shall completely discharge any and all liabilities of BMT against such non provision of services or deficiencies. Additional liabilities, if any, shall be borne by the user.

BMT shall not be liable for delays or inabilities in performance or non-performance in whole or in part of its obligations due to any causes that are not due to its acts or omissions and are beyond its reasonable control, such as acts of God, fire, strikes, acts of government, acts of terrorism or other similar problems at airlines, rails, buses, hotels or transporters end. In such event the user affected will be promptly given notice as the situation permits.

Without prejudice to whatever is stated above, the maximum liability on part of BMT arising under any circumstances in respect of any services offered on the site, shall be limited to the refund of total amount received from the customer for availing the services less any cancellation, refund or other charges, as may be applicable. In no case the liability shall include any loss, damage or additional expense whatsoever beyond the amount charged by BMT for its service.

In no event shall BMT and/or its suppliers be liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or

performance of the BMT website(s) or any other channel. Neither shall BMT be responsible for the delay or inability to use the BMT websites or related services, the provision of or failure to provide services, or for any information, software, products, services and related graphics obtained through the BMT website(s), or otherwise arising out of the use of the BMT website(s), whether based on contract, tort, negligence, strict liability or otherwise.

BMT is not responsible for any errors, omissions or representations on any of its page or on any links or on any of the linked website pages."

It was further submitted that the parties are governed by the terms and conditions agreed between them at the time of booking. Opposite party No.1 duly provided its services to the complainant and it in no manner connected with the operation of the flight and as such there is no deficiency in service on its part. All other averments made in the complaint have been denied and a prayer for dismissal of the complaint qua it was made.

Defence of Indigo Airlines [Opposite Party No. 2]

Opposite party No.2 in its reply has admitted that the complainant booked an air ticket from Delhi to Mumbai for travel on 5.6.2019 on Indigo Flight No. 6E-129 which was booked under PNR J74ZPS. The scheduled time of departure for Indigo Flight No. 6E 129 was 5.40 p.m. The complainant was advised to report to the check in counter for Indigo Flight No. 6E 129 before 45 minutes prior to the scheduled time of departure of his flight i.e. before 4.55 P.M. As per Inter Globe Aviation Limited record, the complainant failed to report to the check in counter for Indigo Flight No. 6E-129 before counter closure. Therefore, Inter Globe Aviation Limited was compelled to treat the complainant as "No show" in accordance with the Indigo CoC. Accordingly, complainant's ticket amount was forfeited. It was admitted that the complainant made the request for rescheduling of his flight beyond the time frame as prescribed under Article 5.2. However, in accordance with the Indigo CoC the complainant is entitled to receive a refund of the passenger service fee and user development fee. Therefore, a refund of INR 711/- was processed on 13.6.2019 to the same account through which the complainant's booking was undertaken. Completing check-in formalities within the stipulated timelines is the sole responsibility of the complainant. Further Inter Globe Aviation Limited is not liable to the complainant for any loss or expenses incurred; as a result of complainant's own failure to adhere to said timelines. This is borne out by Article 8.3 of the Indigo CoC. Article 8.3 has been given in their reply and the same is reproduced hereunder for the facility of reference:-

"8.3 Failure to comply:

IndiGo will not be liable to the customer for any loss or expense incurred due to their failure to comply with the provisions of this Article."

It was further averred that despite failure of the complainant to adhere to check in timeline, the staff of Inter Globe Aviation Limited without any admission of liability offered to re-accommodate the complainant on the next available flight, subject to payment of necessary charges. Opposite party No. 2 denied all other allegations made in the complaint and prayed for dismissal of the complaint qua them.

Defence of Air India Limited [Opposite Party No. 3]

Opposite party No. 3 -Air India Limited also filed its separate reply stating therein that it is a matter of record regarding booking of the online ticket by the complainant through Bookmytrip.com for travelling from Amritsar to Mumbai. However, it was denied that it was a single ticket. Rather two separate tickets were issued to the complainant and since the tickets were got booked by him online through Bookmytrip (India) Pvt. Ltd.- opposite party No.1, as such, the main liability is that of the said company. It was submitted that there was no contract of the Air India Limited with Indigo Airlines and the connected flight was not through the Air India Ltd. It was admitted that before the flight was about to take off, some technical fault had occurred in the plane which came to the notice of the pilot and as such, the flight could not take off in time as the technical fault was to be removed. Accordingly, announcement was made to the passengers of said flight. It took some time in removing the technical fault in the plane. The delay was caused due to the technical fault i.e. brake got jammed, as such, they cannot be held liable for the said delay occurred. As per own version of the complainant, the complainant had duly informed to the Bookmytrip (India) Pvt. Ltd. regarding delay in the flight from Amritsar to Delhi through Air India Limited due to technical fault. The connecting flight from Delhi to Mumbai was not of Air India Ltd. However, as per the rules and conditions of booking of the tickets, if the flight of Air India Limited would have been cancelled, then the complainant/passengers are entitled for the refund of fare but in this case, the flight was not cancelled. The complainant while booking his two tickets, through Bookmytrip (India) Pvt. Ltd. was fully aware that the connecting flight was from the different carrier. The Air India Ltd. was not liable to make any alternative arrangement for the complainant because the connecting flight was not of Air India Ltd. While denying and controverting other allegations, dismissal of complaint was prayed.

Decide the case separately against the respective opposite party [4 + 4 + 4 = 12 Marks]

b) The Consumer Protection Act, 1986 provides remedy for all kinds of defect in goods and deficiency in service – Critically examine the statement [8 Marks]

Question No. 2

[8 + 6 + 6 = 20 Marks]

a) Sonu, a patient, visited Dr. Paul in the PAMRI Pvt Ltd for seeking medical advice for knee pain. Dr. Paul advised the patient that medication won't help and surgery was an only option. However, the patient didn't go for the surgery because of fear. The injury remained untreated. The hospital or Dr. Paul didn't charge any consultation fee. After two years, the patient consulted Dr. Ravi who opined that immediate surgery was required as the injury had been aggravated over a period of time due to lack of treatment. He said medication was the only option if it was treated till last month. Dr. Ravi performed the surgery after obtaining consent from the patient but the operation was unsuccessful and the leg had to amputated. However, there was no fault or negligence of Dr. Ravi in performing the operation. Sonu filed a case against Dr. Paul for medical negligence for proving improper advice. Decide the matter in the light of decided cases. [8 Marks]

b) Soni took admission in the UPSC coaching centre by paying a lumpsum amount of Rs. 2,00,000. The duration of the course was two years. However, after studying for one year, being not satisfied by the education imparted, she withdrew from the course and sought refund of 50% of the fees along with interest and adequate compensation on the ground of deficiency of service and unfair trade practice. The respondent stated that the student had withdrawn voluntarily and therefore there was no deficiency of service, cited one of the clauses of the application form which contained that the lumpsum fees paid for two years was not refundable or transferable under any circumstances if the student withdrew voluntarily. The respondent had also placed on record that no student was enrolled against the seat vacated by the complainant during the tenure of the entire course at any point of time. Finally, the respondent mentioned that in the forty years of the functioning of institute, not a single student have ever complained about the quality of education, and lots of students of the institute are serving the country in the capacity of IPC and IAS. The Commission has passed the order in favour of the respondent on the ground that there was no deficiency of service or unfair trade practice. The complainant has filed review petition in the Commission. Decide the petition as per the decided cases. [6 Marks]

c) Briefly discuss the guidelines laid down by the Supreme Court for awarding compensation in case of deficiency of service in housing matter. [6 Marks]

Question No. 3

[10 + 5 + 5 = 20 Marks]

a) Whether the claimant can successfully claim from the insurance company in the following situations: [5 Marks x 2 = 10 Marks]

i) The goods vehicle has been insured with the insurance company. During the continuation of the policy, the vehicle met with an accident on account of rash and negligent driving by the offending vehicle. The police recorded the FIR against the offending vehicle under certain provisions of the Indian Penal Code and the Motor Vehicle Act. The claimant [insured] incurred expenses of Rs. 2,00,000 for the repair of the vehicle. Although the seating capacity of the vehicle as per the registration certificate was only 1 + 1, but at the time of the accident, five passengers were travelling. The company rejected the claim on the ground that the loss did not fall within the scope and purview of the insurance policy.

ii) On 10 July 2018, the spouse of the claimant took a policy of life insurance from Pax Life Insurance Co. Ltd for a sum of Rs. 11 lakhs. Thereafter, on 16 September 2018, the claimant submitted a proposal for a life insurance term plan policy of the spouse for an insurance cover of Rs. 10 lakhs in India Insurance Co. Ltd. Among the questions that the proposer was required to answer in the proposal form was whether he was currently insured or had previously applied for the life insurance cover, critical illness cover or accident benefit cover. The query was answered in the negative. On 22 September 2018, the India Insurance Co. Ltd issued a policy of life insurance to the spouse based on the disclosures contained in the proposal form. The claimant's spouse died on 8 February 2019. The claimant being a nominee submitted a claim Rs. 10 lakhs under the policy issued by the India Insurance. In the

meantime, Pax Life Insurance Co. Ltd informed the India Insurance that the spouse of the claimant had been insured with them for a sum of Rs. 11 lakhs and that claim had been settled. The India Insurance repudiated the claim on 30 August 2019 on the ground of suppression of material fact. The claimant has filed a case against the India Insurance Co Ltd alleging a deficiency of service. The claimant argued that the omission to disclose a previous policy would not influence the mind of a prudent insurer.

b) Differentiate between occupational negligence and professional negligence in the light of decided cases. [5 Marks]

c) Write a short note on 'Generic Disparagement' [5 Marks]

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester (Monsoon) Examination – 1st Semester – 2019 Batch

CONTRACT-I

Full Marks: 70

Time Allowed: 3 Hours

Question Number 1 and 2 are compulsory. In question number 3 answer either A or B. Ensure that you give only relevant answer and use relevant cases. Read the questions carefully and follow the instructions as given. No clarification will be given during the course of the examination. Students are permitted to carry with them the Bare Act of the Indian Contract Act 1872 (without notes or commentaries) and customized case list.

Q.1 Sharma forms a contract with Verma to supply instant noodles. Verma is in the business of selling eatables to college goers. In the contract Verma specifies the date and the time when the delivery has to be made. Since Sharma has in the past supplied instant noodles to Verma, there was no mention in the contract of the quantity to be supplied. Unknown to Sharma but known to Verma, there is a surge in the demand for instant noodles. On the date the instant noodles are to be supplied by Sharma, Verma calls up to place demand for additional packets of instant noodles. Sharma expresses his willingness to supply additional packets of instant noodles but demands higher rates for the same. Verma is in desperate situation hence he agrees to pay the higher rates for the additional packets. Sharma further informs that he will need a week to deliver the additional packets of instant noodles. Sharma agrees to allow him the additional time. It needs to be also noted that as per the original contract, the price at which the instant noodles is to be supplied is the MRP. However the parties have not mentioned the manner in which the higher rate for the 0additional packets is to be calculated. Soon the time given for supply of the additional packet comes to an end. Verma calls up Sharma to find out the status of the delivery of the additional packets. Sharma assures that it will be delivered but there may be a further delay of two days. Since Verma has no other option he agrees to wait for two more days. On the day that the delivery of the additional packets is due, Sharma informs Verma that the delivery will be subject to payment of the higher rates. Verma however insists on the payment of the MRP and not the higher rates. He cites the delay in delivering the additional packets as the reason for this decision. Sharma accuses Verma of going back on his promise. Verma insists that the original contract contained payment in terms of the MRP hence the payment of higher rates were out of question. Sharma threatens to detain the delivery unless the payment of higher rates is made. Verma demands immediate delivery of the additional packets at MRP. Sharma refuses to do the same and on the contrary informs Verma that he will resort to legal recourse. Verma too decided to resort to legal recourse.

Identify the relevant issues and frame a legal opinion as to how the dispute will be resolved.

You have to support each point of yours with relevant cases.

[4+6+10=20]

Q.2a) Arun and Varun visit a Mall and have decided to eat at the food court. The system followed in the food court requires the customer to deposit money and get a card. The card will be of a value equivalent to the money deposited. Arun and Varun decide that they will go dutch. Both agree that one of them will be paying and later the accounts will be settled. Arun visits the cash counter and deposits an amount of rupees 2000. He receives the food card of the equivalent amount. Both Arun and Varun survey the various food counters. They however did not like anything on display and decide to return the food card. The person at the counter refuses to return the deposited money. Both are furious and seek your help.

Frame a legal opinion and help Arun and Varun recover their money. You shall support each point with relevant cases. [5+10=15]

b) Drama and Dare take up an assignment to complete the furnishings of Harass's bedroom within seven days. The timeline for performance is calculated from the date the furnishing contract is signed between the parties. The contract specified that Drama and Dare will supply men and material for the job. That the client will be consulted in selection of the décor. The contract further provided that the payment will be made after the client gets a certification done from an external agency. The contract did not specify the name of the agency nor did the contract specify the time within which the process of certification needs to be completed. Drama and Dare completed the work within seven days. However they could not do the décor as specified by their client Harass. Further they deviated from the original plan, while executing the furnishings. On inspecting the work Harass noticed that though there were no defects but the execution was not as per the terms of the contract. Harass grudgingly admitted to himself that the bedroom looked beautiful and the furnishings were tastefully done. Harass however was not happy with the non-compliance of the terms of the contract. He accordingly approached his friend Dilbar. Dilbar has an agency which renders home furnishing services. Dilbar is entrusted with the task of certifying the work and assessing the performance of Drama and Dare. Dilbar is specifically instructed by Harass that he should not appreciate the work of Drama and Dare. Accordingly Dilbar gives a negative report on the performance of Drama and Dare. Harass uses this report to reject the demand of payment made by Drama and Dare. Drama and Dare are furious and seek your help.

Frame a legal opinion and help Arun and Varun recover their money. You shall support each point with relevant cases. [5+10=15]

Q.3 Answer any one of the following two Short Notes viz. Answer either (A) OR (B):

- A) i) Identify the difference between *Non-est-factum* and Fraud. Support your answer with relevant cases. [10]
ii) Identify the difference between *Force majeure* and Frustration. Support your answer with relevant cases. [10]

OR

- B) i) Identify the difference between unilateral mistake and Snapping up cases. Support your answer with relevant cases. [10]
ii) Identify the difference between Repudiatory breach and non-repudiatory breach. Support your answer with relevant cases. [10]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. MONSOON SEMESTER 2019 END SEM 4TH YEAR -07th SEMESTER EXAMINATION
Corporate Governance and CSR

Full Marks: 50

Time Allowed: 3 hours

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

Companies Act 2013 and Rules (as amended in 2019), 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. Annexure 1 contains extracts from Punjab National Bank's Independent Auditors Report for the Financial Year ending 31 March 2019.

Based on this Report and your own knowledge answer the following questions:

- a) Why do companies publish an independent auditors report? (1)
- b) Does the law mandate such a report? If so, what law does so? (1)
- c) What provisions have Indian regulators taken to ensure independence of the audit process? (2)
- d) What are the consequences if such criteria of independence are not met? (1)
- e) The Report identifies two key Audit Matters for the financial year. How do these matters impact corporate governance in PNB? (2)
- f) What is the difference between internal and external audit? Which one is reflected in this report? (2)
- g) As outlined in the Report and from your own knowledge, what impact does the auditor have for corporate governance? (2)
- h) Why do 'material misstatements' have to be acted upon by auditors? What are the criteria of materiality used by PNB? (2)
- i) The Report mentions the use of certain accounting policies: what must accounting policies take into account in order to be in the interest of stakeholders? (2)
- j) What is the relationship between the auditor and the audit committee? (2)

- k) Do you believe that banks and other financial institutions should be subject to different corporate governance requirements as compared to other listed entities? Justify your answer and provide examples of the same. (3)

Part B

(10 x 2 Marks)

Please answer any two questions:

2. Outline the basis and efficacy of the stakeholder model of corporate governance in Indian companies. You must refer to both the theory and any appropriate regulation.
3. In 2019, a whistleblower report is published that suggests that Sharpie Ltd. is operating with certain ineffective corporate governance practices. The report suggests that these practices may be due to lack of competition in the product market that Sharpie Ltd operates in. It also highlights that a lack of rigorous corporate control and capital markets have contributed to the failure of corporate governance. Is the report correct in determining that these markets can have a positive impact of corporate governance? How can such markets be made more effective?
4. Discuss the utility of independent directors in contributing to improving global corporate governance standards.

Part C

(5 x 2 Marks)

Please write short notes on the relationship between any two:

5. Agency and Stewardship Theories
6. Insider Economics and Agency Problems
7. Insider Trading and Corporate Governance

Annexure 1: Independent Auditors Report of Punjab National Bank

INDEPENDENT AUDITORS' REPORT

To the Members of Punjab National Bank Report on Audit of the Consolidated Financial Statements Opinion

1. We have audited the attached Consolidated Balance Sheet of Punjab National Bank, its subsidiaries, associates and Joint Venture (collectively known as PNB Group) as at 31st March 2019, the Consolidated Profit and Loss Account and the Consolidated Cash Flow Statement for the year ended on that date and a summary of significant accounting policies and other explanatory information annexed thereto, in which the following are incorporated:

- i) Audited accounts of Punjab National Bank (The Bank), audited by us, vide our audit report dated May 28, 2019,
- ii) Audited accounts of 2 Subsidiaries and 2 associates, audited by other auditors and
- iii) Unaudited accounts of 3 Subsidiaries, 6 Associates and 1 Joint Venture.

2. In our opinion and to the best of our information and according to the explanations given to us, the aforesaid financial statements give the information required by the Banking Regulation Act, 1949 (the 'Act') in the manner so required for bank and are in conformity with accounting principles generally accepted in India and give:

- a) true and fair view in case of the Balance sheet, of the state of affairs of the Bank as at 31st March, 2019;
- b) true balance of loss in Profit and Loss Account for the year ended on that date;
- and c) true and fair view in case of Cash Flow Statement for the year ended on that date.

Basis for Opinion

3. We conducted our audit in accordance with the Standards on Auditing (SAs) issued by the Institute of Chartered Accountants of India (ICAI). Our responsibilities under those Standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements' section of our report. We are independent of the Bank in accordance with the code of ethics issued by the Institute of Chartered Accountants of India together with ethical requirements that are relevant to our audit of the financial statements in India, and we have fulfilled our other ethical responsibilities in accordance with these requirements and the code of ethics. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Key Audit Matters

4. Key audit matters are those matters that, in our professional judgment, were of most significance in our audit of the financial statements of the current period. These matters were addressed in the context of our audit of the financial statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on these matters. We have determined the matters described below to be the key audit matters to be communicated in our report.

