

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

END SEMESTER EXAMINATION, NOVEMBER 2018

QUESTION PAPERS: MONSOON SEMESTER 2018

1. Child Rights
2. Clinic I ©
3. Commercial Instruments
4. Constitutional Law I ©
5. Consumer Law
6. Contract I ©
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8. Corporate Law I ©
9. Criminal Procedure Code ©
10. Criminology, Penology & Victimology
11. Deviance, Control & Society
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14. English I ©
15. Entertainment & Media Law
16. Evidence ©
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18. Intellectual Property & Competition Law
19. Intellectual Property Law (Copyrights) ©
20. Intellectual Property Rights, International Trade & Human Rights
21. International Commercial Arbitration, Law of
22. International Finance, Law of
23. Interpretation of Statutes ©
24. Jurisprudence ©
25. Labour & Industrial Law II ©
26. Law & Secularism
27. Legal History I ©
28. Legal Methods ©
29. Medicine & Public Health Law
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31. Political Science I ©
32. Public International Law & Human Rights ©
33. Securities Law
34. Sociology I ©
35. Sports Law
36. Taxation Laws, Principles of ©

37. Torts, Law of ©

38. Trademark Law

39. Water Law

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

Child Rights Law

Full Marks – 50

Time Allowed: 3 hours

NO EXPLANATION TO BE PROVIDED

Part 1: Answer any two (2) of the following questions:

20x2=40

1. How is the child constituted in childhood studies? Is the child a biological entity or a social construct? How do social constructions of childhood deal with childhood as a transitional and temporal period vis a vis a permanent segment worthy of analysis? Do childhood studies accommodate cultural variability – ie understanding *childhoods and children* inhabiting different realities? How are issues of structure and agency balanced in childhood studies? Elucidate upon the methods and methodologies in childhood research. 20
2. What is the relationship between childhood and child rights? What is meant by child rights? Discuss the evolution of child rights and in this context explain the UNCRC as a holistic document on child rights. What are the cultural barriers to realization of child rights and the obstacles and limitations of rights discourse for children? 20
3. Mainstream laws in India mention children in limited ways. Analyse how children feature in any two of the following laws: 1. Constitutional Law 2. Labour Law 3. Criminal Law 4. Property Law. After critically examining upon how the branches of law you selected discuss children, discuss how you would design the said courses to focus more on children and their rights. 10+10=20

4a) The Juvenile Justice (Care and Protection) Act 2015 is the umbrella legislation on promotion and protection of child rights in India. Discuss the objectives, principles and the major provisions of the Act. Critically analyze the contentious provisions of the Act.

b) The Protection of Children from Sexual Offences Act, 2012 is the result of years of struggle to have a comprehensive legislation to combat child sexual abuse. Critically examine the major provisions and challenges of implementation of the Act. In this context, briefly discuss the process of a POCSO case from the occurrence of the incident to the trial process, highlighting the roles of the various stakeholders mentioned in the Act. 10+10=20

Part II: Answer any one (1) of the following questions:

10 marks

1. Critically analyze the National Policy for Children
2. Implementation of the Right to Education Act

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

CLINIC – I

Full Marks –70

Time Allowed: 3 hours

General Instructions

- A. All questions are compulsory.
- B. No written or printed reference or study material including notes or texts are permitted.
- C. Mobile phones, tablets, laptops and other electronic devices are prohibited in the examination centre.
- D. Marks will also be deducted for grammatical and typographical errors and inconsistencies with facts provided in the question paper.
- E. If questions appear unclear please write your responses on the basis of explanations or assumptions as you consider appropriate, in each case clearly stating such explanations or assumptions.

1. Please prepare a Writ Petition based on imaginary facts (20)
2. What changes/ additions have been made to the rules and principles concerning drafting of a plaint by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015? (15)
3. Ramjibanpur Commercial Bank Limited has advanced a loan of Rupees Twelve lakhs seventy-three thousand six-hundred forty-one to M/s Jnaneshwar Chandra Mahalanobis & Co., a partnership firm consisting of two partners Radheysyam Sundar Mahalanobis and Bibhutibhushan Pyne for investing in shares of various companies listed on the Kolkata stock exchange. The repayment of the loan is to be secured by an anomalous mortgage within the meaning of Section 58(g) of the Transfer of Property Act, 1882. The subject matter of mortgage is sixteen bighas of land owned by M/s Jnaneshwar Chandra Mahalanobis & Co., situated at Chandrakona municipality in Paschim Medinipur district, West Bengal. The loan agreement has been executed between the parties and the mortgage is now required to be documented. Please draft a deed of anomalous mortgage necessary for this purpose. You may use / assume facts as necessary to the extent they are not inconsistent with the question. (20)
4. Dinajpur Sabitri Smriti Anweshan Limited (a company incorporated with the object of promotion of charity) has purchased an office building in Karandighi, Uttar Dinajpur district (West Bengal) from Tarakeshwar Nath Bhounik, a local resident. The sale deed was neither registered under the Registration Act, 1908 (as applicable to West Bengal) nor stamped under the Indian Stamp Act, 1899 (as applicable to West Bengal). Please explain with reasons the differences in consequences prejudicial to Dinajpur Sabitri Smriti Anweshan Limited as a result of such non-registration and non-stamping of the sale deed. (15)

2.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

Commercial Instruments

Full Marks – 50

Time Allowed: 3 hours

Instructions: Kindly write legibly and clearly

Q3. is compulsory. Answer any Four of the rest.