Key Audit Matters	How our matter was addressed in the audit
<p><u>Advances – classification and provisioning</u> (Refer Schedule 9 to the financial statements, read with the Accounting Policy No.5) The advances are classified as performing and non-performing advances (NPA) and provisioning thereon is made in accordance with the prudential norms as prescribed by the Reserve Bank of India (RBI). The classification and provisioning is done</p>	<p>Our audit approach included an understanding of the Bank's software, circulars, guidelines and directives of the Reserve Bank of India and the Bank's internal instructions and procedures in respect of the assets classification and its provisioning and adopted the following audit procedures:</p>

<p>by the Bank's IT software Ladder which imports all the required data from Core Banking Solution (CBS). The extent of provisioning of NPA under the prudential norms are mainly based on its ageing and recoverability of the underlined security.</p> <p>In the event of any improper application of the prudential norms or consideration of the incorrect value of the security, as the valuation of the security involves high degree of estimation and judgement, the carrying value of the advances could be materially misstated either individually or collectively, and in view of the significance of the amount of advances in the financial statements i.e.59.13 % of total assets, the classification of the advances and provisioning thereon has been considered as Key Audit Matter in our audit.</p>	<p>- Evaluated and understood the Bank's internal control system in adhering to the Relevant RBI guidelines regarding income recognition, asset classification and provisioning pertaining to advances.</p> <p>-Test checked the design and implementation as well as operational effectiveness of relevant controls, including involvement of manual process in relation to income recognition, asset classification and provisioning pertaining to advances</p> <p>- Reviewed the documentations, operations / performance and monitoring of the advance accounts, on test check basis of the large and stressed advances, to ascertain any overdue, unsatisfactory conduct or weakness in any advance account, examination of classification as per prudential norms of the RBI, in respect of the branches / relevant divisions audited by us. In respect of the branches audited by the branch statutory auditors, we have placed reliance on their reports. Further we have reviewed on test check basis the reports of the credit audit, inspection audit, risk based internal audit, concurrent audit, regulatory audit to ascertain the advances having any adverse features / comments, and reviewed the reports generated from CBS/ Ladder.</p> <p>Our Results: The results of our audit process were observed to be adequate and satisfactory considering the materiality of the transactions.</p>
<p><u>Investments – valuation, and identification and provisioning for Non-Performing Investments</u></p> <p>(Refer Schedule 8 to the financial statements, read with the Accounting Policy No.4)</p> <p>Investment portfolio of the bank comprises of Investments in Government Securities, Bonds, Debentures, Shares, Security Receipts and other Approved Securities which are classified under three categories, Held to Maturity, Available for Sale and Held for Trade.</p> <p>Valuation of Investments, identification of Non-performing Investments (NPI) and the corresponding non-recognition of income and provision thereon, is carried out in accordance with the relevant circulars / guidelines / directions of RBI. The valuation of each category (type) of aforesaid security is to be carried out as per the methodology prescribed in circulars and directives issued by the RBI which involves collection of</p>	<p>Our audit approach towards Investments with reference to the RBI circulars / directives included the review and testing of the design, implementation, operating effectiveness of internal controls and audit procedures in relation to valuation, classification, identification of Non-Performing Investments, provisioning / depreciation related to Investments as per RBI guidelines</p> <p>- We reviewed and evaluated the process adopted for collection of information from various sources for determining fair value of these investments.</p> <p>- For selected sample of investments (covering all categories of investments based on nature of security) we tested accuracy and compliance with the RBI Master circulars and directions.</p> <p>- We assessed and evaluated the process of identification of NPIs, and corresponding reversal of income and creation of provision.</p>

<p><i>data/ information from various sources such as FBIL rates, rates quoted on BSE/ NSE, financial statements of unlisted companies, NAV in case of mutual funds & security receipts etc. Certain investments are based on the valuation methodologies that include statistical models with inherent assumptions, assessment of price for valuation based on financial statements etc. Hence, the price discovered for the valuation of these Investments may not be the true representative but only a fair assessment of the Investments as on date. Hence the valuation of Investments requires special attention and further in view of the significance of the amount of Investments in the financial statements i.e. 26.08% of total assets), the same has been considered as Key Audit Matter in our audit.</i></p>	<p><i>Our Results: The results of our audit process were observed to be adequate and satisfactory considering the materiality</i></p>
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Information Other than the Financial Statements and Auditor’s Report thereon

5. The Bank’s Board of Directors is responsible for the other information. The other information comprises the Corporate Governance Report (but does not include the financial statements and our auditor’s report thereon), which we obtained prior to the date of this auditor’s report, and Directors’ Report, including annexures, if any, thereon, which is expected to be made available to us after that date.

Our opinion on the financial statements does not cover the other information and Pillar 3 disclosure under Basel III and we do not and will not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed on the other information that we obtained prior to the date of this auditor’s report, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

When we read the Directors’ Report, including annexure, if any, thereon, if we conclude that there is a material misstatement therein, we are required to communicate the matter to those charged with governance.

Responsibilities of Management and Those Charged with Governance for the Consolidated Financial Statements

6. The Bank’s Board of Directors is responsible with respect to the preparation of these Consolidated financial statements that give a true and fair view of the financial position, financial performance and cash flows of the Bank in accordance with the accounting principles generally accepted in India, including the Accounting Standards issued by ICAI, and provisions of Section 29 of the Banking Regulation Act, 1949 and circulars and guidelines issued by the Reserve Bank of India (‘RBI’) from time to time. This responsibility also includes maintenance of adequate accounting records in accordance with the provisions of the Act for safeguarding of the assets of the Bank and for preventing and detecting frauds and other irregularities; selection and application of appropriate accounting policies; making judgments and estimates that are reasonable and prudent; and design, implementation and maintenance of adequate internal financial controls, that were operating effectively for ensuring the accuracy and completeness of

the accounting records, relevant to the preparation and presentation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Bank's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Bank or to cease operations, or has no realistic alternative but to do so.

Auditor's Responsibilities for the Audit of the Financial Statements

7. Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with SAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with SAs, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.*
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.*
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the bank's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the bank to cease to continue as a going concern.*
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.*

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.

From the matters communicated with those charged with governance, we determine those matters that were of most significance in the audit of the financial statements of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

Other Matter

8. We did not audit the financial Statements of subsidiaries viz. (i) PNB Gilts Limited (ii) PNB Insurance Broking Pvt. Ltd. (iii) Punjab National Bank (International) Ltd. (iv) PNB Investment Services Limited & (v) Druk PNB Bank Ltd. whose financial Statement reflect total assets of Rs. 17,813.66 crore as at 31 st March 2019 and total revenues of Rs. 898.80 crore, for the year ended. These financial statements and other financial information excluding PNB Insurance Broking Pvt. Ltd., PNB Gilts Ltd. and PNB (International) Limited, London have been audited by their respective auditors whose reports have been furnished to us and our opinion is based solely on the reports of the said auditors.

Our opinion is not modified in respect of this matter.

Report on Other Legal and Regulatory Requirements

9. The Balance Sheet and the Profit and Loss Account have been drawn up in accordance with Section 29 of the Banking Regulation Act, 1949;

10. Subject to the limitations of the audit indicated in paragraphs 5 to 7 above and as required by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, and subject also to the limitations of disclosure required therein, we report that:

a. We have obtained all the information and explanations which, to the best of our knowledge and belief, were necessary for the purposes of our audit and have found them to be satisfactory;

b. The transactions of the Bank, which have come to our notice, have been within the powers of the Bank; and

c. The returns received from the offices and branches of the Bank have been found adequate for the purposes of our audit.

11. We further report that:

a. in our opinion, proper books of account as required by law have been kept by the Bank so far as it appears from our examination of those books and proper returns adequate for the purposes of our audit have been received from branches not visited by us;

b. the Balance Sheet, the Profit and Loss Account and the Statement of Cash Flows dealt with by this report are in agreement with the books of account and with the returns received from the branches not visited by us;

c. the reports on the accounts of the branch offices audited by branch auditors of the Bank under section 29 of the Banking Regulation Act, 1949 have been sent to us and have been properly dealt with by us in preparing this report; and

d. In our opinion, the Balance Sheet, the Profit and Loss Account and the Statement of Cash Flows comply with the applicable accounting standards, to the extent they are not inconsistent with the accounting policies prescribed by RBI.

Corporate Law – I

Full Marks – 70

Time Allowed: 3 hours

Instructions: Students may carry any book, documents including class-notes, marked, annotated or otherwise, but not any electronic device, inside the examination hall. Carrying their wits alongwith is, however, mandatory. All the questions are to be answered and need to be attempted preferably in the order in which they have been asked. The answer to each part of a question needs to be separately and clearly marked as such. Answers without any explanation of the reasoning behind those, including statements or assertion without any mention of supporting legal authority, may not be awarded any marks. Any assumption being made by the student about the fact situation(s) provided in a question while attempting to answer it ought to be clearly and explicitly mentioned at the start of the answer. Unless otherwise mentioned, the law applicable to all the fact situations would be Indian law, including but not limited to the Companies Act, 2013 and the ruled framed thereunder. No other clarification about the questions would be provided in course of the examination. Brevity and precision while attempting to answer a question would be appreciated. Verbatim reproduction of legislative provisions ought to be avoided. Marks may be deducted for reference to incorrect or irrelevant legal authority in support.

Q.1. Daily Planet Private Limited has been started when Perry White and four of his friends decided to launch a newspaper. Each of them has subscribed to INR 10 lakhs worth of equity shares in the company. In every year for the first three years of operation, the company has shown a turnover of INR 40 lakhs. The state where the company has its head office requires a permit for owning and operating any printing press machine run by laser-based technology. Perry owned such a machine and had obtained a permit for it. He has sold this machine to the company and the company heavily relies upon Perry's previous work experience in the printing and newspaper industries for its functioning. Two among Perry's aforesaid friends have served as the only two directors of the company for these three years. The company currently has forty-seven employees apart from Perry and his friends. As an incentive, each employee has been given 100 equity shares each of nominal value INR 100 in this year. The company has decided to hold a meeting wherein two resolutions are supposed to be tabled. The first one is to convert the company into one complying with the requirements under Section 8 of the Companies Act, 2013. The second one is to declare dividend of INR 2 for each equity share. In the meeting, Jimmy Olsen, one of Perry's non-director friends raised an objection that the company is in violation of the 2013 Act for having the same directors for several years without any of them retiring or being rotated. Additionally, Cat Grant, one of the directors, revealed that the company has received a notice from the relevant State department for operating laser-operated printing press machine illegally without permit. Other stakeholders requested Perry to present an argument before the State to the effect that the permit that he had obtained personally would suffice in this case, especially given the reliance of the company on Perry's personal experience and skills for its own operations. During the discussion, Perry confessed that he had originally bought the machine at a price much lesser than what he had previously disclosed to the company. He further confessed that while he was in charge of dealing with the incorporation procedure for the company, he did not complete the same and did not obtain the incorporation certificate either from the Registrar of Companies, but had been planning to do so soon after the conclusion of the meeting. After the meeting

ended, Lex Luthor, one of the creditors from whom Perry had borrowed some money on behalf of the company in order to take care of the preliminary expenses of incorporation heard about these developments from one of the participants in the meeting and is planning to sue the company to recover said money immediately.

In the light of the aforementioned fact situation, answer the following questions:

- (a) What are the legal implications of Perry's omission regarding incorporation for his friends and the other employees, if any? **(2.5)**
- (b) Can the other members now initiate a proceeding to wind up the company? **(1.5)**
- (c) Had the incorporation taken place properly, would the objection raised by Jimmy have been valid? **(2)**
- (d) Had the incorporation taken place properly, could the argument that Perry was being requested to take up regarding the permit have been accepted? Give possible reasons and support both in favour of and against the argument. **(2.5)**
- (e) Had the incorporation taken place properly, what sort of actions if any could the company have taken against Perry with regard to his disclosure of the original price at which he had bought the machine? **(2.5)**
- (f) Had the incorporation taken place properly, would the two resolutions that had originally been placed in the meeting have merited any specific concern vis-à-vis each other that the company ought to keep in mind, in case both the resolutions had been passed? **(1)**
- (g) Can Luthor successfully sue the company to recover his money? If not, is he left with any other recourse? **(2)**

Q.2. (a) The articles of association of Queen Enterprises Limited allow the Board of Directors to expel any member if all the members of the Board vote in favour of it. Roy Harper, a member, wants to challenge the legal validity of the provision and has come to you for legal advice. Would your answer vary depending upon the type of company it is or the primary object that it performs according to the Object Clause of its memorandum of association? **(2)**

(b) The articles of this company also require any director to vacate his office in the event of any civil action being initiated against him in a court of law. Such a suit has been filed against one of the directors and a notice has been issued to him to such effect, but he has not received the notice owing to having been away from his regular address. Meanwhile, he has taken part in a Board meeting and approved several contracts that the company required unanimous Board approval to enter into. Can the company subsequently refuse to honour its obligations under such a contract and if so, would the outsider part to the contract have any recourse under such circumstances? **(2.5)**

(c) This company had in the last financial year issued certain shares at a premium and certain shares at a discount. The premium amount had been paid by the shareholder to whom the shares had been issued by way of transferring certain assets to the company in lieu of cash, which is why the directors chose not to transfer any money to the securities premium account. The company is also planning to issue sweat equity shares for the first time during this financial year to its managers, who have been told that two years later, the company would buy those shares back from them at a premium if they fail to find a suitable buyer for them in the secondary market. The company had also issued certain preference shares earlier and though the time to redeem these shares is approaching, the Board does not believe that the company would have sufficiency cash reserves or money in the capital redemption reserve account to redeem the same and

hence is trying to explore available options without incurring penalty. Advise the Board about the legalities of its actions and plans so far and any available option as referred to above. **(4.5)**

(d) While issuing the shelf-prospectus in relation to some of the shares mentioned in part (c) above, the company had included certain endorsements made about the company by Oliver Queen, who owns 30% of the paid-up equity share capital in the company. In particular, Queen's prior experience in the company's chosen line of work i.e. manufacturing bows and arrows for sporting events, was highlighted in the prospectus along with his endorsement of the company's future plans and potential. The company was also under the impression that since it was planning to issue multiple batches of identical shares in the same financial year, publishing a shelf-prospectus before the issue of the first batch of shares would mean it would not have to publish any other document throughout the year in relation to these subsequent issues. The company is also planning to use some of the money raised earlier from the issue of such shares for manufacturing certain additional sports goods apart from bows and arrows, since its memorandum of association allows it to manufacture such products too. However, out of 40 shareholders who had subscribed to such shares, only 23 have agreed to this change so far. Advise the company about the accuracy of its impression, the possible ramifications of its actions regarding the prospectus and any way in which its plans can be brought into effect. **(5)**

Q.3. (a) Stark Enterprises Limited, primarily engaged in the trading of electronic appliances, is planning to raise money for one of its projects. The memorandum and articles of association of the company do not mention anywhere its ability to borrow money. Pepper Potts, one of the directors, insisted that the company alters its articles to include this power, which it did. However, the power to borrow money and issue debentures was entrusted to Anthony, one of the directors, in a meeting of the Board of Directors of the company. The Board also mentioned that if the money being borrowed is excess of INR 50 lakhs, then Anthony would need to take the consent of at least one other director. Anthony borrowed a sum of INR 60 lakhs, of which INR 53 lakhs was raised as a syndicated loan from certain banks and INR 7 lakhs by issuing secured bearer debentures to the public without informing any member of the Board in advance.

In the light of the abovementioned fact situation, answer the following questions with reasons and legal authority in support of your answers as applicable:

(i) Was Pepper's original objection a valid one? **(1.5)**

(ii) Can the banks recover the loan given by them from the company or have any other recourse under the circumstances? **(3)**

(iii) Assuming the validity of issue of the debentures, if the debentures are supposed to be redeemed in December, 2019, what amount of money must the company keep throughout 2019 in its Debenture Redemption Reserve Account? **(1.5)**

(iv) If the company pays interest on the debentures meanwhile and one of the original debenture holders has transferred his debenture to another person for consideration, can the transferee claim his right to such interest? **(1)**

(v) Should Anthony have appointed a debenture trustee and arranged the debenture holders to pay such a trustee separately? **(1)**

(b) Comment on the questions raised in relation to the following charges and surrounding circumstances with reasons and supporting legal authority: **(3x2)**

(i) A company has created a fixed charge in favour of a creditor over one of its assets. The charge has not yet been registered after a year. Meanwhile, the company has sold part of this asset to a third party who bought it in good faith. On insistence by the creditor, the company is trying to get the charge registered now. How can the company do so and what effect would it have on the rights of the third party?

(ii) A floating charge has been created by a company in favour of a creditor over all the assets that it has stored in a warehouse. The company has failed to pay two consecutive installments of the loan. The creditor has made an oral inquiry about it, but has not taken any other step so far. Meanwhile, another creditor whom the company has not paid for the last six months obtains a garnishee order over the contents of the warehouse. The company had taken the loan from the second creditor later than the one from the first creditor. Can the first creditor argue priority in terms of his charge?

(iii) A company has created a floating charge by assigning its future debts to a creditor. The document clearly prohibits creation of any subsequent fixed charge over these assets. The company still goes ahead and creates a fixed charge over specific debts that have arisen in the intervening period since the earlier charge has been created. The company is now going into liquidation. Which charge should take priority and why?

Q.4. Mention at least seven anomalies or *prima facie* apparent anomalies in the following fact situation, along with reasons as to why you believe them to be such. **(14)**

The Daily Bugle Limited has been incorporated on September 1, 2018 and has a paid-up equity capital of INR 70 lakhs at present. Mr. Jameson owns 600 fully paid up equity shares of nominal value INR 1000 each. He has sent a letter to the Board of Directors on October 1, 2019 asking them to show cause for not having held any general meeting so far and has alleged that the company is in violation of the Companies Act, 2013 as a result. In the same letter, he has also requested the Board to call for a meeting on his behalf. Having not received any response to the letter till October 19, Jameson himself issued notice to all the members that such a meeting would be held on November 1, 2019 to discuss *inter alia* some of the contracts that the company had recently entered and appointment of a director by the small shareholders. However, he did not send any explanatory statement along with the notice, a fact that was brought to his attention subsequently by Mary Jane, one of the members. On the date of the meeting, only three members including Jameson turned up for it out of the two hundred members to whom Jameson had sent the notice to. Jameson therefore adjourned the meeting to a date two weeks later. On that date, about fifty members turned up for the meeting. Jameson conducted the meeting as the convenor and the chairperson, appointed a director to represent the interests of the small shareholders and issued a direction to the Board to reimburse Jameson for the costs incurred in calling for the meeting. Subsequent to the meeting, May Parker, one of the members, raised an objection that she could not attend the meeting in person, nor was aware of the fact that she could send a proxy instead. Eddy Brock, another member owning equity shares worth INR 5 lakhs that he had inherited from his deceased father by transmission, also alleged that he had not received the notice for the meeting because it had been sent to his father's old address instead. The Board has now received minutes of the meeting from Jameson along with directions to implement all the resolutions passed.

Q.5. State with reasons and supporting legal authority (legislative provisions, case-laws etc.) as applicable whether the following statements are true/false/partly true.

(a) A listed company may always claim that an allotment of shares authorized by its Board of Directors is valid despite three directors out of seven not being qualified to hold directorial post at that time. It may also claim that despite one of the applicants having paid as application money a sum equal to four percent of the nominal value of the shares that he has applied for, the company can still allot to him the shares that he has applied for. **(3)**

(b) An insurance company listed in the Bombay Stock Exchange has issued shares having nominal value of INR 600 crores. If the company wants to continue receiving the subscription money for the shares in calls for a period more than one year from the date of allotment, then it must appoint a public financial institution as a monitoring agency for the use of the proceeds of the issue. **(2)**

(c) A shareholder of a company has pawned his shares in exchange of consideration. The shareholder has not yet paid the amount due to the pawnee although the originally agreed upon time has passed. The company declares dividend with respect to its shares. The pawnee can ask the company to pay this dividend to him so as to offset the sum lent to the shareholder and also to allow him to vote in the next general meeting of the company. **(2)**

(d) An individual applied to a company during a public issue for 20 shares to be allotted to him, but the company did not respond to his application nor allotted said shares during the period of issue. Three months later, the company issued 20 shares to the individual without informing him or without him having communicated with the company any further. The company has entered his name in the register of members after that and he has been told about that by a friend of his, who is also another member of the company. The individual did not communicate even after that with the company. Subsequently, voluntary winding up of the company started. The official liquidator of the company may hold this individual liable as a contributory. Even had the individual filed for rectification of the register of members four years after being told about it by his friend, but before the winding up commenced, the liquidator may still continue to hold him liable once the winding up commenced. **(2.5)**

(e) When a transferee, following a share transfer, receives no response to his application to a company seeking to register the transfer and replace the transferor's name with his own in the register of members, the time period for which he would have to wait to file an application before the tribunal or the time period within which he can file such an application would not be influenced by the fact whether the company concerned is a private or a public one. **(2)**

(f) When the Board of Directors of a company receive an instrument of transfer that is insufficiently stamped and mistakenly register the transfer nonetheless, they can either inform the transferee of this mistake at any point of time in future once the mistake has been discovered so that the transferee may rectify the same, or the Board can themselves regularize the instrument. **(2.5)**

LAW OF CRIMINAL PROCEDURE

Maximum Marks : 70

Time : 3 Hours

General Instructions

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

Question 1

(20 marks)

Mansoor (M), a 30 year old mentally handicapped man, was suspected of committing murder and was arrested by the police on 11 November 2019. He was interrogated at the police station for 36 hours by several policemen, without being given any food and without being allowed to sleep. One policeman threatened them with “even more stringent treatment” and told him that they “knew where his family lived”. M confessed to the charges and signed a written confession. During the whole interrogation M was denied access to a lawyer.