1. Elaborate on the concept of negotiability of a commercial instrument and discuss this with emphasis on the presumption of it. [10]
2. As per S. 59 of the Negotiable Instruments Act, 1881 - a holder of negotiable instrument acquiring it post dishonor inherits right rights of his transferor only. Comment on this provision juxtaposing it with the rights and capacity of a holder and holder in due course. [10]
3. Write short notes on any two:
 - a. Crossing of cheque
 - b. Promissory Note
 - c. Holder and Holder in due course
 - d. Letter of Credit [10]
4. Discuss the provisions of section 138 to 142 of Negotiable Instruments Act 1881 available to payee against the drawers in the event of dishonor of cheque. [10]
5. X, signs as a drawer on a blank stamped paper and gives it to Y and authorizes him to fill it as a note for 500 to secure an advance which Z is to make to Y. Y fraudulently fills it up as a note for 2000 payable to Z, who then in good faith advances 2000. Decide with reasons whether Z is entitled to recover the amount and if so up to what extent. [10]
6. Discuss the statement with reference to provisions of N. I Act 1881, "Once a bearer instrument always a bearer instrument". [10]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 3rd Semester – 2017 Batch

Constitutional Law – I

Full Marks –60

Time Allowed: 3 hours

(ANSWER ANY THREE OF THE FOLLOWING QUESTIONS)

1. a) The State of Karnataka imposed entertainment tax by virtue of the Karnataka Cinemas (Regulation) Act, 1964 on the cars, which were admitted in the Drive-In theatres, an open theatre where a person can enjoy a cinema while sitting in the car. In a challenge to the constitutionality of the said tax, the primary question is whether State legislature can impose entertainment tax on the cars. The contention raised by the Drive-In Enterprises (a consortium of Drive-in-Theatre owners) is that Drive- in-Theatre is a different category of cinema unlike cinema houses or theatres where a person can view the film exhibited therein while sitting in his car. Therefore, the admission of cars/motor vehicles into Drive-in theatre is incidental and part of concept of Drive-in-Theatre, and therefore, the State Legislature is not competent to levy entertainment tax on admission of motor vehicles inside the Drive-in theatre. It is also argued that the incidence of tax being on the entertainment, the State Legislature is competent to enact law imposing tax only on a *person* entertained. In nut-shell, the argument is that the State Legislature can levy entertainment tax on human beings and not on any inanimate object like a vehicle. They further argue that if at all there could be some statutory regulation of such Drive-in theatres, it would have to be brought about by the Parliament, in exercise of the residuary powers of legislation vested upon it under Article 248 and Entry 97, List I, Schedule VII.

On the other hand, the State of Karnataka argues that it is competent to enact such taxes by virtue of Entry 62, List II, Schedule VII, which empowers the State Legislature to levy tax on luxuries, entertainment, amusements, betting and gambling.

As a judge adjudicating on the challenge to the legislative competence of the State of Karnataka to impose such entertainment tax, give your reasoned decision, placing reliance on appropriate doctrines of constitutional interpretation. (12)

- b) By virtue of a Constitutional Amendment, a proviso is added to Article 142 of the Constitution, which states:

“Provided that such power of doing complete justice shall be subject to any existing law or a law duly enacted by the Parliament in this regard”.

A petition has been filed before the Supreme Court challenging the said Constitutional Amendment, alleging that it severely undermines the Basic Structure of the Constitution. Based

on appropriate precedents, critically analyse the constitutional validity of the said amendment.

(8)

2. a) The Parliament of India passed the 93rd Constitutional Amendment Act, 2005 which introduced Article 15(5) into the Constitution. The said Article reads:

“Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.”.

In pursuance of this Article, the Parliament passed the Right to Education Act, 2010, which made it mandatory for all schools (whether aided or unaided) to reserve 25% seats for economically and socially underprivileged children from the neighbourhood.

A group of private unaided institutions have decided to challenge the constitutional validity of the said law. While there are a number of Fundamental Rights violations that they seek to contend later, they want to primarily engage you for articulating on their threshold arguments of a purported Basic Structure violation. Do you find any merit in their claim? Answer, with reference to appropriate precedents. (12)

b) After the assembly election results have been declared in Hari Om Pradesh (a fictitious Indian State, recently re-named!), it has been found that no political party has had a clear majority. Both the National Demolition Alliance (NDA), with 194 seats, and the Bua-Bhatija Alliance (BBA), with 192 seats, both strong contenders who had their respective alliances sewed up much before the polls had been announced, have come perilously close to the half-way mark of 200, but are short by 6 and 8 seats respectively. The other 14 seats are shared by the Pappu Parivar Union (PPU) with 6 seats, the Fading Red League with 2 seats and 4 independents.

Both political blocks staked their respective claims to form the government before the Governor, both claiming that they have the numbers on their side. The Governor, reading reports in the newspapers that the PPU and a few independents are suitably predisposed towards the BBA, decided to invite the leader of the BBA, Ms. Mata Rani, to form the government. He gives her a week's time to seek a vote of confidence.

Incensed by the Governor's move, Yogi G, the Leader of the NDA, decides to move to the Supreme Court, challenging the Governor's use of discretion. He also claims that 2 of the PPU MLAs have got in touch with him, expressing their displeasures with the latest political developments. Moreover, the 4 independents are also negotiating with the NDA, which is making them offers of plum cabinet positions which they can hardly refuse. Therefore, Yogi

claims that the Governor was hasty and had unnecessarily entered the political thicket, relying completely on hearsay and speculations. Hence the constitutional challenge.

Based on established precedents, critically comment on the constitutionality of the Governor's decision. (8)

3. a) Recently the Supreme Court has passed a landmark judgement which has allowed women of all ages to enter the famous Ayyappa temple in Shabarimala, declaring as constitutionally untenable an age-old practice of disallowing women belonging to the menstruating age from entering the shrine.

After the judgement was delivered, its enforcement became a nightmare for the state of Kerala. Violent protests erupted and the mobs prevented women from coming anywhere close to the vicinity of the temple. Despite the best efforts by the state, not a single woman belong to the reproductive age bracket could enter the temple during the period it was opened for public viewing the next month.

Facing pressure from religious groups within the State, the State government is mulling an option of passing a law that will, in the interest of public order, again disallow women of the said age bracket from entering the shrine, thereby impliedly overruling the Supreme Court judgement. They are also considering proposing the Central Government to enact a Constitutional Amendment Act, placing the said law into the Ninth Schedule of the Constitution.

An alliance partner in the Central Government which is the principal opposition party in the state of Kerala is putting pressure upon the Cabinet to recommend to the President for dismissal of the State Government and immediate imposition of President's Rule, for 'the government's gross failure in enforcing a Supreme Court directive'.

Introspect into the two possibilities through a critical constitutional lens, and provide suitable reasonings as to whether any of the two options is constitutionally tenable. (12)

- b) Speaking for the majority in *Krishna Kumar Singh v. State of Bihar*, Justice D.Y. Chandrachud pointed out a cardinal distinction between ordinances and temporary enactments, and made certain observations about the improper usage of the theory of enduring rights in the context of ordinances in certain previous decisions. Are you in agreement with his views? Critically evaluate, with appropriate references. (8)

4. a) The Parliament decides to bring in a greater degree of judicial accountability by passing a law which would segregate 'judicial functions of a judge' and 'other functions'. According to this law, a judge would enjoy immunity from criminal proceedings only with respect to the first category. But in the later, his position would be no different from any ordinary individual. The decision as to which function was a judicial one and which one was outside it would be taken by the Investigating Officer of the Police Station where the criminal complaint is filed. Once the complaint is received, an information has to be immediately passed to a Committee for Judicial Accountability, duly formed by this law, having nominees from the Union Law Ministry. If this

Committee finds that the determination by the Investigating Officer was erroneous, then the complaint would be quashed immediately. This law would apply to all sitting judges of all courts and tribunals in India, including the High Courts and Supreme Courts, and no complainant would be held guilty of having committed Contempt of Court even if the complaint is found to be false or unfounded. The Parliament would also like to go ahead with relevant constitutional amendments required for the said purpose. The 'other functions' mentioned in the law would also cover the administrative functions performed by the Judges in course of performing their respective duties.

There is a significant opposition from the judiciary, fearing affronts on judicial independence and unnecessary executive intervention in the judges' functioning. On the other hand, the Government seeks to justify this move as a means towards ensuring judicial accountability and transparency of functioning of judicial officers. Analyse this situation and provide your nuanced views on the Constitutional tenability of the law. (12)

b) In the case of *State of West Bengal v. Committee for Protection of Democratic Rights*, the Supreme Court observes: "*The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.*" Is this observation in harmony with the existing jurisprudence on the Basic Structure Doctrine? Analyze, with appropriate references to the context. (8)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 7th Semester – 2015 Batch

CONSUMER LAW

Full Marks – 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

[10 Marks x 6 Questions = 60 Marks]

1. Discuss the ambit of right to information as consumer right?
2. Draft an affidavit in support of complaint.
3. When bank may and may not be held vicariously liable for act of its employee? *[5 x 2 = 10 Marks]*
4. Briefly explain the following in the context of medical negligence case: *[5 x 2 = 10 Marks]*
 - a. Liability of medical institution
 - b. Components of valid consent
5. Briefly mention the relevant factors for determining the following: *[5 x 2 = 10 Marks]*
 - a. Compensation in case of deficiency in service by airline company
 - b. Jurisdiction of Consumer Forum
6. Write short notes on the following: *[5 x 2 = 10 Marks]*
 - a. Consumerism
 - b. Puffery

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 1st Semester – 2018 Batch

Contract-I

Full Marks –70

Time Allowed: 3 hours

Attempt any three questions from questions 1 to 4. Question no. 5 is compulsory. Please carefully read through the questions. Also go through the marks distribution. Give only relevant answers. There will be no clarifications given during the examination. Indian Contract Bare Act, 1872, is permitted inside the examination hall. The Bare Act should be strictly without notes or commentaries. Case list, as initialed by the subject teacher, is permitted inside the examination hall.

Q.1 Arun and Varun are good friends. They are contemplating starting a business in hosiery. They search around for suitable places to start their business. Arun meets Pratap who agrees to give his place on rent. Pratap is a high ranked Police officer. He insists that the terms of the rent are put in writing. Arun and Varun decide to save on lawyer's fees. Hence they draft the contract. Copy of the draft is send to Pratap for his perusal and approval. Pratap, upon reading the draft, insists on incorporation of few additional terms. On the whole the terms of the draft contract, as put in by Arun and Varun are:

- a) *The tenant, Arun and Varun and the landlord Mr. Pratap, agree that there will be a tenancy created for commercial purpose*
- b) *Mr. Pratap agrees that Arun and Varun are allowed to use all parts of the premises, barring those used for residential purpose*
- c) *Arun and Varun agree to pay rent on time, by 5th of every month, starting from the day they take possession of the premises*
- d) *Time is the essence of the contract*
- e) *Use for commercial purpose will include all the acts incidental and necessary to carry out the business of hosiery*
- f) *Landlord has the right to terminate the contract, without citing any reasons, by giving a notice of three months*
- g) *Tenant/s are barred from sub-letting or assigning the property, without the consent of the landlord*
- h) *This agreement is binding on the heirs and the legal representatives of the landlord and the tenant....*

Pratap and the tenants Arun and Varun sign the agreement on 1st January 2018. Arun and Varun though take possession of the property only on 3rd of March 2018. Accordingly they start paying the rent from 5th of March 2018. The hosiery business required storage of raw materials. Arun and Varun survey the premise and find that there is a big hall which has not been in use for ages. Arun and Varun contemplate of using the hall as their storage space. As Pratap has gone for world tour, Vishnu is kept in charge as the care taker of the place. Pratap had not informed Arun and Varun about Vishnu's role or authority. Vishnu visits Arun and Varun and informs them that he is the caretaker of the place and Arun and Varun are free to approach him. On 1st of June 2018, Arun and Varun receive a consignment of raw materials. The consignment is huge but can be stored in the hall, as identified by Arun and Varun. They search for Vishnu, who has the key to the hall. Vishnu enquires about the precise reason for which they need the hall. Arun and Varun refer to their agreement and inform that they are permitted to use the hall. Vishnu opens the hall and Arun and Varun store the raw materials there. Pratap is oblivious of these developments. On 30th June 2018, there is heavy rain and due to the existing leakage in the roof of the hall the water seeps in. Consequentially the raw material is substantially damaged. Arun and Varun asses the loss and decide that the fault is of Pratap since he rented them a damaged property. Accordingly they delay payment of rent, for they want compensation from Pratap. Pratap, having returned from the world tour, takes stock of the situation and is informed by Vishnu about all the developments. Pratap thus comes to know that Arun and Varun are using the hall as a storage place. Pratap is furious and contemplates the steps that he should take against Arun and Varun. Further the continued non-payment of the rent by Arun and Varun, for the month of June as well as July and August adds insult to injury.