Media continuously reported on the case, wherein the investigating officer and the prosecutor repeatedly stated that M was guilty. M was put on trial, and without any reference to his mental ailments, the judge – a relative of the victim – sentenced M to life imprisonment.

Answer the following questions :

- a) Enlist the rights of M that were breached during interrogation (5 marks)
- b) Enlist the principles of fair trial that were violated in this case (4 marks)
- c) What measures ought to have been taken to ensure that the rights of M were protected? (6 marks)
- d) What procedures should have been followed in case of persons with mental disabilities at the time of trial? (5 marks)

Question 2**(10 marks)**

The police has produced a person named "X" before a magistrate. He has been arrested on charges of theft and the arrest memo states that he was arrested on 12th November 2019 while the forwarding letter of the Investigating Officer States that he was arrested on 13th November 2019. The case diary states that the arrested person is aged about 19 years, however he appears to be a teenager and looks about 16-17 years of age and there were some visible injury marks on him- though not serious ones. The police has asked for his custody on the grounds that he has made a statement to them admitting of the theft and that the stolen goods have been hidden at a particular place and that he will lead the police to those goods if he is taken there.

Answer the following questions:

- a) What are the next steps that you would take if you were the magistrate before whom X was produced? (5 marks)
- b) Assume that X has admitted to the police that two years back he had committed another theft. Can/should the police register a fresh FIR before that offence is investigated? (5 marks)

Question 3**(10 marks)**

Answer any one question (in no more than 750 words). Only the first answer written will be evaluated

- a) What is the extent to which the magistrate has oversight/control over investigation? To what extent does this take on an inquisitorial character (if at all it does)?
- b) Critically examine the provisions and procedure relating to preliminary assessment under the JJ Act, 2015.

Question 4**(5 X 2 = 10 marks)**

Prepare short notes on any two of the following (in no more than 400 words). Only the first two answers written will be evaluated

- a) Admissibility of evidence obtained by way of an illegal search.
- b) Examine whether a vehicle purchased on hire purchase basis can be seized under Section 94 in the event of the financial taking forcible possession of the vehicle on account a dispute with the purchaser.
- c) The concept of "prejudice to the accused" in the context of a conviction for an offence that he was not charged with.

Question 5**(4 marks)**

On 11.6.2019, a police officer on highway duty intercepted a truck that had jumped a red signal. Since it was felt that the behavior of the driver was suspicious, he conducted a search of the vehicle and it was found that a large quantity of black jaggery/molasses was being transported. On being questioned about the nature and purpose of the consignment, the driver was unable to

give any satisfactory answer. The investigating officer also had a suspicion that the log books and manifests were fake. On interrogating the driver, a statement was obtained that the goods were being transported for the purpose of manufacturing illicit liquor. An FIR was registered under the relevant provisions of the Abkari and Excise Act and investigation commenced. However, on 19.10.2019, on an application made by the driver and the owner of the truck, the High Court, in exercise of its power under Section 482 of the Code quashed the FIR on the grounds that there was no material to show that the seized articles were intended to be used for manufacturing of illicit distilled liquor. The government is unhappy with this judgment and wishes to challenge the same.

Answer the following questions:

- a) How can this judgment be challenged before a superior forum (under what provisions of law)? (2 marks)
- b) Prepare the grounds on which a challenge can be mounted (2 marks)

Question 6

(6 marks)

On receipt of a telephonic information that Hotel California was selling adulterated food, the jurisdictional food inspector proceeded to raid the premises of the said hotel. Samples of biriyani and potato chips were taken and sent to the laboratory for inspection. It was found that the biriyani was “adulterated” and that the potato chips was being prepared in violation of license conditions, thus contravening Section 7 of the Prevention of Food adulteration Act, 1954.¹ A complaint was filed before the jurisdictional magistrate’s court arraying A1 and A2 as accused persons. The Magistrate’s court proceeded to take cognizance, summon the accused & frame charges. The accused pleaded not guilty and hence the court proceeded to trial.

At trial the prosecution examined three witnesses: PW1 identified his signature on the mahazar relating to samples and PW2, the chemical examiner testified as to how the Biriyanis was “adulterated” and in terms of the Act and Exhibit P1- chemical examination report was marked in evidence. PW3, a former employee at the hotel testified to the effect that the Potato chips were being prepared in contravention of the license conditions. The prosecution had also gotten Exhibit P2 marked in evidence –a complaint made by A1 to the police regarding an incident that

¹ Section 7 of the Prevention of Food Adulteration Act, reads as follows:

7. Prohibitions of manufacture, sale, etc., of certain articles of food.—No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

- (i) any adulterated food;
- (ii) any misbranded food;
- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority²⁴ [in the interest of public health;]²⁵ [***]
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder;²⁶ [or]

²⁶ [(vi) any adulterant.]²⁶ [Explanation.—For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.]

happened at the hotel wherein a fight broke out at the hotel and some of the hotel properties had been damaged.

On being examined under 313, A1 and A2 denied the prosecution story & evidence and A1 further provided an alternative explanation that he was not connected to the running of the business. The court then proceeded to take evidence of the defense. A1 took the contention that he was merely a cashier at the hotel and had no role to play whatsoever in the management of the hotel. He produced Exhibit D1 the license issued by the Food Department and Exhibit D2- the license issued by the municipal corporation, both of which was issued in the name of A2 . He further stated that Exhibit P2 was prepared by him on the instructions of A2 and that he signed it because only he was present at the hotel when the fight broke out. A2 did not offer any evidence.

On conclusion of trial, the court acquitted A1 of all charges holding that the prosecution had failed to prove that he was involved in any manner in the manufacture for sale, or storage, sale or distribution of the items in question as he was only a cashier. A2 was however, held guilty of violation of Section 7(i) and 7(iii) of the Act. The court relied on the statements of PW1, PW2, Exhibit P1 and Exhibits D1 and D2 for this purpose. A2 was consequently punished to four years imprisonment and a fine of Rs 15,000.

Answer the following questions:

- a) What are the grounds on which the conviction can be challenged? (4 marks)
- b) What are the grounds on which the quantum of punishment imposed be challenged? (2 marks)

Question 7

(5 marks)

Mr. Narendra was arrested in connection with producing a fake degree certificate to obtain a job. The arrest was pursuant to a FIR – Crime No. 156/2019- registered upon a complaint from the employer. On being produced before a magistrate, Narendra was remanded in police custody, as custodial interrogation was required to decipher the modalities by which he had obtained the fake certificate. Narendra was being housed in the police station lock up. Mr. Manmohan, IPS, who is the director of the police training college had come to visit the investigating officer of Crime No. 156/2019 as they were friends. At the police station Mr. Narendra & Mr. Manmohan identified each other- as both of them knew each other earlier – Mr. Narendra used to serve tea at the office where Mr. Manmohan had worked. Mr. Narendra broke down before Mr. Manmohan and he confessed to have concocted the fake degree certificate himself. Is this confession made to Mr. Manmohan (who no longer conducts any investigations and is only in charge of training) admissible in evidence?

Question 8

(5 marks)

The workers of “The Company” are enrolled in two unions. As a result of differences between the two unions, there have been frequent clashes between the members of these two unions, some of which has escalated into violent ones. To put a stop to these incidents, the jurisdictional district magistrate has issued an order under Section 144 of the Code, prohibiting assembly of 5 or more persons and shouting slogans in certain specified areas abutting the compound of the company . The order is to remain enforce for a period of 30 days. Is the order a valid one?

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. MONSOON SEMESTER 2019 END SEM 4TH YEAR -07TH SEMESTER EXAMINATION

CRIMINOLOGY & VICTIMOLOGY

Full Marks: 70

Time Allowed: 3 hours

Answer Any Seven Questions All Questions Carry Equal Marks

1. How Organised Crime can be explained by Organizational Theory?
2. "Recognition of Victims in Indian Criminal Justice system is a recent development".
Discuss
3. Write short note on Arms Trafficking.
4. Write short note on Drugs Trafficking.
5. Rohini worked as domestic help in Kartarini's house. Kartarani promised Rohini a well paid job in Mumbai. She agreed to leave Kolkata and go to Mumbai with Kartarani for higher pay. Rohini was accompanied by Kartarani to Howrah station but was handed over to Kamal stating Kamal will take to the next employer. After dinner in train when she woke found herself in Brothel. Discuss.

6. Manohar and Mohan brutally raped Ruma aged 10 years after raping tied her hand threw her unconscious body into the canal. Criminal Law Amendment 2019 lays down mandatory Death penalty for sexual offence against girl child below 12 years of age. Discuss with the help of Law Commissions report and apex court judgment impact of this amendment in this case.
7. Discuss Differential Association theory of Sudertherland in the light of socio economic offences and suggest measures to deal with the problem.
8. Discuss the recommendation given by the Criminal Justice Reform Committee.
9. “Rani Convict under the Foreigners Act was awaiting pushback while she was diagnosed with HIV +ve”. Discuss the Reforms relating to Women prisoners recommended by Justice Krishna Iyer Committee.
10. “Methods of execution of convicts are inhuman and barbaric”. Discuss.
11. “Feminist criminology is conflict based calling for the downgrading of many dominant crime theories, as they were constructed without consideration for feminist viewpoints.” Critically analyse the statement and also discuss the theories.
12. What is Anomie in crime?

Economics I

Full marks: 50

Time: 3 Hours

1A) In the country Ajabgarh, there are only two sectors of production – wine and textile. There are two factors of production, labour and capital, which are used in the production of the two goods. Naren is a monopolist in the wine sector while the textile sector is perfectly competitive.

a) Show with the help of an Edgeworth box diagram the allocation of labour and capital between the two sectors.

b) Is this deployment of resources Pareto efficient?

c) If not, what policy do you prescribe to achieve efficiency? Show the implication of the policy in the same diagram. (2+2+1+2)

B) Suppose Naren invents a mobile application by which he gets to know the maximum willingness to pay of each consumer for a bottle of wine free of cost. For simplicity, let us assume that the invention cost of the mobile app is zero.

a) Will there be any change in resource allocation under the new scenario?

b) Will that allocation be Pareto efficient?

c) Will there be any deadweight loss? If yes, then calculate the loss. If no, then is it desirable from a welfare point of view? (2+2+4)

2) Consider the market for LPG cylinders. Let us assume that the market is perfectly competitive as far as the consumers are concerned. Initially, when the market was regulated by the government, a consumer, Ms Rima used to purchase 15 cylinders annually. Government then deregulates price of cooking gas as a result of which, price increases by Rs 200 per cylinder. Not willing to hurt the consumers, the government launches a policy of Direct Cash Transfer by virtue of which, Ms Rima receives Rs 3000.

a) Will there be any change in the utility of the consumer?

b) Will there be any change in demand for cooking gas as compared to the initial situation?

Use a choice theoretic framework to illustrate. (10+5)

3) Fulmoni lives for two periods. Her income in periods 1 and 2 are \bar{Y}_1 and \bar{Y}_2 (exogenous) respectively. Her utility depends on her current and future consumptions only. The endogenous (choice) variables for Fulmoni are therefore her current and future consumptions, C_1 and C_2 respectively. She has the option to save or borrow at market rate of interest r (a parameter for her).

Assume that she consumes whatever she earns during her lifetime.

- a) Write down the typical optimization problem for Fulmoni. (3)
 - b) Show her equilibrium inter-temporal consumption-saving (or dis-saving) choice using an appropriate diagram. Interpret the marginal condition clearly. (4)
 - c) Suppose in period 1, there is suddenly a parametric increase in r (due to Increase in repo and reverse repo rates by the RBI). How will that affect Fulmoni's saving decision in period 1? What will be the substitution effect and income effect in this case? Will we get an unambiguous result? Explain. (8)
- 4) Explain the Coase theorem with a suitable example in presence of a negative externality. (5)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. End Semester (Monsoon) Examination 2019 –9th Semester – 2015 Batch

Enforcement of Intellectual Property Rights

Full Marks: 60

Time Allowed: 3 hours

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

1. “Intellectual Property Systems are not neutral in nature; they set the rules of the game in which individuals and organisations interact, and in which corporate leaders and stakeholders are shaped and technological trajectories selected or reinforced. Due to the not neutral nature of IPR systems it is impossible for government to enforce a right without implementing their views on the notions of rights and wrongs.”

Critically analyse the above statement in view of global enforcement of Intellectual Property Rights. **[12 Marks]**

2. Do you think that Part III of the TRIPS Agreement while ensuring effective enforcement of IPRs in all Members, the Agreement allows for a broad exception in certain cases? Discuss with the help of relevant provisions with special reference to the ‘mandatory’ and ‘optional enforcement’ measures. **[12 Marks]**

3. (a) What are the reasons to follow a territorial approach based on the *lex loci protectionis* regarding intellectual property rights infringements? Explain.

(b) Mr. Roy resides in Italy and found out that some of his music had without permission been issued on CDs by a France company namely RealTech. Those CDs could be bought on the internet, including from Italy, and they had been pressed for the France company (RealTech) by MediaTech, an Australian company.

In view of the above situation how the jurisdictional issue can be determined? Explain. **[6+6=12 Marks]**

4. (a) It is often argued that the developed countries, by most accounts have imposed their higher intellectual property protection standard on their less developed trading partners. Is there any justification for such argument? Explain.
- (b) Do you agree that within the present framework of TRIPS enforcement provisions, maintenance of an effective intellectual property enforcement regime is a challenge specially when state resources are scarce and need to be allotted to other development priorities? Give arguments for you answer. **[4+8=12 Marks]**
5. Write short notes (*any three*): **(4X3=12 Marks)**
- (a) Border measures under the Customs Act, 1962
 - (b) Order 39 Rule 7 of Civil Procedure Code vs. *Anton Piller* Order
 - (c) Anti-Counterfeiting Trade Agreement
 - (d) Intellectual property enforcement and human rights
6. (a) What constitute *mens rea* under the Copyright law? How the phrase “knowingly infringes” has been interpreted by the Court in *Sheo Ratan Upadhyya vs. Gopal Chandra Nepali* (AIR 1965 All 274). Do agree with the interpretation in view of growing demand for strict enforcement of intellectual property rights? Justify your answer.
- (b) How the Indian court interpreted and recognised “public interest” while refusing to grant interim injunction as a civil remedy in a suit for infringement of patent? Discuss with the help of relevant case laws. **[2+2+2+6]**

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester (Monsoon) Examination – 1st Semester – 2019 Batch

ENGLISH- I

Full Mark: 30

Time Allowed: 2 Hours

1. Answer any **ONE** of the following questions : (**10x1=10**) **500 words**

- a) What kind of literary genre is dramatic monologue? Discuss Robert Browning's *My Last Duchess* and *Porphyria's Lover* as specimens of this genre.
- b) Examine Rabindranath Tagore's short story *The Exercise Book* as a strong reformist plea for greater equality in educational opportunities for both men and women.
- c) How does Vijay Tendulkar critique middle class morality through judiciary in *Silence! The Court is in Session*.

2. Explain any **ONE** of the following statements with reference to the context : (**5x1=5**) **250 words**

- a) "In school, when the first bell rings, my foot's already on the threshold. I haven't heard a single reproach for not being on time these past eight years."
- b) "And it was this very girl who, through her death, tore my shroud to tatters."
- c) "I found a thing to do, and all her hair/ In one long yellow string I wound /Three times her little throat around, And strangled her."

3. Do as directed: (**10x1= 10**)

1. A solution or remedy for all difficulties or diseases. (One word substitution)
2. Mala fide. (Give meaning and make a sentence with it)
3. As soon as the moon came up they started on their journey. (Begin: No sooner...)
4. Your luggages are so heavy. (Correct the sentence)
5. He lives....Hyderabad. He lives29 Tilak Marg. (Put appropriate prepositions)
6. He locked the papers up that they.....be safe. (May or might?)
7. He said, "Alas! Our foes are too strong." (Change to indirect sentence)
8. Distinguish between the words *Spacious* and *Specious*.
9. Can I ever forget your kindness? (Change to Assertive sentence)
10. This is the needle with which she knits. (Change to Simple sentence)

4. Read the following extract and critically analyze it. (5) (150 words)

*What is this life, if, full of care,
We have no time to stand and stare?
No time to stand beneath the boughs,
And stare as long as sheep or cows,
No time to see, when woods we pass,
Where squirrels hide their nuts in grass.
No time to see, in broad daylight,
Streams full of stars, like skies at night?*

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. MONSOON SEMESTER 2019 END SEM 4TH YEAR -07th SEMESTER EXAMINATION

ENTERTAINMENT & MEDIA LAW

Full Mark: 50

Time Allowed: 3 Hours

QUESTION NO. 1 IS COMPULSORY. ANSWER ANY TWO QUESTIONS OUT OF QUESTIONS 2, 3 AND 4.

YOU MAY ANSWER THE SUB-PARTS OF A QUESTION SEPARATELY, OR TOGETHER. EVALUATION SHALL BE DONE ACCORDINGLY. NO CLARIFICATIONS SHOULD BE SOUGHT.

1. Read the following advisory from the News Broadcasters Authority to all its member Editors and answer the following questions: (10x2=20)

October 16, 2019

IMPORTANT ADVISORY

All Editors of NBA

Re: Reporting of Ayodhya matter pending in the Hon'ble Supreme Court

As you are aware, the Hon'ble Supreme Court of India has been hearing the above matter on a daily basis and the issues involved in the above matter are extremely sensitive in nature.

Being a visual medium, the electronic media is a powerful tool and the information disseminated by it has wide impact and it plays an important role in the formation of public opinion. Therefore, it is incumbent on the news broadcasters to take extra care and be cautious while telecasting news relating to sensitive and emotive matters.

You will appreciate that the reporting of the Ayodhya issue being heard by the Hon'ble Supreme Court is one such matter in which **extra care and caution needs to be exercised to ensure that the telecast of any news relating to it should not be sensational, inflammatory or provocative. The basic guideline to be adhered to during telecasting news is respect of the above issue is that all such news should conform strictly to subserving the public interest of maintaining communal harmony and preservation of the secular ethos of the country.**

In view of the sensitive nature of the Ayodhya issue, reporting requires adherence to the Code of Ethics and Broadcasting Standards and certain specific guidelines issued from time to time in this regard.

It is, therefore, necessary that all news broadcasters should not only ensure strict compliance of the guidelines but should also ensure that no occasion arises for any speculation about the accuracy, neutrality and impartiality of the content.

Some additional specific guidelines to be observed in relation to the telecast of news in this matter are as follows:

1. No broadcast should be made in any speculative manner in respect of the present proceedings before the Hon'ble Supreme Court nor of the judgement before it is pronounced; and of its likely consequence thereafter which may be sensational, inflammatory or provocative.
2. No news in relation to the present proceedings pending before the Hon'ble Supreme Court shall be broadcast unless the reporter and/or editor have adequately ascertained the accuracy, authenticity and correctness of what is reported, preferably from Court records, or at the very least, by being personally present during such proceedings.

3. For clarity and adherence it is emphasized that programmes/telecast should not speculate on issues relating to the Ayodhya judgement or its repercussions.
4. No footage of the demolition of the Babri Masjid is to be shown in any news item relating to the Ayodhya matter.
5. No visuals need be shown depicting celebration or protest by persons in respect of the Ayodhya matter.
6. In view of the sensitivity of news reporting on this issue, extra care should be taken to ensure accuracy by vetting and clearance at the highest editorial level.
7. Telecast of any news/programme must not give any impression of bias or prejudice in favour of, or against any community.
8. Care should be taken to ensure that no opportunity is given to anyone to express any extreme view, including in debates in order to influence the viewers.
9. Debates which are provocative and inflammatory and likely to create tension in the public should be avoided. It is expected that strict adherence to these guidelines would be ensured by all the Editors to avoid any violation which may attract strict action. It is hoped that every channel will adhere strictly to the Code of Ethics, Guidelines/Advisory and give no occasion for the NBSA to examine any allegation of violations by the Member channels. This occasion is a challenge, as well as an opportunity to the Member channels to prove the efficacy of the self-regulatory mechanism. It is hoped that the opportunity would not be lost.

Annie Joseph

For and on behalf of the

News Broadcasting Standards Authority

- a) Analyse the legal tenability of the said advisory if it is challenged/ flouted by a News Broadcasting Company. (10)
- b) Assuming that this advisory was issued by the Ministry of Information and Broadcasting to the News Broadcasters, would your analysis be any different? Analyse, with reference to legal principles and settled precedents. (10)

2. Reputed filmmaker Mr. Chatur Kumar has made a controversial Hindi film titled ‘Mahatma: The Untold Story’ on the last two years of Mahatma Gandhi’s life. Clearly, this film tends to project the Mahatma as a villain of sorts – responsible for partition of India, a political hypocrite clearly responsible for side-lining of certain political stalwarts and promoting the cause of his own protégés etc. Quite intriguingly, the filmmaker shows a tacit support towards Nathuram Godse and tries to justify his version of the assassination of Gandhi, by alluding to references of Godse’s statements made in the courtroom in course of his trial.

Naturally, when this film was sent to the CBFC for certification, the CBFC found its contents “outrageously offensive for public exhibition”. It refused certification of the film altogether. The FCAT upheld the Examination Committee’s decision on appeal. Aggrieved, Kumar has decided to approach the Supreme Court alleging the abridgement of his Article 19(1)(a) freedoms in an unreasonable manner. He has also approached Netflix, a Video on Demand (VOD) site and has sold satellite broadcasting rights to it. Netflix has duly released the film on October 2 in four languages – Hindi, English, Tamil and Telugu.

In light of the facts as aforesaid, analyse the following questions:

- a) Do you consider the total prohibition of the film to be a reasonable restriction? Articulate with reference to appropriate references to the context.

(5)

b) Can Mr. Kumar be held legally liable for releasing the film in Netflix even after a refusal by the CBFC and a *sub judice* case in the Supreme Court?

(5)

c) Can Netflix be held liable in any way?

(5)

3. In a case involving the Bengali Film ‘*Bhobishyoter Bhool*’ which was quite dubiously taken off the theatres, presumably upon instructions from senior Police officials, even after it was certified by the CBFC for public viewing, the Supreme Court pulled up the State for use of “*extra constitutional means to prevent the lawful screening*” of the film, and ordered the State to pay compensation and costs to the producers. D.Y. Chandrachud, J., emphatically observed:

“The wielding of extra constitutional authority is destructive of legitimate expectations. Under the constitutional scheme, restrictions can only be imposed by or under a law which is made by the State. [...] In the present case, the West Bengal police have overreached their statutory powers and have become instruments in a concerted attempt to silence speech, suborn views critical of prevailing cultures and threaten law abiding citizens into submission”.

Clearly outlining the need for a positive mandate upon the State to protect Free Speech, the Court asserted:

“Political freedoms impose a restraining influence on the state by carving out an area in which the state shall not interfere. Hence, these freedoms are perceived to impose obligations of restraint on the state. But, apart from imposing ‘negative’ restraints on the state these freedoms impose a positive mandate as well. In its capacity as a public authority enforcing the rule of law, the state must ensure that conditions in which these freedoms flourish are maintained. In the space reserved for

the free exercise of speech and expression, the state cannot look askance when organized interests threaten the existence of freedom. The state is duty bound to

ensure the prevalence of conditions in which of those freedoms can be exercised. The instruments of the state must be utilized to effectuate the exercise of freedom. When organized interests threaten the properties of theatre owners or the viewing audience with reprisals, it is the plain duty of the state to ensure that speech is not silenced by the fear of the mob. Unless we were to read a positive obligation on the state to create and maintain conditions in which the freedoms guaranteed by the Constitution can be exercised, there is a real danger that art and literature would become victims of intolerance.”

Do you think this observation by D.Y. Chandrachud, J., as ushering in a new paradigm shift in construing Article 19(1)(a) as a positive right, instead of its usual negative right connotation? Analyse, with appropriate references to the context. (15)

4. In order to prevent the viral spread of malicious information over the internet that occasionally results in causing violence and other similar forms of public order disturbance, the Government very often takes resort to the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, which authorizes the government to, subject to certain procedural requirements being observed, temporarily shut down internet services in the affected areas. In light of our existing Fundamental Rights jurisprudence, analyse the constitutional validity of the said rule.

(15)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 –9th Semester – 2015 Batch

Equity and Trusts

Full Marks - 50

Time Allowed: 3 hours

This Examination is for **50 marks**. You are allowed to only carry unannotated and unmarked copies of the Indian Trust Act 1882 and the Specific Relief Act 1963.

Section A

20 Marks

1. Mr. Manson creates a trust through a will for the maintenance of his wife and children. While his wife has life interest, the children retain a remainder interest. He makes certain other dispositions to friends and acquaintances as well. Upon his death, the following issues emerge:

This Section is compulsory. Please consider each sub-section as unconnected to each other and point out the legal implications in each scenario.

- a) He had appointed as trustees his wife, Mrs. Manson, an insolvent chartered accountant and Mr. Polanski, who has recently gone through a devastating bereavement and claims to be 'emotionally distraught and practically suicidal'. (4 marks)
- b) The trust consists of certain shares which have gone up in value. Mrs. Manson wishes the trustees to sell these shares immediately. The children object. (4 marks)
- c) In the trust document he writes, 'I would wish that my collection of knives is used by my friends, acquaintances and followers for furthering my interests and beliefs and teaching people the rightful ways.' (4 marks)

- d) In the trust document he writes, 'Of my 100 Limited Edition, signed by the director DVD copies of the cult classic movie Valley of the Dolls, I leave 20 of them to my friend Sharon.' (4 marks)
- e) In the course of time it becomes apparent that no accounts of trust property have been received for 5 years. The beneficiaries of the trust request an accounting of the trust. The trustees wish to appoint an accountant and delegate the role of preparing and furnishing accounts. (4 marks)

Section B

(10 x 2= 20 marks)

Answer any two of the following:

3. Evaluate the use of constructive trusts in India and the UK.
4. Does the instrument of the private trust retain any significance in the 21st century? Illustrate your answer with the use of legal examples.
5. 'Equity continues to have important implications for both the law of trusts and as a remedial tool.' Discuss.

Section C

(5 x 2= 10 marks)

Write short notes on any two of the following cases:

6. Tagore v Tagore
7. Allcard v Skinner
8. Paul v Constance

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 – 5th Semester – 2017 Batch

LAW OF EVIDENCE

Full Marks – 70

Time Allowed: 3 hours

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

(Attempt All Questions)

No clarification may be sought during examination

INSTRUCTION

- The question paper consists of three pages. Please ensure that your paper runs up to page no. 3.
- There are two questions in this paper. Start answer to new question in a fresh page. You may first attempt question no. 1 or 2 as per your preference but ensure that you complete all the sub parts of the respective attempted question before moving on to the next question. The missed out question may not be evaluated if answered towards the end or mixed with answers of another question. However, it is not necessary to maintain the chronological order within the sub-part of a particular question.
- The answer number and sub-part should be marked properly.
- Answers should be supported with the relevant provisions of the Indian Evidence Act and decided cases. However, it is not necessary to copy the entire provision from the bare act. It is sufficient to highlight the essential ingredients of the relevant section of Act. You may also substantiate your answer by formulating hypothetical examples. Marks shall be deducted for wrong citation.
- There is no standard length of answer. You should endeavour to write to the point but there is no restriction in citing authorities – the more, the better. Tip: Check the mark allotted for an individual question before attempting so that you can frame your answer accordingly.

Question No. 1

[Each sub-question carries eight marks: 5 questions x 8 marks= 40 Marks]

[N.B. – Mark will not be awarded for this question if provision of the Indian Evidence Act is NOT cited in support of the reasoning assigned to the answer or WRONG provision is applied even if the answer is otherwise correct. Besides, mark shall be deducted for citing wrong cases]

- a) X and Y are charged for the murder of P. The prosecution produced two eye witnesses. Both the witnesses deposed in the court that X and Y separately struck on

the head of the deceased with an identical sharp object. The witnesses were cross examined by the defence and the court didn't find any inconsistencies in their testimony. However, in the post mortem report one incised injury was found on the head, which was attributed to the cause of death. The doctor, who conducted the post mortem, opined that it was unlikely that there were multiple blows on the head of the deceased. There is no other evidence in the case. The defence contested on the ground that eye witnesses were not reliable and court should go with the version of medical opinion as it is relevant u/s 45. So, medical evidence should be applied to overrule the ocular evidence. On the other hand, the prosecution argued that eye witness account is direct evidence and medical finding is merely advisory or corroborative in nature u/s 45. Therefore, as per the best evidence rule, fact narrated by eye witnesses and subjected to cross examination prevails over opinion evidence. Decide the case in the light of relevant provisions of the Indian Evidence Act and decided cases.

- b) X, one of the witnesses in a case against A vs B. X has narrated certain facts related to the alleged incident. Besides, he stated facts which are not connected with the alleged incident. The counsel sought the permission of the court for producing independent witness for corroborating the facts which are unconnected with the alleged incident. The independent witness which the counsel proposed to produce doesn't know anything related to the alleged incident. Whether the court will permit the said independent witness? Cite relevant provision.
- c) X made a statement previously that he saw B stabbing C to death but before the court he deposes that he saw 'B' and 'D' stabbing 'C' to death. Whether the previous statement is admissible? If yes, what is the probative value? Discuss in the light of relevant provision and decided cases.
- d) X and Y have been charged for criminal conspiracy. Z, a sole witness in a case, while deposing in the court, narrated that he was present in the room when X and Y were hatching conspiracy. He said that he heard their plan and recorded it in his mobile phone as well. In the course of his testimony, he wanted to refresh his memory by listening to the recorded conversation. Whether the court will permit? Cite relevant provision.
- e) X filed a case against Y for 60% ownership of the land, which is in possession of the latter. X narrated in the court that the original deed, executed in the year 2015, was in his possession but Y took it from him on the pretext that it was required for proving his citizenship under the policy of National Register of Citizens (NRC). However, the deed of 2015 is not relevant for claiming citizenship as per the rules of NRC. Y has failed to produce the original deed in the court. Consequently, the court has permitted X to produce secondary evidence of the content of the deed. Now, Y is willing to produce the original deed for contradicting the claim of X arising out of the secondary evidence tendered by the latter in the court. Whether the court will permit Y to produce original deed? Cite relevant provision.

Question No. 2

[Each sub-question carries six marks: 5 questions x 6 marks = 30 Marks]

- a) Briefly explain the various factors laid down in the case of State vs Navjot Sandhu [AIR 2005 SC 3820] for determining the probative value of an admissible statement u/s 27?
- b) What are the relevant factors to be considered for determining the probative value of an opinion given by handwriting expert? Cite relevant case.
- c) Point out the difference between 'proving an admission' and 'contradicting a statement'.
- d) Whether the opinion of an expert on proved fact is admissible?
- e) X, an accused in a case, refused to appear for test identification parade. Whether it is relevant against the accused? Discuss in the light of the relevant provision of the Indian Evidence Act.

FAMILY LAW- II

Instructions: List of cases and schedule signed by the course teacher is allowed in the examination hall.

Full Marks - 65

Time Allowed: 3 Hours

1. (a) Sylvia, a Parsi female fallen in love with Prem, a Hindu male and married him under Special Marriage Act, 1954. After two years of marriage, her father died intestate. As she was married to a non-Parsi, she was prevented from entering the ‘Tower of Silence’ on her father’s death. When she claimed property rights her brother objected saying that she is not entitled to the said property as she ceases to be a Parsi. Whether Sylvia, a born Parsi woman, by virtue of contracting a civil marriage with Prem, a non-Parsi man under the Special Marriage Act, 1954, cease to be a Parsi and is not entitled to inherit the property of her deceased father? Give current legal position of law and also your own views. Justify your answer with relevant case laws. [2.5+2.5 =5]
(b) X and Y were in live- in relationship for one year. Y has given birth to Z out of this relationship. Would section 16 of the Hindu Marriage Act, 1955 apply to children born in live-in relationships regarding succession? [5]
2. (a) Briefly discuss the suggestions provided by Law Commission of India in Consultation Paper on Reform of Family Law, 2018 for reforming Hindu, Muslim, Christian and Parsi laws of Succession. [7]
(b) X, a Christian male, dies intestate, survived by his mother and two brothers of the full blood, Y and Z, and a sister M, who is the daughter of his mother but not of his father. Calculate the respective share with justified reason. [3]
3. (a) X was married to Y. X was unchaste on the date of the demise of her husband Y. Y died intestate. X claimed property rights. Z, the father of Y objected X from inheritance on the ground of unchastity. Whether X is disqualified to inherit Y’s estate as a Class-1 heir under the Hindu Succession Act. 1956? Support your answer with relevant case laws. [5]
(b) Amarnath, a Hindu father executed a mortgage of the joint family properties, to raise a loan, though not for a family necessity. After three years, 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 in the coparcenary property as well? Also, support your answer with relevant case laws. [5]

4. (a) What are the essentials of a valid will (wasiyat) under Muslim law? [2]
- (b) Ali, a Shia testator dies leaving behind net assets worth Rs. 18, 00,000/-. Funeral expenses was Rs.3, 00,000/-. There was a legacy under which he gave Rs. 5, 00,000/- to X, Rs. 5, 00,000/- to Y and Rs. 5, 00,000/- to Z in that order.
- (i) Calculate the bequeathable amount and the share of X, Y and Z. [2.5]
- (ii) Will there be any difference if Ali belonged to Sunni sect? [2.5]
5. (a) X died in the year 2001 leaving behind two daughters, two sons and his widow. After his death, his son filed the suit for partition and a separate possession of the suit property in the plaint stating that the two sons and widow were in joint possession of the properties as coparceners. A preliminary decree has been passed in the partition suit in 2006. However, during the pendency of this suit, Section 6 of the Hindu Succession Act, 1956 was amended. Both the daughters contested the suit by claiming that they were also entitled to share in the joint family properties, being daughters of X.
- In the given fact scenario, are the daughters entitled to share the joint family property as a preliminary decree has already been passed in the partition suit? Justify your answer with relevant case laws. [5]
- (b) What are the special rules for females governed by Marumakkattayam and Aliyasantana Laws? [5]
6. Write short note on (Any Three): [3x3=9]
- a. Doctrine of Escheat
 - b. Karta
 - c. Gift of Mushaa
 - d. Hiba-ba-shart-ul-Iwaz
7. Difference Between (Any three) : [3 x 3=9]
- (i) Marz-ul-Maut and *Donatio Mortis Causa*
 - (ii) Hindu joint Family and Coparcenary
 - (iii) General Rules of Inheritance of Sunnis and Shias
 - (iv) Mitakshara and Dayabhaga

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 –9th Semester – 2015 Batch

Law of Insurance

Full Marks- 50

Time Allowed: 3 hours

Instructions to examinees

This question paper is divided into two parts, i.e. Part A and Part B. Answer both the questions from Part A and any two of the questions from Part B.

Bare Acts Allowed - Insurance Act, 1938 and IRDA (Protection of Policyholders' Interest) Regulations, 2017

PART – A

Answer both the questions in this part

2x15 = 30 marks

1. On 10 July 2017, the spouse of Falak took a policy of life insurance from Rigel Life Insurance Co. Ltd., with a sum assured of Rs.11 lakhs. Barely two months later, i.e. on 16 September 2017, he i.e. Falak's spouse submitted another proposal for a life insurance term plan policy of the Orion Life Insurance Co. Ltd. for an insurance cover of Rs. 10 lakhs. In item number 17 of the insurance proposal form of Orion, the proposer was required to answer whether he was currently insured or had (previously) applied for life insurance cover, critical illness cover or accident benefit cover. This query was answered in the negative and the response of the proposer was 'NA' or 'not applicable'.

Also the following declaration was furnished by the proposer in his proposal form:

"I understand and agree that the statements in this proposal form shall be the basis of the contract between me and Orion Life Insurance Company Limited ("the Company") and that if any statements made by me are untrue or inaccurate or if any of the matter material to this proposal is not disclosed by me then the Company may cancel the contract and all the premiums paid, will be forfeited".

On 22 September 2017, the Orion Life Insurance Co. Ltd. issued a policy of life insurance to the spouse of Falak based on the disclosures contained in the proposal form. Falak's spouse died on 8 February 2018. On 24 May 2019, nearly fifteen months after the date of death, Falak, who was the nominee under the policy issued by the Orion Life Insurance Co. Ltd., submitted a claim of Rs. 10 lakhs under the terms of the policy. The claim was supported by necessary medical certificate stating that the policy holder had suffered from sudden chest pain prior to his death. On 14 July 2019, in response to the Orion Life Insurance Co. Ltd.'s e-mail dated 29 June 2019, Rigel Life Insurance Co. Ltd. informed the Orion Life Insurance Co. Ltd. that the spouse of Falak had been insured with them for a sum of Rs. 11 lakhs and that

the claim had been settled. The Orion Life Insurance Co. Ltd. repudiated Falak's claim on 30 August 2019 stating thus:

“In the light of the active suppression of material fact, leading to the glaring omission on the part of the proposer of the policy to answer the questions contained in the life insurance policy-form correctly, we repudiate the claim under the policy.”

However, Falak in this case maintained that “the omission of the insured to disclose a existing previous policy of insurance would not influence the mind of a prudent insurer”.

The Orion Life Insurance Co. Ltd. maintained that

In answering the relevant query negatively the proposer submitted ex facie false information. This was in breach of the bounden duty of the proposer to furnish full and complete details in response to the queries contained in the proposal form.

The commencement date of the policy being 22 September 2017, the claim in the present case was repudiated within two years, on 30 August 2019, due to the nondisclosure of the previous life insurance policy held by the proposer. If the information sought by the insurer in the proposal form is not disclosed, is suppressed or if a false answer is furnished by the proposer, the insurer is entitled to repudiate the insurance policy or any claim arising from it.

It is for the insurer, and not the proposer, to determine whether the information which has specifically been sought in the proposal form is material or otherwise.

It is only when an insurer seeks to repudiate a policy of life insurance or a claim arising under it after two years of the effective date of the policy, the insurer may have to demonstrate that the information sought in the proposal form was material.