Refer to the terms of the contract as given above and identify the relevant issues. Further give a reasoned legal opinion as to who will win the dispute and why? Support your reasons with relevant authorities (cases/articles/other relevant references). [3+8+9=20]

Q.2 Kishan writes a letter to Koyal. The letter contains the following information:

There is a truck, fully equipped with all modern gadgets, manufactured by Tata Motors. The truck is black in colour. The truck can carry a load upto 30,000 metric tonnes. The truck is suitable for driving in hilly area. The truck can be used to carry stone chips from the mines in the treacherous of conditions.

The letter further elicited interest from Koyal including her opinion on the possible price that anyone will be willing to pay. Koyal's father is in the business of stone quarrying and has quite an experience in handling all heavy duty vehicles. She approaches her father to find out whether he will be interested in buying the truck of the above description. Her father peruses the letter to read about the description. He then decides to visit Kishan. Kishan lives far off in Kanpur and Koyal's father Mr. Dayal has to travel from Chennai. Since Kishan and Koyal were batch mates at school, Kishan is in touch with her. Further Koyal is a senior partner at one of the leading law firms. Hence Kishan thought of writing to Koyal for her sincere opinion. He didn't want to take any professional help since he trusted Koyal. She has always been very forthright and sincere in her approach. Hence Kishan has written to Koyal. Mr. Dayal visits Kishan and inspects the truck. He surveys the truck with the eye of an expert. Mr. Dayal is himself the owner of 20 such trucks, considering the big business magnet that he is. Mr. Dayal realizes that he has struck gold, for the truck has enough left in it to ply for another ten years. However he restrains himself and does not show his enthusiasm. On the contrary Mr. Dayal tells Kishan that the truck, due to heavy wear

and tear will last only for another three years. Thereafter it has to be sold as a scrap. Kishan is disheartened and doubts his own judgment. Considering that he trusts Koyal he genuinely believes that Mr. Dayal is expressing his honest assessment of the condition of the truck. Since Kishan desperately needs money for the treatment of his ailing mother, he requests Mr. Dayal to buy the truck. Mr. Dayal senses the desperation of Kishan. Mr. Dayal accordingly agrees to pay one lakh fifty thousand for the truck. Mr. Dayal knows that the second hand value of the said truck in the market is three lakhs. Kishan and Mr. Dayal enter into a written agreement wherein Kishan accepts in writing the price, as paid by Mr. Dayal. Kishan also declares that he accepts the price without protest and treats the same as a genuine price. He agrees that the deal is final upon both parties putting in their signature. Further both the parties agree not to raise any dispute or challenge any aspect of the transaction in any court within India. Mr. Dayal is a satisfied businessman, marveling at this own ingenuity. Kishan agrees to deliver the truck by 10th of February 2018, the agreement having been signed on 1st February 2018. Incidentally on the 6th of February 2018, Koyal writes an e-mail to Kishan and congratulates him on the deal of his truck. In the same e-mail Koyal inadvertently reveals that Kishan must be happy to have got three lakhs as a price for his second hand truck. This information sets the alarm bells ringing for Kishan. He conducts his own enquiries in the market and finds out that the ongoing price for a second hand heavy duty vehicle of the kind that he has sold is three lakhs. Kishan is hurt as well as angry. He decides to hold on to the delivery of the truck and is contemplating proper legal recourse.

Referring to the facts, as given above, identify the relevant issues. Further give a reasoned legal opinion as to who will win the dispute and why? Support your reasons with relevant authorities (cases/articles/other relevant references). [3+8+9=20]

Q.3 Sachin has a friend Jatin. Jatin is usually in dire financial circumstances. Jatin accordingly keeps on requesting Sachin to help. On 1st February 2018, Sachin was sitting at home. He was planning to go to his office. He also had kept bundles of 100 rupees notes on the table of his sitting room. The total amount of cash kept on the table was one lakh rupees. Sachin was planning to go to the bank, and deposit the same. At about 10:00 am on the same day, as Sachin was putting all the cash in a suitcase, Jatin dropped by. The first thing Jatin noticed was all the cash lying inside the suitcase. However he behaved normally and indulged in small talk with Sachin. Sachin was in a hurry, so he enquired as to the purpose of Jatin's visit. Jatin just shrugged and said that it was a courtesy call. As Sachin was about to shut the suitcase, Jatin asked for water. Since Sachin was all alone and the servants had not turned up for work, he went inside to fetch water. Jatin quickly stuffed few bundles of notes inside his pocket. As Sachin returned he saw Jatin sitting quietly waiting for the glass of water. Sachin offered him the glass of water and shut the suitcase. He noticed nothing. Soon thereafter Jatin left and Sachin went to the bank to deposit his money. At the deposit counter, Sachin found out that he had only rupees ninety thousand instead of rupees one lakh. Sachin re-counted and became sure that ten thousand rupees has been stolen. He recalled all the events that took place in the morning upon Jatin's arrival. He was sure, considering Jatin's financial plight, that the money has been stolen by Jatin. In the meanwhile Jatin, used the stolen cash to pay off Mr. Nandlal. Mr. Nandlal was Jatin's creditor. Jatin was indebted to Mr. Nandlal to the extent of two lakh rupees. So Mr. Nandlal was pleased and relieved to receive ten thousand rupees from Jatin. Since he was aware of Jatin's financial condition, he feared losing all the money, he has lend to Jatin. In the meanwhile Sachin left the bank and went to meet Jatin. When he reached Jatin's home, he could not find Jatin. Jatin's servant informed Sachin that Jatin has gone to Mr. Nandlal's place. Sachin immediately

reached Mr. Nandlal's place but he could not find Jatin there either. Upon enquiry Sachin was informed by Mr. Nandlal that Jatin has left the place in a hurry, after paying off ten thousand rupees to Mr. Nandlal. Sachin desperately tried thereafter to trace Jatin but all his attempts failed. Feeling distressed, he is contemplating ways to recover his ten thousand rupees. He does not want to involve the police hence that option is clearly ruled out. He is seeking remedy under the civil law.

Help Sachin by identifying the relevant issues, upon referring to the facts. Further give a reasoned legal opinion as to whether, if at all, Sachin will be able to recover his ten thousand rupees? Support your reasons with relevant authorities (cases/articles/other relevant references).