Disclosure of a pre-existing life insurance cover of the proposer is necessary to enable the insurer to assess the human life value of the proposer before the issuance of a policy. The consequence of non-disclosure of a pre-existing cover is that the insurer is unable to assess the real risk. This is an important facet of financial underwriting.

Even a partial non-disclosure or ambiguous disclosure regarding the previous policies in the proposal form vitiates the policy, which is thus liable to be rescinded.

Falak on the other hand maintained that

The insurance agent induced the insured to take a policy of life insurance by taking his signature on a blank proposal form together with the premium in cash. The insured was not conversant with English and it was the duty of the insurer to translate the proposal form into Gujarati (vernacular language). The proposal form was either filled in by the Orion Life Insurance Co. Ltd.s or their agent and the witness was unknown to the insured.

A non-disclosure of a previous insurance policy cannot be a valid ground for repudiation of the claim. There is no prohibition in law from a person holding any number of life insurance policies from different insurers. The insurer has admitted that the death of the insured on 8 February 2018 was due to a heart attack and hence the claim was covered within the terms of the policy.

The non-disclosure of a previous insurance cover is not of any material consequence. The alleged omission or commission is not of any material consequence and would have not influenced the mind of the Orion Life Insurance Co. Ltd. while issuing the policy nor would it affect the rate of premium.

Analysing the facts and arguments presented by both the parties and applying appropriate provisions of law write a reasoned judgment deciding whether Falak is legally entitled to receive the said sum assured from Orion. 15 marks

2. Magical Moments Colour Lab (is a sole proprietorship business and is into the business of photography/ videography etc.). It imported one set of printer process and film processor from Japan. The machines arrived at Mumbai on 1st November, 2018 and were entrusted to M/s Super Road Lines (a transport business venture) for onward transportation from Mumbai to Hardwar (via road) by 20th November, 2018. A pre-dispatch survey conducted by the Surveyor (appointed by the insurer) confirmed that both the machines were in sound condition at the time of dispatch from Mumbai.

To secure the machines against any possible damage during transit, the Magical Moments obtained a transit insurance policy from the Insurance Company for a sum of Rs. 53 lakhs. The policy covered loss against all risks including damage/breakage, theft pilferage, road risk and non-delivery etc.

During transit, the printer machine was damaged but was repairable, however, there was no apparent damage caused to the film processor (which was found to be in working condition). This matter was also confirmed by the surveyor (in his report) who conducted the post-transit-survey soon after the machines arrived at Hardwar. Moreover, the surveyor (in his report) opined that the damage/loss to the printer machine was repairable and assessed the cost of repairing the same at Rs. 5,76,730/-. This post-transit-survey was carried out by a surveyor appointed by the insurer. Accordingly the insurer offered to pay Rs. 5,76,730/- only to the Magical Moments Colour Lab.

Magical Moments refused to accept the said amount of Rs. 5,76,730/- and demanded a total amount of Rs. 53 lakhs (i.e. the sum insured) be given to it. Magical Moments further claimed that while there was no apparent damage to the film processor, the fact that the printer machine had suffered damage during transit, raised a reasonable apprehension in the mind of the insured that the impact which the printer machine had suffered in the course of transportation may have damaged the film processor too. It was submitted by Magical Moments that merely because the film processor was found to be in working condition did not rule out the possibility of the machine giving trouble in future.

Moreover Magical Moments maintained that the manufacturers had clearly ruled out any possibility of repairs to the printer or the film processor machine in India. It was also submitted (by Magical Moments) that the expenses on repairs which could be carried out only in Japan would be far more than the price of a brand new machine making it unwise

to insist on repairs. The manufacturer had also ruled out the possibility of any such repairs being satisfactorily carried out by any repairing agency in India.

Magical Moments further maintained that since insurance contracts are 'contracts of indemnity', Magical Moments is entitled to receive the entire sum insured of Rs. 53 lacs because the contingent event (i.e. the damage/ loss in transit) actually took place.

Applying appropriate provisions of law and analyzing the facts and arguments presented by the parties to the dispute, determine the extent of liability of the insurer in this case. Give reasons for your answer. 7+8 = 15 marks

PART-B

Answer any two questions from this part

2x10 = 20 marks

3. Critically analyse the regulatory aspects of a contract of reinsurance in India. 10 marks

4. Discuss the impact of the process of assignment and nomination to a policy of life insurance in India. 10 marks

5. Discuss the various types of marine perils which may be covered under a policy of Marine Insurance as per the applicable law in India. 10 marks

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. MONSOON SEMESTER 2019 - 4TH YEAR - 07TH SEMESTER EXAMINATION

INTELLECTUAL PROPERTY LAW 1

Marks: 70

Time: 3 Hours

BARE ACT (COPYRIGHT ACT - WITHOUT COMMENTS) IS ALLOWED

ANSWER ALL QUESTIONS

NO EXPLANATION SHALL BE OFFERED

1. If a book is legally published in a foreign country, would its import into India constitute infringement of copyright if it is done without the permission of the copyright owner? Answer with explanation. Would the position be different for DVD? 10
2. A private Hospital transmits video film of single user license to its patients from a central machine to television monitors in individual patient's room. Examine liability of the Hospital. 10
3. Beyond Dreams Entertainment ("BDE") handed over certain scripts and concept notes of a particular Hindi television show on contemporary issue to Zee Entertainment. Initially, Zee was supposed to telecast the series but negotiations failed and Zee was no longer to telecast the show, instead went on to create a new show based on the concept notes shared. BDE sued to restrain the telecast of this show developed by Zee. Argue for both sides and decide. 10
4. A singer had sung certain songs for a film, but the CD of the songs in the said film and the film promo did not show her name as the singer. Advise singer. 10

5. Principal Director of a Film is claiming Joint Authorship in the Film along with Producer. Examine legality and desirability of such claim. 10
6. An artist made a portrait of Mahatma Gandhi based on two photographs of Mahatma Gandhi. Examine standard of Originality in a derivative artistic work to determine copyrightability of such portrait. 10
7. An online platform which stores music files uploaded by users is arguing that the online platform is not liable for copyright infringement as it has installed an automated technology tool to check infringement. Offer counter argument to this claim of the online platform. 10

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. MONSOON SEMESTER 2019 END SEM 4TH YEAR -07TH SEMESTER EXAMINATION

Intellectual Property Rights, Plant Genetic Resources and Agriculture

Full Marks: 60

Time Allowed: 3 hours

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

1. (a) The prevalent notion of intellectual property is not definitionally dependent upon the physical externality, materiality or scarcity of the object owned. Knowledge, which is in the public domain, is freely available to all. The appropriation of intellectual property is thus derived not from its innate propensity to propertization, but from a politico-legal dispensation which conceives of IPRs as a reward structure which enables the social organization of research. Intellectual property rights thus constitute devices which enable the transformation of intangible assets into a tradable property to which there is private and restricted access. It comes to share with tangible property ‘the mutual quality of exclusivity in the eyes of the law’.

In view of the expanding nature of intellectual property critically analyze the above statement.

- (b) Was there a ban on patenting life form or process leading to life form in India before the 2002 Amendment to Patents Act, 1970? Explain. [8+4=12 Marks]

2. (a) “Science, with the help of institutional mechanisms like TRIPS and UPOV, helps the transformation of agriculture, where the relationship of the farmer to his farm and his produce is altered. The plant variety that is conserved, renewed or selected by farmers is separated from social, economic and cultural systems in which farmers develop their production.”

In view of the above inquire into the ‘justness’ of the claim of farmers’ rights, as a putative counterbalancing response to intellectual property regimes in the PGRs.

- (b) One of the leading criticisms against UPOV is that, it cannot substantially help to meet the goals of the Convention on Biological Diversity to ensure the conservation, sustainable utilization and fair and equitable sharing of benefits arising from the use of biological diversity.

Do you agree? Give reasons for your answer. [8+4=12 Marks]

3. (a) How far the right to food and intellectual property protection for new plant varieties can achieve complementary goals?
- (b) Will the PVP&FR Act, 2001 assist India in realizing the human right to food? Justify your answer with the help of the relevant provisions of the Act identifying the issues and challenges for country's food security. **[4+8=12 Marks]**
4. (a) Article 28 of the TRIPS Agreement recognizes intellectual property rights as private rights which often construct obstacles to the exchange of flow of knowledge and their use of production. Such an exclusive and private right system clashes with the traditional, social and economic system in which local communities make use of biodiversity and the associated knowledge.
- If the above statement is true, then how the issues related to ownership of traditional knowledge in international intellectual property rights regime can addressed? Discuss from both national and international perspective.
- (b) Briefly explain the legal relationship between TRIPS Agreement and CBD Obligations. **[8+4=12 Marks]**
5. The claim of IPRs over plant genetic resources was aggravated due to the significant development in agricultural biotechnology and pressure by private sector, which took significant role in plant breeding. The shift highlights the breath taking potential of genetic engineering for improving agricultural production and quality by creating of varieties of plant containing desirable traits, which does not exist within the gene pool. Agricultural biotechnology involves huge investment of money, labour, intellectual effort and considerable risks, therefore, has become the target of more and more stringent instruments of privatization through different forms of 'intellectual property rights'.
- Critically analyze the above statement and examine how legislative, judicial and policy initiatives sculpted the complex intellectual property jurisprudence expanding IPRs over plant genetic resources. **[12 Marks]**
6. Write short notes (*any three*): **[4X3=12 Marks]**
- (a) Technology transfer and benefit sharing
- (b) TKDL
- (c) Moral and ethical issues relating to commodification of seed and plant
- (d) International Treaty on Plant Genetic Resources

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. End Semester (Monsoon) Examination 2019 – 5th Semester – 2017 Batch

JUDICIAL PROCESS AND ACCESS TO JUSTICE

Full Marks – 70

Time Allowed: 3 hours

The paper is self-explanatory, no bare acts or any reading materials are allowed inside the examination hall.

Long Questions: Write any four, Q1 is compulsory (50 marks)

1. The courts are also responsible for overseeing investigation before the commencement of the trial and during the trial, any unreasonable delay the courts must explain the reasons. Discuss the reasons for judicial delay and role of courts? **(14 marks)**
2. The role of a public prosecutor in a case, cannot be to secure conviction or acquittal in a case, he advocates for the State in prosecuting the accused along with securing the position of the victim in a criminal trial. Can he fulfil both the roles? Discuss with relevant case laws. **(12 marks)**
3. Delay in judicial process affects not only a person's legal rights but also his constitutional rights. Do you agree? Support your argument with reasons and case laws. **(12 marks)**
4. The role of National Legal Services Authorities ensures that none will be excluded from access to justice depending upon their socio-economic and cultural rights. Explain the role and contribution of NALSA in promotion of access to justice. **(12 marks)**
5. A entered the house of B with an intention to commit theft. While A was committing theft B tried to restrain A, B was attacked with acid which caused her burn injuries. While the accused will be tried as per the provisions of law, where shall B approach for aid and rehabilitation? Whether A's arrest have any kind of implication upon B's rights? Elucidate. **(12 marks)**

6. **Short Questions: Answer all (20 marks)**

- a. Is access to justice, access to courts? Explain. **(5 marks)**
- b. Who is primarily responsible for the promotion of access to justice? **(5 marks)**
- c. The position of the victim in a criminal trial is lost to being a prosecution witness, how will you advocate the position of the victim in a criminal trial. **(5 marks)**
- d. How does dispute containment and legal health promotion improve access to justice? **(5 marks)**

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 – 5th Semester – 2017 Batch

JURISPRUDENCE

Full Marks – 70

Time Allowed: 3 hours

Attempt any *five* questions.

Q.1 The picture of a judge sitting in an ivory tower, weighing nothing but the point of law and fact presented before him, is of course misplaced. Judges are affected by time and place, perhaps they are affected a bit less than the rest of us but they are not immune is evident from the judgments themselves. When socialism was the rage, judgments too had that hue. Today, that penumbra is shriveled and socialist rhetoric is less noisy. The way Supreme Court fell in line during Emergency is of course the classic illustration of the impact time and place have on judges, and on their reading of law. Recall the admonitions of the SC against being hyper-technical where Fundamental Rights are involved. But hyper technicalities are exactly what the court donned during Emergency. *ADM Jabalpur* remains a monument to cowardice dressed up in legalism.

[Excerpts from Arun Shourie's 'Courts and their Judgments', HarperCollins Publishers, Noida, India]

Based on the above paragraph, discuss that the judgments of the courts are not objective and neutral documents. Explain it with reference to '*Speluncean Explorer*' case. (14 Marks)

Q.2 Through a Presidential order and constitutional amendment, Article 370 of the Indian Constitution have been made inoperative. It has created a divide among constitutional experts with regard to the validity and legality of this exercise. The validity of this exercise has been challenged in the Supreme Court of India. Assuming yourself as the Attorney General of India make a case for this amendment based on Carl Schmitt's theory of sovereignty. (14 Marks)

Q.3 What is the pragmatic program given by Roscoe Pound to balance the competing interests in any given society? Does it suffer from any pathology when it's applied in a social system? Explain it by making a case for series of affirmative actions needed to be taken for the persons belonging to LGBTQ+ community in WBNUJS. (10 + 4 = 14 Marks)

Q.4 a) Explain the concept of 'possession'? What are the various theories supporting one or other concept of possession? (3.5 + 3.5 = 7 Marks)

b) Briefly explain the Hohfeldian concept of Rights and analyze 'Right to constitutional remedies under Article 32 of the Constitution of India' through Hohfeldian framework of jural relations. **(4 + 3 = 7 Marks)**

Q.5 'Feminist approach to law can be seen to start from basic assumption about relationship between men and women and the law is informed by and serves to reinforce patriarchal social relationship that is based on male norms, male experience and male dominance. Women's experience is excluded from the law and the has contributed to women's oppression.' Critically analyze it in the light of various feminist legal theories with special reference to #MeToo movement and it's critique of the due process. **(10 + 4 = 14 Marks)**

Q.6 President X is a democratically elected President of the 'Republic of Memes'. After his successful first term in the office he was re-elected for the office of the President for the second time. However, just after his re-election he was accused of corruption, nepotism and authoritarianism. There was a huge protest against him across the 'Republic of Memes'.

The army of the Republic unseated the President X through a successful coup d' etat. The army has also suspended the Constitution.

Explain the effectiveness, validity and legitimacy of this legal order with reference to Kelsen's Pure Theory of Law. **(14 Marks)**

Q.7 Attempt briefly any *two* of the following: **(7 + 7 = 14 Marks)**

- a) Difference between the 'idea of obligation' and 'Being obliged to'
- b) Queer legal theory and it's impact on contemporary legal thinking
- c) Rawlsian Idea of Justice
- d) Negative and positive marks of an independent political society as proposed by John Austin

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. MONSOON SEMESTER 2019 4TH YEAR -07TH SEMESTER EXAMINATION

LABOUR & INDUSTRIAL LAW - II

Marks: 60

Time: 3 Hours

Instructions

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

ALL THE BEST

1. “Subsequent judicial dicta has not been able to address the gaps in legal protection for workers that have arisen due to the constitution bench decisions in SAIL and Uma Devi cases.” Please comment on the statement and substantiate your assertions with reference to relevant statutory provisions and case law. (12 Marks)

2. M/s. NDML is a company that provides Information Technology (IT) personnel to a large number of establishments to work on a contract basis. NDML had also registered and obtained its own Code under the Employees Provident Funds and Miscellaneous Provisions Act 1952. According to the terms of the standard Service Level Agreement (SLA) that NDML has with establishments, NDML provides as many IT personnel as the establishment may require and the NDML would charge a total fee of Rs 25,000 per head from the establishment. The SLA also stated that NDML would be responsible for hiring and firing of the personnel, disciplinary control over them and payment of wages and other social security benefits to the personnel. According to the standard contract that the NDML signed with the IT personnel whom it sent to various establishments, NDML signed them up for annual contracts according to which the following wage structure was paid to all of them

Head	Amount
Basic Wage	5000 per month
Dearness Allowance	500 per month
House Rent Allowance	300 per month
City Compensatory Allowance	200 per month
Leave Encashment Allowance [payable once a year to those with unutilised in their leave]	Rs 100 for each day of unused leave in a calendar year
Overtime Allowance [payable each month]	Rs 50 per hour of actual overtime work.

Part A

Anit Ghosh and Shashi Shabdawali were two such IT workers who had been deputed to work for Beliaghata Law College (BLC), Kolkata, a private law college, between January 1 2018 and December 31. The Registrar of BLC received a showcause notice from the Regional Provident Fund Commissioner directing him to show why an order should not be issued under Section 7-A for non-payment of contribution on behalf of Anit Ghosh and Shashi Shabdawali by the BLC.

The Registrar consulted the Professor of Labour Law at BLC, who said that the liability to pay Rs. 600 per month as employer's contribution and another Rs 600 as employee's contribution fell upon NDML since it was the employer of Anit Ghosh and Shashi Shabdawali. These contentions were submitted by the Registrar to the Regional Provident Fund Commissioner in his reply.

Please write a note determining the moneys due by BLC and NDML under Section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act 1952. [12 marks]

Part B

Manish Mishra had been entered into a contract with NDML wherein he was deputed by the company to work at Sikkim Electronics Ltd (SKEL) since January 1 2012. After working till December 31 2018, his contract was not renewed on the ground that he was found sleeping at work on more than a dozen occasions by the management of SKEL. On non-renewal of his contract, he applied for payment of gratuity to both SKEL and NDML but was denied any such payment. Thereafter, he filed a complaint against both SKEL and NDML before the Controlling Authority under the Payment of Gratuity Act. Please decide whether Manish Mishra is entitled to the gratuity, and assess the liability of SKEL and NDML. In case, an application for gratuity was filed before a Labour Court under the Industrial Disputes Act 1947, would it be maintainable? [10 marks]

3. Vidya Sinha, was appointed as a trained Nurse on an ad hoc position for two years by Naya India Health Point, Uri, a private hospital, on July 1 2019 with a consolidated salary of Rs 18000 per month. She was already pregnant at the time of appointment. This was her third pregnancy. She has approached you for advice on whether she is eligible for Maternity Leave with wages and if she is so entitled, she would like to know the date from which she could go on leave? Please advise in accordance with relevant statutory provisions and case law. [16 marks]

4. Gopal Turi worked as a Khalasi and Cleaner on Oil Tanker No. BH-10J-8661 under the employer Sachin Kumar Bhadani who ran a Transport Agency at Darbhanga with 6 employees. On 29.05.2019, Gopal Turi, and the driver of the said tanker Shyam Lal Manjhi, were instructed by their employer, Sachin Kumar Bhadani, to deliver a consignment to Haldia. Due to the deteriorating law and order situation, they were instructed to not travel after 2200 hours on any of the nights. On 02.06.2019 while they were on their way to Haldia, the tanker reached Junglepara 22.00 a.m. However, since Kolkata was very close, they decided to travel to the city before resting for the night. Soon after midnight, they took road challan and cash at the Dankuni toll tax station at NH-2. After proceeding for almost 20-25 kilometers after the toll tax station, they came across an empty L.P. Truck that obstructed their way. As they halted the vehicle for a moment, four persons came out from the said empty L.P. Truck and forcibly took the tanker in their possession and assaulted the two occupants of the truck. Gopal Turi died as a result of the injuries he suffered due to the assault. On post-mortem, the doctor found the cause of death as severe intro-peritoneal bleeding due to rupture of liver and lumps due to blunt force trauma combined with a degenerative liver disease that Gopal Turi was suffering from. When the widow of the deceased Turi applied for compensation, Sachin Kumar Bhadani replied that the death did not arise out of employment and in the course of employment. In particular, he highlighted the fact that Gopal Turi had a pre-existing disease and that his instructions had been disregarded by the deceased. Please decide whether the plea forwarded by Sachin Kumar Bhadani is tenable? [10 marks]

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 – 5th Semester – 2017 Batch

Land and Real Estate Laws

Full Marks – 50

Time Allowed: 3 hours

Instructions:

- **Students are allowed to consult Module and bare acts pertaining to Land Acquisition Act, 2013, SEZ Act, 2005 and Real Estate Regulation and Development Act, 2016**
- **Answer all questions**
- **Kindly use relevant materials, cases and statutory provisions in support of your answer**
- **No clarification can be sought in the exam hall**

1. Mr. Karian is the absolute owner of agricultural land bearing survey No. 55/1 measuring 5 acres, at Jakkasandra village, Malur taluk, Karam District. Mr. Karian is growing horticultural crops since land is multi-irrigational. On 30.09.2005, District collector issued a notification under Section 4 of the Land Acquisition Act, 1894, which was published in the official gazette. Thereafter, notices under Section 4(1) were served upon the landowners/interested persons. After following the procedure, the Special Land Acquisition Officer made an award under Section 11 of the 1894 Act. Notices were also issued to the landowners to reach the Office of the Special Land Acquisition Officer and receive the amount of compensation. Since they neither received the compensation nor made any reference to the District Court, however the compensation of Rs. 10 Lakh was deposited in the government treasury. Mr. Karian feels that compensation decided by the land acquisition officer was inadequate considering the nature of the land as well as the number of fruit-bearing trees. After knowing about the new land acquisition Act, 2013, Mr. Karian wants to know about the legal position of his claim as to the compensation. Advise him accordingly. **(6 marks)**

2. The government of Maharashtra took a decision to set up a satellite city of New Mumbai to reduce congestion in the city of Mumbai. Accordingly, lands in 20 villages in Thane and Raigad districts were earmarked for setting up a satellite city of New Mumbai. These villages are known for their picturesque wetlands and also the proposed New Mumbai

has a creek line of 150 km with a dense mangroves bed of about 50 sq.km, water bodies, and mudflats which support various categories of flora and fauna. On 20.02.2018 special land acquisition officer issued a notification under Section 4 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In the meantime, an NGO based in Delhi, which is working for the preservation of wetland is intending for quashing the notification. Consider yourself interning at the same NGO. What would be your legal opinion for the above case?

(6 marks)

3. Mr. Sahu executed a power of attorney to the builder for the construction of a multi-storeyed apartment on the land owned by him. On an application made by the builder, the Odissa Development Authority accorded sanction on 3.3.2010 for construction of a ten storeyed building in accordance with the building plans sanctioned by the Planned Development Authority of Odissa. The construction commenced and when the building came up it was found to have been built grossly in excess of the sanctioned plan on all the floors. Though the sanction accorded by the Authority permitted only 10 floors, a 15-floor building was erected. On 7.2.2018 Bhuvaneshwar Municipal Commissioner who is the approving authority of the town planning, initiated proceedings under the Orissa Development Authorities Act, against the builder calling upon it to show cause why the excess portions were not demolished. However, the builder in its response to the show-cause notice stated that former municipal commissioners had permitted them for such construction keeping in view of the housing shortage in the city and they did not raise any objection. Based upon the response to the show-cause notice Bhuvaneshwar Municipal Authority took a decision not to demolish the structure.

On 25.3.2019 one Mr. Panda whose flat is situated in the complex adjacent to Mr. Sahu's building, made a representation to the Authority complaining of the excess construction and submitting that the deviations from the sanctioned plan damaged the environment and endangered life and safety of not only the occupants of the building, but also of other inhabitants of the locality. Mr. Panda made representations, not only to the Authority but also to the Bhuvaneshwar Municipality, the Pollution Control Board and the State Government.

Despite making representation to these authorities, they failed to issue an order to demolish the said construction. Mr. Panda has approached you for legal advice.

(6 marks)

4. Mr. Verma is having two floors building, bearing No. C-1 at DK block, Taj Nagar. The building was meant to be used for commercial proposes. Mr. Salim was inducted as a tenant on the first floor of the premise by the owner through Rent Deed dated 20.07.2017. Mr. Salim started his hardware business, and it was going on reasonably well. In the meantime, Mr. Verma's son required the premise for running his separate business of sanitary and hardware products as the premise was at a prime location for the said

business. Mr. Verma sought eviction of the tenant from the premise for his son by filing a petition under the Delhi Rent Control Act on the ground of bona fide requirement.

Mr. Salim controverted the claim of bona fide requirement set up by the landlord by maintaining that the son of the landlord is employed as a Director in the company M/s. Lakshmi Granites Pvt. Ltd. and earns about Rs. 75,000/- per month. Further, Salim contended that Mr. Verma is running the business of marble and granite from several locations in the city which can be preferably used to accommodate the business of his son. Rent controller of Delhi sought an opinion from you in the capacity of an intern in their department. Advice. **(6 marks)**

5. Mr. Naman is a software engineer in Mumbai. Based upon the advertisement which appeared on the Mumbai mirror, Mr. Naman booked a flat belonging to a reputed luxury home construction company on 21.09.2016. As per the agreement of sale, he had paid INR 30,33,494 (out of INR 36,20,004) upon promise of delivery of his flat by 30.09.2018 (with six months of grace period additionally). Subsequently, Mr. Naman paid the entire installment on time but the builder didn't execute the agreement. Upon visiting the site, he found that the builder had stopped all construction activities from April 2017 without any reason. Mr. Naman and other potential buyers met the builder and forced him to resume the construction work. On resumption of work, the builder shared a fresh completion schedule which was agreed by all. But unfortunately, the builder had not mobilized enough manpower and materials to complete, even as per the new stipulated schedule. Upon inquiry, the promoters have evaded every question and have been continuously giving false promises.

Mr. Naman whose wedding was fast approaching, wanted to shift his house as early as possible. He had saved a lot of money to spend good time after the wedding but the builder has broken his dreams of a peaceful nuptial life and has caused financial agony by not delivering his flat. Disheartened, Mr. Naman approach the legal aid clinic of NUJS for advice. Prepare a brief for the same. **(6 marks)**

6. Mr. Moon had booked a flat in 'shining star' project for the no T8-1303 IN Tower 8, for a total consideration of Rs. 77, 78,511/ including all taxes and amenities charges. Out of the said sale consideration, Mr. Moon had paid a sum of Rs, 31, 10,222/ as the initial payment advance and the loan was arranged for a sum of Rs. 37,83,3999 by the builder from a nationalized bank. Thereby, a total amount of Rs 68, 93.621 was paid. As per the sale agreement and construction agreement with promoter, delivery of the possession was fixed as 30.09.2017 with a grace period of 6 months. However, even after the said period, the promoter failed to complete the project on time and deliver the possession.

As a result, Mr. Moon suffered severe financial loss by paying an EMI, without any income tax benefits. Mr. Moon stated that had the possession been handed over to

him on time, he would have saved on rents of Rs. 19,000 or would have earned a sum of Rs, 19,000 by renting out the apartment. Upon the inquiry with the builder, it was informed that the project would have been completed on time, had there not been any interference from the local and municipal authorities. Further, he said that RERA authority has not registered his project in view of want of sufficient clearances/ documents. As a result of it, local authorities disconnected the water and electricity connection for not getting registration with RERA. Mr. Moon not convinced with this reply filed a written complaint to RERA against the Promoter of the company for initiating criminal action. Based on the complaint RERA issued show-cause notice to the Promoter. The Promoter has approached you for the next course of action. Advise.

(5 marks)

6. Write Short notes on any three of the following:

(3 x 5 = 15 marks)

- a. PPP model in urban housing project.
- b. Building code and its enforceability.
- c. Joint developmental agreement in the real estate sector.
- d. Digitalization of land records and its utility in land acquisition.
- e. Comment on the implication of the Supreme Court decision in *Bikram Chatterji & Ors v. Union of India & Ors (2017)* with respect to the real estate sector
- f. Power of Gram Sabha vis-à-vis eminent domain of the state.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. End Semester (Monsoon) Examination 2019 –7th & 9th Semester – 2014 & 2015 Batch

LAW AND IMPOVERISHMENT

Full Marks- 50

Time Allowed: 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.
 5. Please read all the questions carefully.
-

1. “Federalism has acted as an impediment in the path of translation of the constitutional promise of adequate nutrition.” Please comment on this statement with the help of adequate examples. (10 Marks)
2. Would it be correct to state that even though use of technology in welfare programme has been expanded on the basis of claims of accuracy, efficiency and neutrality of decision-making, it is also true, as Dorothy E Robert argues that the “technological transformation of governmental decision-making” marks a “new form of managing populations that reinforce existing social hierarchies.”? (10 Marks)
3. “Judicial activism is at once a peril and a promise, an assurance of solidarity for the depressed classes of Indian society as well as a site of betrayal. Its spectacular achievements mask horrible failures.” - Please comment on this claim by Professor Upendra Baxi with reference to Indian judiciary’s record on protection of socio-economic rights. (12 Marks)
4. The newly formed Government of Berzerkistan has released the following National Health Policy 2019. Assuming that the socio-economic and political circumstances and the constitutional-legal framework of Berzerkistan is identical to India, comment on this policy on the anvil of capabilities approach and social exclusion approach and rights-based approach to poverty. (18 Marks)

THE NATIONAL HEALTH POLICY OF BERZERKISTAN, 2019

The primary aim of the National Health Policy, 2017, is to inform, clarify, strengthen and prioritize the role of the Government in shaping health systems in all its dimensions-investments in health, organization of healthcare services, prevention of diseases and promotion of good health through cross sectoral actions, access to technologies, developing human resources, encouraging medical pluralism, building knowledge base, developing better financial protection strategies, strengthening regulation and health assurance.

1. Goals

The policy envisages as its goal the attainment of the highest possible level of health and well-being for all at all ages, through a preventive and promotive health care orientation in all developmental policies, and universal access to good quality health care services without anyone having to face financial hardship as a consequence. This would be achieved through increasing access, improving quality and lowering the cost of healthcare delivery

2. Progressively achieve Universal Health Coverage

A. Assuring availability of free, comprehensive primary health care services, for all aspects of reproductive, maternal, child and adolescent health and for the most prevalent communicable, non-communicable and occupational diseases in the population. The Policy also envisages optimum use of existing manpower and infrastructure as available in the health sector and advocates collaboration with non-government sector on pro-bono basis for delivery of health care services linked to a health card to enable every family to have access to a doctor of their choice from amongst those volunteering their services.

B. Ensuring improved access and affordability, of quality secondary and tertiary care services through a combination of public hospitals and well measured strategic purchasing of services in health care deficit areas, from private care providers, especially the not-for profit providers.

C. Achieving a significant reduction in out of pocket expenditure due to health care costs and achieving reduction in proportion of households experiencing catastrophic health expenditures and consequent impoverishment.

D. Influence the operation and growth of the private health care sector and medical technologies to ensure alignment with public health goals. Enable private sector contribution to making health care systems more effective, efficient, rational, safe, affordable and ethical. Strategic purchasing by the Government to fill critical gaps in public health facilities would create a demand for private health care sector, in alignment with the public health goals.

3. Policy Thrust

3.1 Ensuring Adequate Investment The policy proposes a potentially achievable target of raising public health expenditure to 2.5% of the GDP in a time bound manner. It envisages that the resource allocation to States will be linked with State development indicators, absorptive capacity and financial indicators. The States would be incentivised for incremental State resources for public health expenditure. General taxation will remain the predominant means for financing care. The Government could consider imposing taxes on specific commodities-such as the taxes on tobacco, alcohol and foods having negative impact on health,

taxes on extractive industries and pollution cess. Funds available under Corporate Social Responsibility would also be leveraged for well-focused programmes aiming to address health goals.

3.2 Preventive and Promotive Health The policy articulates to institutionalize inter-sectoral coordination at national and sub-national levels to optimize health outcomes, through constitution of bodies that have representation from relevant non-health ministries. This is in line with the emergent international “Health in All” approach as complement to Health for All. The policy prerequisite is for an empowered public health cadre to address social determinants of health effectively, by enforcing regulatory provisions.

3.3. Closing Infrastructure and Human Resources/Skill Gaps: The policy duly acknowledges the roadmap of the 12th Five Year Plan for managing human resources for health. The policy initiatives aim for measurable improvements in quality of care. Districts and blocks which have wider gaps for development of infrastructure and deployment of additional human resources would receive focus. Financing for additional infrastructure or human resources would be based on needs of outpatient and inpatient attendance and utilization of key services in a measurable manner.

3.4 Urban Health Care: National health policy prioritizes addressing the primary health care needs of the urban population with special focus on poor populations living in listed and unlisted slums, other vulnerable populations such as homeless, rag-pickers, street children, rickshaw pullers, construction workers, sex workers and temporary migrants. Given the large presence of private sector in urban areas, policy recommends exploring the possibilities of developing sustainable models of partnership with for profit and not for profit sector for urban health care delivery. An important focus area of the urban health policy will be achieving convergence among the wider determinants of health –air pollution, better solid waste management, water quality, occupational safety, road safety, housing, vector control, and reduction of violence and urban stress.

4. Legal Framework for Health Care and Health Pathway

The policy while supporting the need for moving in the direction of a rights-based approach to healthcare is conscious of the fact that threshold levels of finances and infrastructure is a precondition for an enabling environment, to ensure that the poorest of the poor stand to gain the maximum and are not embroiled in legalities. The policy therefore advocates a progressively incremental assurance-based approach, with assured funding to create an enabling environment for realizing health care as a right in the future

Legal History I

Full Marks: 70

Time Allowed – 3 Hours

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

1. Critically analyse the principles on which the social structure of the *Rig Vedic* people rested. Did the three organs of the tribal polity in *Rig Vedic* times give evidence of the democratic functioning of the government? 6 + 4 = 10
2. Explain the three theories of the origin of kingship in ancient Indian history. Did the functions of the monarch demonstrate the establishment of state authority in the ancient Hindu political system? 7 + 3 = 10
3. Enumerate the different sources of Hindu law as they emerged in the *Rig Vedic* period. 10
4. Define *dharma*. Through an analysis of the different branches of *dharma* demonstrate the increasing radicalization of Hindu law in the later *Vedic* age. 4 + 6 = 10
5. Trace the development of law courts in the *Rig Vedic* period. 10
6. Evaluate, with reference to the *smritis*, whether law-making and law-interpreting processes in ancient India were highly developed or not? 10

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

7. Analyse, in brief, the administrative machinery of the Sakyan republics. What was the nature of the *Sakyan* state? 2 + 3 = 5
8. Analyse the structure of local administration in ancient India. 5
9. Did the establishment of urban centres demonstrate the existence of a vibrant market economy in the post-Maurya period of ancient Indian history? 5
10. Evaluate the importance of different rites and functions of the joint family in Hindu law? Did the individual play a significant role in the functioning of the family? 3 + 2 = 5
11. What were the constituents of pastoralism in the ancient Indian economy? What purpose did land have for the pastoral people? 3 + 2 = 5

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester (Monsoon) Examination – 1st Semester – 2019 Batch

LEGAL METHODS

Full Marks: 70

Time Allowed: 3 Hours

INSTRUCTIONS

1. ALL QUESTIONS ARE COMPULSORY.
2. Questions may be attempted in any order, but subparts within questions must be answered in order. Please take care to number the answers accurately.
3. Answers must be precise.

-
- I. Refer to the excerpt of the judgement in *Annexure-A* and answer the following questions: (15 marks)
 1. Briefly describe the facts of the case. (4 marks)
 2. What are the legal issues raised? (3 marks)
 3. Do you feel the High Court was right in not entertaining questions of fact as ascertained by the lower courts? Explain. (3 marks)
 4. Was the judge correct in applying the understanding of 'non-natural use' of land, as conceptualized in *Ryeland v Fletcher*? Do foreign judgements bind Indian Courts? (5 marks)

 - II. In the following examples, identify the logical fallacy (if any) in the arguments, briefly explain the nature of the fallacy and cite your own example for each. (5x4 = 20 marks)
 - a. 'Those people whose second wives are foreigners are mostly getting the Nobel prize. I don't know whether it is a degree for getting the Nobel,' Rahul Sinha of the BJP commenting on Dr. Abhijit Banerjee's Nobel Prize.
 - b. Whenever he sang the *raaga* Megh Malhar, he would make it rain - nature itself rejoiced when the great Tansen sang!

- c. Amit Shah, Union Home Minister, accused the opposition of spreading "misinformation" about restrictions in the Kashmir Valley, in the aftermath of the J&K Reorganization Act. "Where are the restrictions? It is only in your mind. There are no restrictions. Only misinformation about restrictions is being spread...People are trying to create hue and cry over lack of mobile connections for few days. Lack of phone connection is not human rights violation," he said.
- d. "Darwin's theory is scientifically wrong. ... Nobody, including our ancestors, in written or oral, have said they saw an ape turning into a man", Satya Pal Singh, Union Minister for Higher Education
- III. Marxist legal theory views law as a 'tool of oppression' in the hands of the ruling class. Would you agree with this assessment? Explain, with reference to the functions performed by law in society, the importance and limitations of this theory. (10 marks)
- IV. Third World Approaches to International Law (TWAIL) has brought to light the Eurocentrism inherent in the development of concepts like 'democracy' and 'human rights', and the attempt to pass these off as universal values. Discuss the contribution of the movement in highlighting the issues faced by developing nations, and in ascertaining their place within the new world order. (10 marks)
- V. Write short notes on the following: (5x3 = 15 marks)
- a. Key features of Tribunals
 - b. Supervisory Jurisdiction of High Courts
 - c. Court of Record
-

Annexure-A
Kerala High Court

T.C. Balakrishnan Menon And Ors. vs T.R. Subramanian And Anr. on 12 June, 1967

Equivalent citations: AIR 1968 Ker 151

Bench: TC Raghavan

JUDGMENT T.C. Raghavan, J.

The second appeal arises out of a suit for damages by the first respondent, a minor represented by his father, for injuries caused to him by the explosion of a minnalgundu at the Trichur Pooram in April 1959. The second respondent is the 20th defendant, the independent contractor who attended to the exhibition of fireworks; and the appellants are some of the members of the Pooram Celebration Committee. They were members of the Paramekkavu Devaswom Committee as well along with some others who were also impleaded as defendants in the suit. I may add that the Paramekkavu Devaswom itself was the first defendant. Both the lower courts have decreed the suit; and there is no dispute now regarding the quantum of damages or regarding the finding that the injury was caused by the negligence of the 20th defendant. The trial court made the appellants and the Devaswom liable: It held that it was the Celebration Committee that was responsible for the conduct of the Pooram and not the Devaswom Committee. On appeal the District Judge held that in view of the finding of the trial judge that the Devaswom Committee was not responsible, the Devaswom could not also be made responsible. Ultimately, the liability was confined to the appellants, who were members of the Pooram Celebration Committee.

A minnalgundu is an explosive made out of a coconut shell by filling it with an explosive substance. The coconut shell itself is placed in a bamboo tube with gun powder beneath; and the tube is kept upright tied to an iron peg driven into the ground. When the gun powder in the tube is ignited through a small hole on the side of the tube, the coconut shell is ejected vertically several feet into the sky where it explodes producing a flash or lightning-like light and a loud report. Two processions of elephants bearing the deity or Poorams organised by two Devaswoms, the Paramekkavu and the Thiruvambadi Devaswoms, meet at the southern gopuram of the Vadakkunnatha Temple in the evening at about 5 or 5.30 in the Thekkumkad Maidan around the temple; and just as the elephant of the Paramekkavu Devaswom bearing the deity emerges through the southern gopuram before this important event, a few hundreds of olappadakkams interspersed with about 20 or 25 minnalgundus are fired. (Olappadakkams are a type of fireworks made with gun powder wrapped in small parcels of palm leaves.) The accident is said to have happened when this was done.