[3+8+9=20]

Q.4 Tharoor is a CEO of a Company named Cyclone that is involved in Oil exploration. Tharoor decides that his Company should bid for a government tender. The Union of India, on 15th August 2018 invited tenders for Oil exploration in the Indian Ocean. The site was near Andaman and Nicobar Islands and thus was in an environmentally sensitive zone. The terms of the tender document and the subsequent contract is:

- a) *Every bidder is required to have twenty years of experience in the area of Oil exploration.*
- b) *Every bidder needs to have yearly turnover of Rs. 800 crore and above.*
- c) *Every bidder needs to deposit a bank guarantee amount of Rs. One crore along with the bid document.*
- d) *The said deposit will be refunded to all the unsuccessful bidders on the completion of the bid selection process.*
- e) *Every bidder is required to keep the bid open for a period of 222 days.*
- f) *Any person withdrawing the bid prior to the said period will forfeit the bid deposit amount of Rs. One crore.*
- g) *The successful bidder upon the issuance of the work order is required to deposit 10% of the contract price as security amount in the form of a bank guarantee.*
- h) *The said security amount will be forfeited upon failure of the successful bidder to perform the contract within the time specified in the contract.*
- i) *The contract of Oil exploration has to be signed between the successful bidder and the Union of India.*
- j) *The contract shall remain valid for a period of two years.*
- k) *The contractor, upon signing of the contract, shall perform and complete the work of Oil exploration within the period of two years.*
- l) *The contractor shall supply to the Union of India all the Natural Gasoline and Distillate, drilled from the site.*
- m) *The price of the said Natural Gasoline and Distillate shall be determined by the prevailing market rates on the date of the supply.*

- n) *The contractor shall ensure that the drilling operation is continuous and uninterrupted.*
- o) *Each consignment of Natural Gasoline and Distillate shall be supplied to the Union of India on a regular basis and not later than 20th of every month.*
- p) *Time is the essence of the contract and any delay in supply beyond 20th will cause deduction of 10% of the contract price.*
- q) *The Liquidated Damages is not by way of penalty....*

Cyclone was successful in the bidding process. On 1st October 2018 Cyclone signed the contract with Union of India. And soon thereafter it started the Oil exploration operation. Unfortunately on 30th of October 2018, the National Green Tribunal, issued order which restricted the amount of Natural Gasoline and Distillate that could be explored and extracted at the Oil exploration site. Consequently Cyclone faced difficulty in supplying the requisite quantity of Natural Gasoline and Distillate. In the month of November, Cyclone requested, in writing to the Union of India, to extend the date within which the supplies could be made. The Union of India, through its Secretary, Ministry of Petroleum and Natural Gas, acceded to the request of extending the time. However it was mentioned in the letter that there will be deduction of the 10% contract price by way of liquidated damages. The Union of India extended the date to 30th of every month. Cyclone is relieved with the extended date but is equally upset with the fact that they will be charged liquidated damages. They are seeking legal opinion.

Refer to the facts as given above and identify the relevant issues. Further give a reasoned legal opinion as to what is the position of law as to the dispute raised by Cyclone? Support your reasons with relevant authorities (cases/articles/other relevant references).

[3+8+9=20]

Q.5 Write Short Notes on any one:

a) Novation versus Alteration

b) Necessaries versus Contract

[10]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 7th Semester – 2015 Batch

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 2017), LODR 2015, OECD Principles of Corporate Governance (summary), UK Corporate Governance Code (summary).

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

Part A

(20 marks)

This Question is compulsory.

1. Annexure 1 contains extracts from Tata Chemical's 2016-2017 corporate governance report that is published in accordance with SEBI's rules on the same.

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

- (a) What is the value of such a corporate governance report? (2)
- (b) The report places considerable reliance on the composition of the Board. Why is board composition integral to corporate governance? (3)
- (c) The report states that the company's corporate governance philosophy is 'to protect the interests of all its stakeholders.' Why are stakeholders important? Are they important only as philosophy or as law? (5)
- (d) How can Tata Chemicals ensure that its independent directors are truly effective? Is it doing sufficiently enough to ensure this already? (3)
- (e) The report sets out the role of the audit committee in some detail. Why do modern companies place so much reliance on audit committees? (2)
- (f) Tata Chemicals decides to follow all the provisions of the Kotak Report, regardless of whether SEBI has accepted them. What impact does this have on its corporate governance report? (You need not consider only the extracts of the provided report in your answer) (5)

Part B**(10 x 2 Marks)**

Please answer any two questions:

2. What, in your opinion, is the most effective mechanism (internal or external) of corporate governance in India? Please give reasons and examples to justify your choice.
3. Agents or Stewards- What best encapsulates the Indian corporate governance scenario? And, why?
4. Outline and evaluate the effectiveness of institutional investors as a corporate governance mechanism.

Part C**(5 x 2 Marks)**

Please write short notes on the relationship between any two:

5. Corporate Social Responsibility and CSR
6. Auditors and Audit Committees
7. Minority and Majority shareholders

Annexure 1: Corporate Governance Report of Tata Chemicals 2016-2017

1. Company's Philosophy on the Code of Governance

The Company has a strong legacy of fair, transparent and ethical governance practices and it believes that good Corporate Governance is essential for achieving long-term corporate goals and to enhance stakeholders' value. In this pursuit, the Company's Corporate Governance philosophy is to ensure fairness, transparency and integrity of the management, in order to protect the interests of all its stakeholders.

Strong leadership and effective corporate governance practices have been the Company's hallmark and it has inherited these from the Tata culture and ethos. The Company has adopted a Code of Conduct for its employees including the Managing Director and the Executive Directors as well as for its Non-Executive Directors.

The Company has also adopted the Tata group Governance Guidelines for Board Effectiveness to fulfil its responsibilities towards its stakeholders. The Governance Guidelines cover aspects related to composition and role of the Board, Chairman and Directors, Board diversity, definition of independence, Director term, retirement age and Committees of the Board.

The Company is in compliance with the requirements stipulated under Regulations 17 to 27 read with para C and D of Schedule V and clauses (b) to (i) of sub-regulation (2) of Regulation 46 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations'), as applicable, with regard to corporate governance.

2. Board of Directors

A. Composition of the Board

The Company has an active, experienced and a well-informed Board. The Board along with its Committees undertakes its fiduciary duties keeping in mind the interests of all its stakeholders and the Company's corporate governance philosophy.

As on 31 March, 2017, the Board comprised six Directors, out of which five are Non-Executive Directors and one Managing Director. Out of the total strength, three (i.e. 50%) are Independent Directors (including one woman Independent Director). The composition of the Board of Directors of the Company is in conformity with the Listing Regulations and the Companies Act, 2013 ('the Act').

The Company currently has right mix of Directors on the Board who possess the requisite qualifications and experience in general corporate management, finance, banking, marketing and other allied fields which enable them to contribute effectively to the Company in their capacity as Directors of the Company. Detailed profile of the Directors is available on the Company's website at www.tatachemicals.com.

B. Board Procedure

The dates of the Board/Committee Meetings are agreed upon at the beginning of the year.

The agenda along with the detailed notes are circulated in advance to the Board members. The items in the agenda are backed by comprehensive background information to enable the Board to take appropriate decisions and to discharge its responsibilities effectively. The Managing Director apprises the Board on the overall performance of the Company every quarter including the performance of the overseas operating subsidiaries. The Board periodically reviews the strategy, annual business plan and capital expenditure budgets and risk management, safety and environment matters. It also reviews the compliance reports of the laws applicable to the Company, internal financial controls and financial reporting systems, minutes of the Board Meetings of the Company's subsidiary companies, adoption of quarterly/half-yearly/annual results, transactions pertaining to purchase/disposal of property, major accounting provisions and writeoffs/writebacks, corporate restructuring, minutes of the meetings of the Audit and other Committees of the Board.

In addition to the information required under Regulation 17(7) read with Part A of Schedule II of the Listing Regulations, the Board is also kept informed of major events and approvals are taken wherever necessary.

The General Counsel & Company Secretary monitors the Board and Committee proceedings to ensure that terms of reference/charters are adhered to, decisions are properly recorded in the minutes and actions on the decisions are tracked. Meeting effectiveness is ensured through clear agenda, pre-circulation of material in advance, detailed presentations at the meetings and tracking of the Action Taken Report (ATR). Additionally, based on the agenda, the Board/Committee meetings are attended by members of the senior leadership as invitees, which bring in the requisite accountability and also provide developmental inputs.

C. Meetings Held

The Board met 9 (nine) times during the Financial Year (FY) 2016-17 on 26 May, 2016, 22 July, 2016, 5 August, 2016, 10 August, 2016, 7 October, 2016, 10 November, 2016, 22 November, 2016, 8 February, 2017 and 29 March, 2017.

The gap between two meetings did not exceed one hundred and twenty days.

3. Independent Directors

A. Meetings of Independent Directors

During the year, two meetings of Independent Directors of the Company without the presence of Non-Independent Directors and members of management were held on 10 November, 2016 and 29 March, 2017 as required under Schedule IV to the Act (Code of Independent Directors) and Regulation 25(3) of the Listing Regulations. At their meeting, the Independent Directors reviews the performance of Non-Independent Directors and the Board as a whole, performance of the Chairman and also assesses the quality, quantity and timeliness of flow of information between the Company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

B. Terms and conditions of Independent Directors

All the Independent Directors of the Company have been appointed as per the provisions of the Act, Listing Regulations and the Governance Guidelines for Board Effectiveness adopted by the Company. Formal letters of appointment have been issued to the Independent Directors. The terms and conditions of their appointment have been disclosed on the website of the Company.

None of the Independent Directors on the Board serve as an Independent Director in more than seven listed companies. All Directors are also in compliance with the limit of Independent Directorships of listed companies as prescribed in Regulation 25 (1) of the Listing Regulations.

The Managing Director of the Company does not serve as an Independent Director in any listed company.

C. Induction and Familiarisation Programme for Directors

The Company has a familiarisation programme for its Independent Directors. The objective of the programme is to familiarise the Independent Directors to enable them to understand the Company, its operations, business, industry and environment in which it functions and the regulatory environment applicable to it. These include orientation programme upon induction of new Directors as well as other initiatives to update the Directors on a continuing basis. An induction kit is handed over to new Directors which includes the annual report, a CD containing overview of the Company and its operating subsidiaries, charters of the Company, annual Board/Committee calendar, Code of Conduct for Non-Executive Directors, Tata Code of Conduct for Prohibition of Insider Trading, etc. Meeting with Business/Functional Heads are organised to provide brief on the business/function.

Pursuant to Regulation 25(7) of the Listing Regulations, the Company imparted various familiarisation programmes for its Directors including review of long-term strategy, industry outlook, regulatory updates at Board and Audit Committee Meetings, Presentations on Internal Control over Financial Reporting, Goods and Services Tax, Indian Accounting Standards, Risk Management Framework, Presentation on Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 ('IEPF Rules') and Controls at Registrar and Share Transfer Agent to the Stakeholders Relationship Committee, etc. Pursuant to Regulation 46 of the Listing Regulations, the details required are available on the

website of the Company at the web link at http://tatachemicals.com/upload/content_pdf/familiarisation-programme-hours-2017.pdf.

D. Code of Conduct

The Company has adopted the Tata Code of Conduct ('TCoC') for its Whole-time Directors, Senior Management Personnel and other Executives which is available on the website at <http://tatachemicals.com/About-Us/Governance/Code-of-conduct>.

The Board has also adopted a Code of Conduct for Non-Executive Directors, which incorporates the duties of Independent Directors as laid down in Schedule IV of the Act (Code for Independent Directors) and Regulation 17(5) of the Listing Regulations and the same is available on the Company's website at http://tatachemicals.com/upload/content_pdf/TCOC-non-executive-directors.pdf.

All the Board members and Senior Management of the Company as on 31 March, 2017 have affirmed compliance with their respective Codes of Conduct. A declaration to this effect duly signed by the Managing Director forms part of this report. Apart from reimbursement of expenses incurred in the discharge of their duties and the remuneration that these Directors would be entitled under the Act as Non-Executive Directors, none of the Directors has any other material pecuniary relationships or transactions with the Company, its Promoters, its Directors, its Senior Management or its Subsidiaries and Associates.