The finding of both the lower courts is that the minnalgundu instead of rising into the sky and exploding there, ran at a tangent, fell amidst the crowd and exploded causing serious injuries to the first respondent. The further finding is that the accident was caused by the negligence of the 20th defendant in not properly securing the bamboo tube containing the coconut shell to the iron peg and was also due to his negligence in not choosing strong tubes because the tube in question burst. On the basis of these findings which cannot be questioned, the accident could have happened in one of two ways: either the coconut shell containing the explosive substance was not ejected sufficiently high into the sky due to the bursting of the bamboo tube, so that it fell among the crowd before it burst: or it ran at a tangent due to the tilting of the tube and exploded in the midst of the crowd. In either event, the negligence was of the 20th defendant, the independent contractor.

It may not probably be necessary to consider, in view of the finding that the 20th defendant was negligent, whether the principle of *res ipsa loquitur* applies to this case. Even if the negligence of the 20th defendant is not established, the principle that the thing itself speaks must apply to this case, because minnalgundus

are normally to fly sufficiently high into the sky perpendicularly before they explode and not to fly at a tangent, fall amidst of the crowd and burst. Since the gundu in question fell in the midst of the crowd and burst, there must have been negligence on the part of the 20th defendant, who was responsible for making and firing it. This presumption of law is rebuttable; but there is admittedly no evidence to rebut it. Therefore, even on this principle the finding of the power courts that the 20th defendant was negligent can be sustained.

The further question for consideration is whether the appellants, who engaged the independent contractor, would also be liable. The minnalgundu is an explosive and is therefore an "extra-hazardous" object; and persons who use such an object, which, in its very nature, involves special danger to others, must be liable for the negligence of their independent contractor. The duty to keep such a substance without causing injury to others is a "non-delegable" duty: the appellants could not have escaped liability for the breach of such a duty by engaging an independent contractor. The liability of the appellants can also be based on the rule enunciated by Blackburn J. in the famous case of *Rylands v. Fletcher*, (1868-3 H L 330) The rule is that:

"the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape"

The person's liability arising out of such "non-natural" user of the land is absolute, or strict as some decisions say.

7. Sri. V K. K Menon, on behalf of the appellants, argues that in this case there was no "non-natural" user of the land where the minnalgundus were exploded. His argument is that it is only a natural user of the Thekkumkad Maidan during the day of the Pooram festival to collect minnalgundus and explode them there. I do not agree, because under the [Indian Explosives Act](#) for making and storing explosive substances even on the Thekkumkad Maidan on the Pooram day licences have to be taken from the prescribed authorities It is admitted that for exhibiting fire works permission has to be obtained from the District Magistrate. The accident took place in this case at 5.30 pm when the two Pooramiorganised by the two Devaswoms were about to meet before the southern gopuram of the temple. It is also admitted that for the exhibition of fireworks during the day no licence was taken, though a licence was taken for the night. It is therefore obvious that this argument of Mr. V. K. K. Menon has no substance.

8. The next contention urged by the counsel of the appellants is that the principle of *voluntarius non fit injuria* must apply to the case. The argument is that since the first respondent voluntarily came to witness the Pooram and the fireworks, he is a volunteer and therefore not entitled to damages. What the evidence discloses is that the volunteers who helped the 20th defendant kept a cordon round a particular area and the gundus were kept and exploded within that area. The gundu that caused injury to the first respondent fell outside this area and exploded. The counsel argues that even this would not have made the first respondent any the less a volunteer. I have asked Mr V. K. K. Menon whether everyone in the big crowd of a few lakhs witnessing the fireworks anywhere in the Thekkumkad Maidan would be a volunteer, and he has answered in the affirmative. This answer alone is sufficient to reject this contention. If the first respondent entered the area within the cordon and sustained injuries, he might be considered to be a volunteer: but to argue that everyone who stood anywhere in the Thekkumkad Maidan, a very extensive and large area open to the public, is a volunteer is to contend for something bordering on the preposterous.

The concurrent decision of the lower courts is confirmed; and the second appeal is dismissed with costs of the first respondent.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 – 9th Semester – 2015 Batch

LEGAL PERSUASION

Full Marks- 70

Time Allowed: 3 hours

This paper contains two parts. Part A and Part B. PART A has One (1) compulsory question carrying 25 marks. Answer ANY three (3) out of five questions (5) questions in PART B. All three questions in PART B will carry 15 marks each.

PART A

COMPULSORY QUESTION

(25 Marks)

Q. Herein below is an extract from Martin Luther King's "I have a dream" speech:

I am happy to join with you today in what will go down in history as the greatest demonstration for freedom in the history of our nation.

....

I am not unmindful that some of you have come here out of great trials and tribulations. Some of you have come fresh from narrow jail cells. Some of you have come from areas where your quest for freedom left you battered by the storms of persecution and staggered by the winds of police brutality. You have been the veterans of creative suffering. Continue to work with the faith that unearned suffering is redemptive. Go back to Mississippi, go back to Alabama, go back to South Carolina, go back to Georgia, go back to Louisiana, go back to the slums and ghettos of our northern cities, knowing that somehow this situation can and will be changed. Let us not wallow in the valley of despair.

I say to you today, my friends, so even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream.

I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident: that all men are created equal."

I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.

I have a dream that one day even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

I have a dream today.

I have a dream that one day, down in Alabama, with its vicious racists, with its governor having his lips dripping with the words of interposition and nullification; one day right there in Alabama, little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers.

I have a dream today.

I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low, the rough places will be made plain, and the crooked places will be made straight, and the glory of the Lord shall be revealed, and all flesh shall see it together.

This is our hope. This is the faith that I go back to the South with. With this faith we will be able to hew out of the mountain of despair a stone of hope. With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that we will be free one day.

This will be the day when all of God's children will be able to sing with a new meaning, "My country, 'tis of thee, sweet land of liberty, of thee I sing. Land where my fathers died, land of the pilgrim's pride, from every mountainside, let freedom ring."

And if America is to be a great nation this must become true. So let freedom ring from the prodigious hilltops of New Hampshire. Let freedom ring from the mighty mountains of New York. Let freedom ring from the heightening Alleghenies of Pennsylvania!

Let freedom ring from the snowcapped Rockies of Colorado!

Let freedom ring from the curvaceous slopes of California!

But not only that; let freedom ring from Stone Mountain of Georgia!

Let freedom ring from Lookout Mountain of Tennessee!

Let freedom ring from every hill and molehill of Mississippi. From every mountainside, let freedom ring.

And when this happens, when we allow freedom to ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, "Free at last! free at last! thank God Almighty, we are free at last!"

Analyse the above extract by identifying the means of persuasion, figures of speech and canons of rhetoric used.

PART B

ANSWER ANY THREE (3)

1. What means of persuasion does Gorgias use to defend Helen in Encomium of Helen? Elaborate with examples from the Encomium of Helen. (15)
2. What according to Cicero, are the canons of Rhetoric? Elucidate with examples for each. (15)
3. What are Charismatic Leadership Techniques (CLTs)? What are its types? Explain with examples. (15)
4. What is rhetoric? What are the different types of rhetoric? Discuss with examples. (15)
5. What is the difference between natural and artificial memory? What did Cicero say about memory as a canon of rhetoric? Discuss. (15)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. MONSOON SEMESTER 2019 END SEM 4TH YEAR -07th SEMESTER EXAMINATION
MEDICINE & PUBLIC HEALTH LAW

Full Marks: 40

Time Allowed: 3 hours

***EXAMINEES ARE PERMITTED TO REFER TO BARE & UNANNOTATED COPIES OF
THE FOLLOWING INSTRUMENTS / LEGISLATIONS ONLY:***

- (I)** The United Nations Declaration of Human Rights, 1948
 - (II)** The Constitution of the World Health Organisation, 1948 (read with the Ottawa Charter, 1986)
 - (III)** The Geneva Declaration, 1948 (read with the 2017 Amendment via the World Medical Association Guidelines)
 - (IV)** The Helsinki Declaration, 1964 (read with the 2013 Amendment)
 - (V)** The International Covenant on Economic, Social & Cultural Rights, 1966
 - (VI)** The International Covenant on Civil & Political Rights, 1966
 - (VII)** The Alma-Ata Declaration, 1978
 - (VIII)** The World Medical Association's Statement on Medically-Indicated Termination of Pregnancy, 1970 (read with the 2018 Amendment)
 - (IX)** The Medical Termination of Pregnancy Act, 1971 (read with the 2002 Amendment & the Medical Termination of Pregnancy Rules, 2003)
 - (X)** The Protection of Human Rights Act, 1993
 - (XI)** The Clinical Establishment Act, 2010 (read with the Clinical Establishment (Central) Rules, 2012)
 - (XII)** The United Nations Millennium Development Goals, 2000
 - (XIII)** The United Nations Sustainable Development Goals, 2015
 - (XIV)** The Mental Healthcare Act, 2017
 - (XV)** The National Health Policy, 2017
 - (XVI)** The World Medical Association Declaration on Euthanasia & Physician-Assisted Suicide, 2019
-

PART I

Answer ANY 1 of the following:

(20)

- Q1.** The Preamble to the Constitution of the World Health Organisation defines 'Health' as: "...a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity."
As an Indian scholar *en route* achieving the United Nations' stipulated Sustainable Development Goals, - opine on the (retrospective) appositeness of the above definition.
- Q2.** Trace the evolution of the Hippocratic Oath from its original form to the modern version. Identify with appropriate justification, the points, you feel are key to lending it optimum social relevance.

PART II

Answer ANY 2 of the following:

(10x2)

- Q3.** 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 her 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 constitution 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.

The surgical procedure is carried out perfectly “in a textbook fashion” 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.

Opine.

Q4. 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 (privately run) facility 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 nursing-home/centre, the medical team attending to his late son, and the individual nurses on duty at his ward, - with charges of gross criminal negligence amounting to manslaughter.

The matter has since been argued exhaustively by both the opposing Counsels before you – the single-judge Bench.

Opine and rule.

Q5. David and John Hicks are Siamese (conjoint) twins. While David is fully healthy, John has been born without a heart and only a pair of very rudimentary lungs. This has resulted in John's having to depend entirely on David for all his vascular and pulmonary functions. In the initial years, little David demonstrated exemplary stamina, in that, his constitution was easily able to put in and survive the extra work that his heart and lungs were faced with. This was made amply evident through the optimal progression that was recorded in the overall development of the two children.

Ironically however, it were these rapid strides achieved in their health, hence their body weight, which resulted in a situation where it had grown increasingly difficult for David's body to continue to undertake this much-increased "workload for two", until matters reach such a head that, sometime during their thirteenth year, the twins' attending physician, an eminent paediatrician, Dr. Fellowes, - warns their parents about the impending possibility of a potentially fatal cardiac arrest and complete collapse facing David.

The only solution to avert this disaster, he advises, would be to operate upon the twins, whereupon, David would be free to grow into a healthy adult, with a perfectly normal and a long productive life ahead of him. This course of action would obviously mean that John would be left to fend for his own survival, something for which he is clearly not equipped.

Mr. & Mrs. Hicks, when posed with this momentous choice of effectively selecting between their two sons, voluntarily waive away their rights to decide in their children's best interest. The onus then falls on Dr. Fellowes and the Government clinic that he is attached with, to apply to you, the local judicial magistrate for allowing the team to proceed with the proposed operation having assumed its mantle of *parens patriae*.

Direct with appropriate rationale.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. MONSOON SEMESTER 2019 END SEM 4TH YEAR -07TH SEMESTER EXAMINATION

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 UN Space Treaties.
- (iii) Answer **question no. 7 and any four among the remaining six** questions.

1. “Principle of national non-appropriation under the Outer Space Treaty should be limited to prohibition on States to appropriate outer space and celestial bodies. It has nothing to do with private appropriation.” Do you agree with this statement? Substantiate.

8 Marks
2. “Almost all rules for international cooperation in the Space Treaty, which includes many conditions, would provide for not active but passive cooperation in space activities between the states.” Evaluate this statement of Megumu Nakamura.

8 Marks
3. Critically evaluate the US Star War programme and Chinese anti-satellite missile tests in light of the international space law.

8 Marks
4. Elaborate upon the remedies available to the creditors of private space activities under the UNIDROIT system. How are they found inadequate in protecting the interests of the creditors?

5 + 3 = 8 Marks
5. “The United States of America has adopted a completely commerce oriented approach in enacting national space laws. The recent developments in the United States reflect its attempt to redefine the way in which the space treaties are interpreted.” Substantiate the statement.

8 Marks
6. Write short notes on the following
 - (a) Difficulties in the demarcation of outer space from airspace
 - (b) Concerns associated with risk in space insurance coverage

4 x 2 = 8 Marks

7. Alvesta Space International is a private limited company incorporated and operating in the Republic of Jurilium. Alvesta developed a highly advanced space vehicle for tourism purposes, which has been successfully tested for carrying three tourists along with an operator of the space vehicle to outer space at a time. In April 2019, Alvesta obtained license from Jurilium Department of Space Transportation for its first commercial space tourism. Alvesta had already shortlisted three space tourists from Kingdom of Balama on the basis of commercial bidding. Each space tourist had paid \$ 60 million for the mission. As per the approved plan, the space vehicle was supposed to reach the altitude of 580 km and complete a full orbit before its return to the earth.

On 20 August 2019, Alvesta launched its space vehicle from its launch facility at Jurilium. The space vehicle was carrying three Balaman tourists and two crew members (from Jurilium). Despite all precautions, the launch was turbulent and a small portion of fuel tank was damaged during the entry into outer space. This resulted in the leakage of toxic fuel in outer space. Due to the continuous loss of fuel, Alvesta decided to alter its plan and asked the crew members to orbit at 320 km altitude. This hasty decision resulted in the release of toxic fuel in the entire orbit at 320 km altitude. The released fuel also damaged two satellites of Penantia, resulting in a complete shutdown of military reconnaissance and weather forecasting facility in the State of Penantia.

The concerns of Alvesta continued as its return facility was not sufficiently equipped for emergency landing, which was foreseen in the prevailing circumstances. Only option available to Alvesta was to request Penantia to allow landing at its highly advanced landing facility, which Alvesta availed by promising Penantia to “compensate all losses suffered by Penantia in accordance with the UN space treaties”. This promise of Alvesta was also endorsed by Jurilium. Though the landing of the space vehicle in Penantian facility was successful, it resulted in damage to Penantian return facility as well as to its environment. Penantia has estimated a loss of \$ 150 million on account of damage caused to its two satellites and also a loss of \$ 40 million for the damage caused at its return facility and environment. An additional compensation of \$ 80,000 was also claimed by Penantia in connection with the rescue and return of crew members and space tourists.

Jurilium requested Penantia to return the crew members and space tourists. Penantia refused to return them until all compensation is paid by Jurilium. Jurilium declined to pay any compensation to Penantia by declaring that it is “neither responsible nor liable to pay any compensation to Penantia under the UN space treaties for the activities of Alvesta.” Decide the case by highlighting all relevant provisions and possible arguments.

Note: * All States involved are parties to Outer Space Treaty, Rescue Agreement, Liability Convention and Registration Convention.

** A subsequent report from UN scientific experts revealed that the turbulence experienced during the launch was due to the overweight. It also found that the fuel used in the mission was of cheap quality and highly toxic.

13 Marks

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester (Monsoon) Examination – 1st Semester – 2019 Batch

POLITICAL SCIENCE – I

Full Marks: 70

Time Allowed: 3 Hours

Q1.) Answer any ONE question:

25 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, legal and institutional sub-approaches. Which approach do you think is most relevant and why? (7+6+4+4+4=25)

OR

- b) Do you agree that Behaviouralism represents a ‘protest movement within Political Science’? In the light of this, explain the intellectual foundations, achievements and criticisms of the Behavioural school of Political Science. Why did Post-Behavioural approach to the study of Politics emerge? (2+10+4+4+5=25)

Q2.) Answer any TWO questions:

2x15=30 Marks

- a) What did Karl Marx mean by materialistic interpretation of history? In this context explain briefly Marx’s theory of class-struggle and the concept of surplus value. What was the main criticism against Marxian doctrine? (5+5+2+3=15)
- b) Explain the significance of the Social Contract Theory regarding the origin of the state highlighting specifically the views of John Locke and Rousseau. Do you think that Locke was a libertarian and Rousseau a populist? (5+5+5=15)
- c) Discuss the natural, historical and economic theories of rights. (5+5+5=15)
- d) Discuss the implications and shortcomings of the Theory of Divine Origin and the Theory of Force regarding the origin of the state. Do you think these theories are relevant or obsolete today in the 21st century? Give reasons for your answer. (5+5+5=15)
- e) “By establishing a single source of all positive law Austin put forward a monistic view of law, state and sovereignty.” In the light of this statement analyze Austin’s theory of sovereignty and why do you think his theory has been criticized. (9+6=15)

Q3) Answer any three short notes: (3x5=15)

- a) Relationship of Political Science and Economics
b) Relevance of Political Science in legal education
c) John Stuart Mill as a positive liberal thinker
d) Relationship between Liberty and Law
e) Dimensions of Equality
f) Hegel on Civil Society

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 – 5th Semester – 2017 Batch

PUBLIC INTERNATIONAL LAW AND HUMAN RIGHTS

Full Marks – 70

Time Allowed: 3 hours

Instructions:

- a. Please read the Questions Carefully.
- b. The Exam is not an open-book exam. However, you are allowed to carry the following salient documents (bare text only): **(i) UN CHARTER (ii) ICJ STATUTE (iii) VCLT (iv) UDHR (v) ICCPR**. Use of electronic resources is not allowed.
- c. No clarification can be sought on the Questions.
- d. 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.
- e. Marks will be awarded for quoting relevant provisions of laws and judgments.

Answer any three of the following questions in detail: (3 x 10 = 30 Marks)

1. The formation of *Customs* in International Law is democratic in contrast to other sources of International Law. However, the formation of *Customs* to a larger extent is determined by the *State Practice* of the developed States rather than third-world nations. Examine the process in the creation of Custom with relevant case laws.
2. *The Right of self-defence* in International Law has evolved significantly to the extent that in modern international law its application extends to non-state actors a stark departure from a traditional understanding of *Right to self-defence*. Delineate the evolution of the *doctrine of self-defence* in International Law with relevant cases, resolutions and propositions.
3. *State Recognition* in International Law involves consequences both at the International and Municipal Law; it is beyond law and is based on political Judgment. Analyze.
4. *Sovereignty* is grounded on the foundation of territory which is one of the basic characters of State in International Law. Enumerate the various modes of acquisition of

territory in International Law, further discuss the significance of *'Uti Possidetis'* and its interface with the doctrine of *Right to self-determination*.

5. No legal text drafted by man can possibly be perfect; hence, treaty interpretation forms one of the fundamental aspects of the *codification and progressive development* of International Law. The various techniques of treaty interpretation are codified under *Article 31 and 32 of Vienna Convention on Law of Treaties, (VCLT)*, notwithstanding the earlier efforts in codifying the law of treaties under the auspice of Harvard Draft Convention, 1935. Appraise the contours of treaty interpretation in International Law.
6. Write Short Notes on **any four** of the following questions: (5 x 4 = 20 Marks)
 - a. Lockerbie Case.
 - b. Contentious Jurisdiction in International Court of Justice (ICJ).
 - c. Difference between dualism and monism.
 - d. Difference between Jus Cogens and Erga Omnes Obligation.
 - e. Diplomatic Asylum with reference to Julian Assange.

Decide on the following **Cases** legally: (2 x 10 = 20 Marks)

7. The State of Ashmin and Jadeka are neighbouring States. The State of Ashmin is located north of Jadeka, the former is a developing economy and the latter is a highly developed State with an economy worth 25 trillion dollars. The bilateral ties between these two States have deteriorated overtime because of cross border territorial skirmishes. On 10th November 2019 a Jadeka national one Mr.Sanson was allegedly charged for espionage in the State of Ashmin and subsequently sentenced to capital sentence in the military court of Ashmin without being offered any consular access. Because of wide media coverage and emotions at stake, Jadeka initially attempted to resolve the conflict through diplomatic channel, however, most of these efforts ended inlogjam. In the meantime, the State of Jadeka approached the International Court of Justice (ICJ) demanding that Ashmin grant consular access to MrSanson. Both Ashmin and Jadeka are signatories to the Vienna Convention on Consular Relations, parties to United Nations Charter, ICJ Statute, International Covenant on Civil and Political Rights (ICCPR) and other major International Conventions.

Frame legal arguments and counterarguments for both Ashmin and Jadeka. (10 Marks)

8. In November 2019, Kony Ming, the United Nations Mediator in Dali, was assassinated in the course of his service to the United Nations (UN). The General Assembly requested the International Court of Justice (ICJ) whether the UN had the capacity to bring against the State Responsible with the aim of obtaining reparation for damage caused to the organisation and the victims. If this question were answered in the affirmative, it was further asked in what manner the action taken by the United Nations could be reconciled with such rights as might be possessed by the State of which the victim was a national.

As the President of the International Court of Justice (ICJ), you are required to render an advisory opinion for the above question posed by the General Assembly. **(10 Marks)**

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester (Monsoon) Examination – 1st Semester – 2019 Batch

SOCIOLOGY – I

Full Marks: 65

Time Allowed: 3 Hours

Section A: Attempt all

01x20=20 marks

1. Read the passage and answer the question given below:

This is the fictional account of 'Felix'. Dr. Janani and Dr. Adhikary are married and eager to have children. However, they are unable to do so. They sign an agreement with a Ms. Maya that she will be inseminated with Dr. Adhikary's sperm. Ms. Maya is herself married to Mr. Mohnh and has two children. Ms. Maya agreed to bear any resulting child/children, and give it over, as soon as it was born, to Dr. Janani and Dr. Adhikary. A baby girl was conceived and born, who is named 'Felix', but after giving up the child, Ms. Maya has a change of heart and wants to take the child back. The couple now sues Ms. Maya to recover the child.

- a) How would you resolve the case if you were the judge? Can you identify any real life case which is similar to this fictional account? Explain the case.

Section B: Essay type Questions: Attempt any 2

02x20=40 marks

1. Religion is nothing but 'society divinised'. Comment.
2. Evaluate Merton's perspective on Deviance.
3. What do you understand by the statement of a famous anthropologist when he says: "...the view of things in which one's own group is the center of everything, and all others are scaled and rated with reference to it." Explain with examples.

Section C: Short Notes: Attempt any 1

01x5=05 marks

1. Radical Feminism
2. Law and Society Movement
3. Cultural Defence in Law

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 –9th Semester – 2015 Batch

Principles of Taxation Laws

Full Marks- 65

Time Allowed: 3 hours

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

1. Answer followings-

- a. “The Constitution of India did not have provision for concurrent power until enactment of the Constitution (101st Amendment) Act, 2016”. Do you agree? Substantiate your answer with suitable illustration(s).
- b. Critically examine the true nature, extent and scope of residuary power with special emphasis on tax matters of the Union with the help of constitutional provisions and decided cases.

5+8=13

2. Answer followings-

- a. Honb’le Prime Minister of India, Sri Narendra Modi puts on auction his “ kurta, churidar paizama, sadari and pen” on March 31, 2019. He got Rs. 10 crores from the auction. He has donated the entire sum to a trust which promotes yoga. Discuss the tax implication in his hand. Refer the statutory provisions
- b. “Across the globe including India, resident assessee’s global income is taxed but the non-resident assessee’s only local income is taxed”. Do you agree? Why it happens? Discuss and refer Indian statutory provisions.

5+8=13

3. Answer followings-

- a. “Agricultural income is not being taxed directly but indirectly under Income Tax Act, 1961”. Critically examine the statement with the help of relevant Constitutional and Statutory provisions.
- b. Xmas Co. Ltd. purchased a machine for Rs. 1 lakh on March1, 2017 and put to use on December 31, 2017. Presuming depreciation rate is 10%; calculate depreciation for A.Y.2017-18 and 2018-19.

9+4=13

4. “The charging and computation of income provisions under house property head of the income tax act, 1961 has become outdated and complicated with the passage of time and varied judicial interpretations. Therefore, there is need to rationalize and simplify the provisions”. Do you agree? Support your answer with the help of statutory provisions and decided cases.

13

5. Answer the followings-

- a. Critically examine the statutory provisions with emphasis on recent past amendments as to computation of tax on capital gains from equity shares in a company. Refer suitable illustration(s).
- b. The Sun pharma Co. distributed ‘freebies’ of worth Rs. 4 lakh to private Medical practioners and Rs. 10 lakh to government hospital doctors for prescribing the particular medicines during P.Y. 2018-19. Can the company claim the deduction of such expenditure while filing income tax return for the relevant A.Y.? Substantiate your answer.

8+5=13

6. Mr. Sajjanlal, an employee of Tata Consultancy Service Pvt. Ltd., Kolkata furnishes the following information for the FINANACIAL YEAR 2018-19 as under-
- a. Basic salary Rs. 2,50,000pm
 - b. DA 60%, as per terms of employment
 - c. HRA Rs. 40,000pm
 - d. Residing in a rented house in Burdhman and paying rent Rs. 50,000pm
 - e. Professional tax paid Rs. 2000

Compute income tax liability including surcharge and cess, if any, of Mr. Sajjanlal for the relevant A.Y.. Give proper working notes.

13

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

- a. Determination of residential status of individual.
- b. Why to make a distinction between tax and fees? Discuss.
- c. Gift and income tax implications.
- d. Set off of losses.
- e. Clubbing of incomes with special emphasis on minor’s income.
- f. “Exemption is better than taxation under GST.” Comment on it.

6.5+6.5=13

THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B End Semester (Monsoon) Examination – 1st Semester – 2019 Batch

THE LAW OF TORTS

Full Marks: 70

Time Allowed: 3 Hours

SUBSTANTIATE ALL ANSWERS WITH CASE LAWS

PART A – 40 MARKS. ALL QUESTIONS ARE COMPULSORY

1. Nature Fresh is a food wholesaler operating out of a large warehouse. Food is purchased there in bulk, either in person or via order. One day, a number of incidents occur in the warehouse:
 - (a) Employees Malcom and Zoe meet a customer, who wishes to buy a large quantity of rice. The desired product is on a high shelf, two stories up on the warehouse's industrial shelving. Ordinarily, they would use a forklift system to retrieve the rice. Today, however, the lift is already in use, so Malcom and Zoe decide to retrieve the rice on their own. They have attempted this once before, and were caught by their employer, who forbade them from retrieving products in this manner. Zoe climbs up the shelving, and after ensuring Malcom is ready, she shifts the bag of rice off the shelf. Unfortunately, another customer is walking by when the bag falls off of the shelves. It misses Malcom and hits the customer, who is knocked to the floor and suffers a broken arm.
 - (b) Rice is spilled over the floor, and so Malcom and Zoe call Rose, a cleaner. Rose comes to Nature Fresh three days each week and is paid by them on weekly basis. She operates under her own name, and files a tax return each year declaring her income. Rose jumps onto the warehouse's sweeper machine, an industrial unit used to make cleaning large spills easier. On her way to the spill she accidentally runs over the foot of a customer. The customer's foot is broken.
 - (c) Jack, the cashier of Nature Fresh, hears the customer yelling at Rose. He is very fond of Rose, so he rushes over and berates the customer for his poor attitude. The customer refuses to back down, and Jack hits him, breaking his nose.
 - (d) Meanwhile, Mathew, a delivery driver of Nature Fresh, is out on a job delivering meat to a customer. While on his way when he decides to stop for lunch at a drive-through restaurant, taking a 15 minute detour. While placing his order at the order window, he accidentally puts his delivery van in reverse, and hits the driver behind him.

Nature Fresh is now facing four claims – one for the broken arm, one for the broken foot, another one for the broken nose, and a fourth for the vehicle damage. Advise Nature Fresh on whether it will be held vicariously liable for these claims. (4x5 =20 marks)

2. ABC, a construction company, is building a road through a rural area when it encounters a rocky piece of land. Although the area is rather close to a housing district, they decide to blast away the rock. A child, playing in a yard two blocks away is hit by a piece of flying rock, causing a deep laceration. ABC Construction has taken permission from the municipal corporation to build the road, and claims that it also took all the usual precautions for such blasting. The child's parents file a suit against the construction company for the child's medical bills, as well as his pain and suffering, saying that the activity of blasting carries with it 'inherent dangers.' Decide whether ABC is liable in the situation. (10 marks)

3. (a) Rachael was relying on an inheritance from her grandfather in order to be able to pay off her home loan. Her grandfather had promised her the money and had changed his will, in her presence. However, upon his death, she 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 two 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 solicitor, focussing on the concept of 'duty of care.' (5 marks)

(b) The Hawkins Laboratory is undertaking research on a particular strain of flu. The research is expensive and highly specialised, and the lab works with a number of dangerous samples of the virus. One day, a breach in containment leads to an outbreak within the laboratory, causing the death of one scientist. In the course of investigation, it is found that such breaches are rare, though their possibility cannot be ruled out. It is also found that Hawkins Laboratory's yearly maintenance check for its decontamination system has been overdue for 5 days. Although the lab was aware of the issue, it did not fix it, citing the following reasons:

- The engineer who conducted the check was available only a week after the due date for the maintenance check.
- Under the circumstances, a one week delay in maintenance check would normally not make any difference, and
- Shutting down the laboratory for a week would lead to huge losses.

Identify the factors which the court will use in determining the applicable 'standard of care' for Hawkins Laboratory, and decide whether the laboratory will be liable in negligence. (5 marks)

PART B – 30 MARKS. ANSWER ANY TWO QUESTIONS

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 on the elements of the torts in question and defences applicable, if any. (3x5= 15 marks)

5. Write a detailed note on the evolution of the law relating to State Liability under Article Article 300 of the Constitution of India, with reference to suitable cases. (15 marks)
6. Critically analyse ANY ONE of the following cases: (15 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

LL.B. End Semester (Monsoon) Examination 2019 – 9th Semester – 2015 Batch

TRADEMARK LAW

Full Marks – 50

Time Allowed: 3 hours

Note: Answer any 5 of the following Questions

1. It is very much established that; the concept of ‘novelty’ under the patent law, the concept of ‘originality’ under the copyright law and the concept of ‘distinctive character’ in the spear of trademark law are the basic yardsticks for determination of eligibility for intellectual property monopoly conferment in those respective spears. In this background debate on the rationale on the basis of which ‘distinctive character’ is considered as the basic threshold under trademark law. Debate on the role of ‘distinctive character’ in the determination of validity of a trademark with the help of decided case laws. (10*1=10)
2. Analyze the process of registration of trademarks in India from the perspective of a trademark attorney. Discuss the powers of trade mark registry while emphasizing on the absolute grounds on the basis of which trademark application can be rejected with the help of decided case laws. (10*1=10)
3. ‘ADHANI’ is a family name which belongs to a family involved in the business of electronics in Ahmadabad, Gujarat. The head of the family has been using the family name as the name of the business since three decades while involving his two sons in the business. Gradually ‘ADHANI’ became a good brand in the business of electronics with established reputation and goodwill. After the death of the head of the family, his two sons who are having equal share in the ADHANI business continued the business for about a decade without any hassles. Later, both the sons together, decided to sell the business and share the proceeds equally. Accordingly, the business was sold, while the proceeds were shared among the two sons equally. Now, the elder son wants to start separate and independent businesses in automobiles for which he would like to use the name of the family that is ‘ADHANI’ as the business name and also want to register the same as the

trademark for his business. Meanwhile, the younger son is intending to venture into the business of telecommunications and he also wants to use the name of the family 'ADHANI'. Give your opinion on the possibility of using family name as the business or brand name with the help of decided case laws. Detail also on the possibility of more than one person registering the family name as their separate trademark for their independent business enterprises. (10*1=10)

4. www.panindiabusinessconsultancy.com is a registered domain name of a premier business firm which is known for providing business consultancy services having its registered office at Mumbai. While, www.panindiaconsultancy.com is a registered domain name of another prominent business firm which has got established in the recent past having its registered office at Delhi. Both the companies are providing for business consultancy services. The first firm approached court of law challenging the registration of the domain name of the second firm on the grounds such as 'similarity', 'dilution' of good will etc., which are to be debated and decided by the court. Give your opinion on the matter on the basis of established principles and practices in this regard with the help of decided case laws on the point of contention. Discuss how and why principles of trademark law are applied in the matters of assessing similarity of domain names. (10*1=10)

5. 'Oppo' is a well known smart phone company which is having good market in India. The producers of 'Oppo' smart phone have registered the phrase 'Oppo; the selfie 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 'the camera phone' which is the 'best' for taking 'selfies'. The slogan of the product "Oppo: the best selfie phone" is very much indicative of the function of the product, and as well the company has on its own declared that its product is 'the best selfie phone' in the market over rest of the others. 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 "VIVO" 'LENEVO' 'SAMSUNG and 'NOKIA' moved the court of law against 'Oppo' alleging that 'Oppo' has been misleading the public as to be 'the best selfie phone' and challenging the validity of the trademark on the basis that; the trademark is descriptive in nature. It is prayed before the court of law to take action against the owner and brand ambassador of

‘Oppo’ for misleading the public and for seeking a direction to the trademark registry to revoke the registration of the trademark on the basis of trademark being descriptive.

The Court issued notice to Trademark registry, the Owner of the ‘Oppo’ company and also the brand ambassador of ‘Oppo’ that is ‘Mrs Deepika Padukone. Analyze the present case in the context of ‘descriptive trademark’ with the help of decided case laws. Discuss whether brand ambassadors of the products can be held responsible for alleged misleading trademark and advertisement in the given context. (10*1=10)

6. Madidas is a famous sports goods company and over the years ‘Madidas’ brand of sports goods garnered good reputation in the market. Nike, another famous sports goods company having its own share in the market with proven credibility of its brand with an established consumer base. Madidas has registered a trademark ‘joggers’ for its newly produced brand of shoes. Later, Nike, launched its new brand of shoes for which it has applied for ‘morningjoggers’ as their trademark. Do you think that both the above marks are deceptively similar? If yes, on what basis? If no, on what rationality? Discuss different types of similarity, while highlighting the rules of comparison for assessing similarity with the help of decided case laws. (10*1=10)

7. Write short note on any **FOUR** of the following: (2.5*4=10)

- a. Trademark protection for movie titles
- b. Classification of business for the purpose of trademark registration
- c. The Jurisdiction of IP Appellate Board
- d. Nation Wants to Know: fight for brand name
- e. Trademark and Freedom of Expression

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2019 – 9th Semester – 2015 Batch

TRADITIONAL KNOWLEDGE SYSTEMS & IPR

Full Marks - 40

Time Allowed: 3 hours

EXAMINEES ARE PERMITTED TO REFER TO BARE & UNANNOTATED COPIES OF
THE FOLLOWING INSTRUMENTS **ONLY**:

- (I) The United Nations Declaration of Human Rights, 1948
 - (II) The International Covenant on Economic, Social & Cultural Rights, 1966
 - (III) The International Covenant on Civil & Political Rights, 1966
 - (IV) The United Nations Convention on Biological Diversity, 1992
 - (V) The Indian Trade Marks Act (read with the 2017 Amendment Rules)
 - (VI) The Indian Copyright Act (read with the 2012 Amendments)
 - (VII) The Indian Patents Act (read with the 2019 Amendment Rules)
-

PART I

Answer ANY 2 of the following:

(15x2)

- Q1.** The 17th UN General Comment (circa 2005) - on Article 15(1)(c) of the ICESCR had maintained that ‘Article 15, ICESCR cannot be interpreted as guaranteeing intellectual property rights or as elevating intellectual property to the human rights stratosphere... (sic)’. Opine.
- Q2.** Comment with appropriate illustrations, - on the ideological debate between advocacy for maintenance of the prior art domain *versus* the according of due protection to both tangible and intangible traditional knowledge clusters.

- Q3.** What is “*Property Paradox*”? Explain the same in light of the tendency towards propertification of intellectual assets, and what this spells for traditionally transmitted folk literature and music.

PART II

Answer ANY 1 of the following:

(10)

- Q1.** Indu Sharma is a biochemist of Indian origin, and has trained extensively at Cranford University, USA, - an institute renowned the world over, for its academic and research excellence. Upon completing her doctoral requirements, Dr. Sharma is recruited by a Thompson & Thompson Inc., multinational giant specialising in the field of manufacturing cosmetics with professed medicinal qualities.

Dr. Sharma and her team, after putting in months of long, arduous and advanced research, finally come up with a multipurpose face-cream, which while satisfying the basic moisturising requirement, also claims to have antiseptic, skin-lightening and anti-ageing properties. Towards this end, Dr. Sharma and team have resorted to a few ‘100% herbal and organic’ sources, namely: Saffron, Turmeric, Sandalwood and Tulsi, - which, incidentally, will constitute the ‘unique selling point’ of said product.

However, prior to launching this product in the Indian market, Messrs. Thompson & Thompson apply for a patent for this cream, at the Indian Patent Office.

You are the examiner entrusted with this particular application, which has, incidentally, already been granted a patent in the United States.

Examine and rule.

- Q2.** Mohd. Javed belongs to a family who have been involved in the fine craft of creating unique *zardosi* embroideries, for over ten generations. During all of this time they had been based in and around Varanasi, formally known the world over, for its distinctive embellished Banarasi fabric.

Roopa & Ravi, a Mumbai-based designer duo, chance upon this unique style of work that Mr. Javed puts out from his workshop, and are suitably impressed by its nuanced intricacy and clearly superior quality. They purchase all his items in bulk, pay him handsomely and depart.

A few months later, his daughter, Rehana, happens to come upon a news-flash on the television, which lauds a “historic” collaboration between a young and talented Indian designer-team of Roopa & Ravi with Vivienne Eastwood, - a globally respected doyenne of high fashion, - wherein “the world would be treated to an unprecedented range of *haute couture*, which would combine Eastwood’s distinctive silhouettes with Roopa & Ravi’s very own creative spin on the traditional mainstream Banarasi *zardosi* work”.

Perturbed, Rehana tries to contact the news channel, which forwards her the co-ordinates of Roopa & Ravi’s Mumbai boutique. Thereafter however, the trail goes cold.

Now, while Javed’s ancestors had always enjoyed a great reputation within their own professional community for their distinctive style of craftsmanship, - the very idea of seeking a copyright or trademark protection on their work had never occurred to them. Ergo, Javed too, in tune with this legacy - had always shunned any such means of securing exclusive protection, until now, when, even this would unfortunately appear to be a belated measure at best.

Rehana, a fashion-design student enrolled at NIFD Mumbai, - while duly appreciative of her family’s unique contribution and ethos, - is nevertheless, of a different mind. She persuades her father to seek legal help, however, retrospectively, - and they approach you.

As Mr. Javed’s lawyer, advise him as to his next course of action under the circumstances, and talk him through the best strategy you can offer.