Senior Management of the Company have made disclosure to the Board confirming that there are no material, financial and/or commercial transactions between them and the Company which could have potential conflict of interest with the Company at large.

4. Audit Committee

The Audit Committee's role shall flow directly from the Board of Directors' overview function on corporate governance, which holds the Management accountable to the Board and the Board, in turn, accountable to the shareholders. The Committee oversees the work carried out in the financial reporting process by the Management, the internal auditor, the statutory auditors and the cost auditors and notes the processes and safeguards employed by each of them.

The Audit Committee functions according to its charter that defines its composition, authority, responsibilities and reporting functions.

All the items listed in Regulation 18 (3) read with Part C of Schedule II of the Listing Regulations and in Section 177 of the Act are covered in the terms of reference.

A. Terms of Reference

The Audit Committee of the Company is responsible for supervising the Company's internal controls and financial reporting process and, inter-alia, performs the following functions:

Oversight of the Company's financial reporting process and disclosure of its financial information;

Discuss and review, with the management and auditors, the annual/quarterly financial statements before submission to the Board;

Review of the Company's accounting policies internal accounting controls, financial and such other matters;

Hold timely discussions with external auditors regarding critical accounting policies and practices, significant reporting issues and judgements made, nature and scope of audit, etc;

Evaluate auditor's performance, qualification, independence and effectiveness of Audit process;

Recommend to the Board, the appointment, re-appointment, removal of the external auditors, fixation of audit fees and also approval for payment of audit and non-audit services;

Review the adequacy of internal audit and risk management function;

Review the adequacy of internal control systems and ensure adherence thereto;

Provide guidance to the Compliance Officer for setting forth policies and implementation of the Tata Code of Conduct for Prevention of Insider Trading;

Scrutinise inter-corporate loans and investments;

Review the Company's compliance with the legal and regulatory requirements and the Tata Code of Conduct and effectiveness of the system for monitoring the same;

Review the functioning of Whistleblower Mechanism of the Company which shall include the Vigil Mechanism for Directors and employees to report genuine concerns in the prescribed manner;

Review the significant related party transactions;

Valuation of undertakings or assets of the listed entity, wherever it is necessary

Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board;

Discussion with internal auditors of any significant findings and follow up there on;

Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, approval of the audit plan and its execution, staffing and seniority of the official heading the department, reporting structure and frequency of internal audit;

Approve the appointment of the Chief Financial Officer after assessing the qualifications, experience and background of the candidate;

Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

SET - 1
THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. End Semester (Monsoon) Examination 2018 – 5th Semester – 2016 Batch

Corporate Law-I

Full Marks –70

Time Allowed: 3 hours

Instructions: Answer any five of the following seven questions. Carrying any marked/unmarked book, legislation, or any other document (other than any electronic device) inside the examination hall, is optional and permissible. Carrying common-sense and wits alongwith, however, is compulsory and non-negotiable. Each part of the answers should be clearly and accurately marked to indicate which part of the question it corresponds to. Once a question has been attempted, all parts of it must be answered together. There shall be no further clarification provided in relation to the questions. In case any assumption has been made by the student in the context of the fact scenario provided, the same must be clearly mentioned at the beginning of the answer. Verbatim reproduction of legislative provisions is strongly discouraged.

Q.1. Rosa Diaz and Terry Jeffords, both Indian citizens and residents, have decided to start a business of selling protein-rich snack bars in India and named it P-99. In order to raise funds for the business, they have approached multiple people within their social circle, with the understanding that every person who provides any fund will have proportionate decision-making power in the business and will be entitled to a proportionate share of any profit made. So far, forty nine people have agreed to this proposal and contributed various amounts to the business. Rosa and Terry are planning to eventually go to the Registrar of Companies to formalize the business structure of P-99, but are yet to do so. Meanwhile, Charles Boyle, one of the contributors, has vouched for the quality of the raw material supplied by Norm Scully, and Rosa and Terry have paid a sum of INR 10 lakhs to Norm to get such material on behalf of P-99, with a promise to pay an additional INR 5 lakhs subsequently. However, the material turned out to be of sub-standard quality and P-99 suffered a heavy loss because of that. In the light of the above fact scenario, answer the following questions in brief with supporting legal provisions and case-laws as applicable.

- (a) Can P-99 or anyone else sue Norm for having knowingly supplied such material? (3)
- (b) Will the answer to (a) change in any manner if Rosa and Terry get P-99 registered under the Companies Act, 2013 subsequently? (1)
- (c) Can Norm sue P-99 or anyone else for recovering the remaining INR 5 lakhs that he is owed? (1)
- (d) Can P-99 sue Boyle if it can establish that Boyle had reasonable grounds to suspect the quality of the material? (1)
- (e) Assuming the answer to (d) is yes, can Boyle adopt a strategy to counter any such suit by applying before a court of law in India that P-99 should be subjected to winding-up and the contributions of all involved should be refunded to the extent possible given the assets currently owned by P-99? (2)

(f) Assuming P-99 continues its business operations for more than one financial year, will it have any further liability to any regulatory authority under the law of the land? (2)

(g) In case P-99 gets registered under the Companies Act and the government announces a new tax benefit for businesses involved in manufacturing and selling high-protein food, can Rosa and Terry claim such exemption for any share of the profit they end up getting in a financial year from P-99, especially if they can establish that the actual decision-making power within P-99 rests with them? Explain the various arguments and possibilities. (4)

Q.2. (a) A company named Pearson, Specter & Litt Services, Inc. that has not been incorporated under the Companies Act, 2013 has taken on rent two apartments in Mumbai and Delhi respectively. At the first apartment, Ms. Paulsen, acting as the company's representative, stays three days a week and conducts all formalities necessary on behalf of the company when any of the company's shareholders residing in Mumbai inform her about having transferred one or more of its shares to each other. At the other apartment, Mr. Ross, another representative, stays four days a week and receives and procures any order placed for services rendered by the company. In the light of the given fact scenario, answer the following questions with supporting legislative provisions and case-laws.

(i) Whether the company is required to comply with any procedural requirement under the 2013 Act or associated rules (specific details of the requirements need not be mentioned, simply referring to the provisions may suffice). (4)

(ii) Would the answer have changed any if Ms. Paulsen also used the Mumbai apartment as the venue to make all payments to the Indian creditors of the company? (1)

(iii) In case of (ii), would there be any further procedural requirement on the company's part if it gets liquidated in its country of incorporation? (1)

(b) Martha Costello has started a company named Fine Silk Traders Pvt. Ltd. in India with four other people as fellow shareholders. She also wields considerable individual influence over Nick Slade and Billy Lamb, the two people who are appointed as directors of the company on November 5, 2018. The Registrar of Companies had issued the certificate of incorporation on November 1, 2018 and the warehouse where the company would store its products was bought on November 25, 2018. On December 15, 2018, both Nick and Billy resigned from their positions. According to you, at which point of time did Martha's initial pre-incorporation duties if any, come to an end? Would the resignation of the directors trigger any further obligation on her part and if she is unable to fulfill the same or has left the company before that, how can such duty/obligation be discharged under such circumstances? (4)

(c) In the fact situation mentioned in (b), is it mandatory that Martha will have to personally fulfill all the procedural requirements necessary at the time of incorporation, including following any instruction that the Registrar may give? If not, what other possibility is there? Once the certificate of incorporation has been issued by the Registrar, in case it is found out that the government has outlawed trade in silk and silk products by a new legislation while the incorporation was pending, what will be the impact of such an event on the validity of incorporation and the certificate? (1+1+2)

Q.3. (a) Alan Shore, Shirley Schmidt and Brad Chase are the members of Crane, Poole & Schmidt Legal and Management Software Pvt. Ltd. The Articles of Association of the company require any member to inform the company before giving up their right to vote on any matter involving the composition of the board of directors of the company. However, Alan and Shirley have entered into a contract with each other, which states that in the event of either of them being unable to vote in a meeting, the other

would also refrain from voting on any resolution in that meeting. Later, at the end of one financial year, the company chooses to declare dividend with respect of only those categories of shares owned by Brad Chase, despite having decided in a meeting beforehand to declare dividend for all the shares of the company. Meanwhile, the company had entered into a contract with Denny Crane, whereupon the latter was supposed to service software upgrades to the company. However, one month later, the company terminated the contract unilaterally, which the terms of the contract allowed, but the Articles clearly mention that unilateral premature contractual termination by the company can occur only on grounds of proven misconduct. In the light of the fact scenario, answer the following questions with authority in support of your answer:

(i) Can Brad successfully bring a suit challenging the validity of the contract between Alan and Shirley? Can anybody else do the same? (3)

(ii) Can Alan or Shirley successfully bring a suit challenging the dividend declaration by the company? (2)

(iii) Can Denny successfully challenge the contractual termination on the strength of the Articles? (2)

(b) In the above fact scenario, would it have been possible for Brad to enter into the same contract with Denny on behalf of the company even before the Articles of the company had been approved by the Registrar of Companies? If yes, then what would have been the legal effect of such a contract? Would the situation have been different in a Common Law jurisdiction as opposed to in India? (5)

(c) Advise an individual who wants to incorporate an One Person Company under the Companies Act, 2013 and wishes to know under what circumstances will such a company have to mandatorily get converted into a private or public company as per the provisions of the Companies Act, 2013 and associated Rules. (2)

Q.4. Hamlin & McGill Medical Supplies Ltd. is a company incorporated under the Companies Act, 2013 and listed in multiple stock exchanges in India. The Board of Directors of the company sent a notice via e-mail on October 1, 2018 to all the equity shareholders of the company of a general meeting to be held on October 15, 2018. Saul Goodman, who had become a member of the company on September 20, 2018, could not attend the meeting itself and was not aware of his right to appoint a proxy, although he had received the notice. The email sent to Howard Hamlin, another member, failed to get delivered and the failure receipt was sent to the company's official email address on October 2, 2018, after which the company sent a physical copy of the notice to Hamlin's registered address on October 7, 2018. Hamline later claimed that while the meeting was intended to discuss *inter alia* the possibilities of amending a contract that the company had entered into, he was given an opportunity to examine the contract only on the date of the meeting and not before. When the chairperson was being elected for the meeting, there was a demand for poll to be conducted for that purpose, but the same could not be conducted in the absence of a chairperson, since only the latter had the power to conduct a poll. In course of the meeting, after voting by show of hands, Kim Wexler, a member and Gus Fring, the proxy for another member, collectively demanded a poll for the resolution about amending the contract, but the chairperson rejected such demand on the ground of Gus being a proxy and the not the original member. Another resolution that was sought to be put up to vote in the meeting was whether the company could opt for buying back of its own securities from the existing members and the company had also provided for e-voting on this matter prior to the meeting. Identify at least seven anomalies/irregularities in this entire fact scenario with appropriate reasons and legal authority backing your argument. (14)

Q.5. Answer with reasons and legal authority (both legislative provisions and case-laws, as and where applicable) whether the following statements are true, false or partly true and partly false. [No marks will be awarded for accurate answers but incorrect or inadequate argument or legal precedent]

(a) A company has issued 100 shares having nominal value INR 1000 each to Annalise Keating and in return, she has transferred a plot of land owned by her having market value INR 200000 to the company. The company need not transfer any cash to or from any of the accounts owned by the company. (2.5)

(b) A company has got incorporated on November 1, 2017 and passed a special resolution on October 1, 2018 to issue a certain number of sweat equity shares to its employees on October 7, 2018, with the condition that the holders of such shares shall get only one vote for every two votes that are given to the holder of an existing ordinary equity share – this action of the company is an invalid one for at least two reasons. (3)

(c) A company can pass a special resolution authorizing holders of 40% of its equity shares to get 3 votes for every vote given to the holders of the remaining 60% of its equity shares, provided such resolution is agreed upon by the entire 100% of equity shareholders. (2.5)

(d) A company has given an offer letter to a firm acting as an issue house, offering the latter an opportunity to subscribe to a certain number of equity shares in the company. Subsequent to the firm accepting the offer and sending a part of the application money in advance, the shares have been allotted to the firm by the company. Three months after the date of allotment, an offer was made by the firm to sell these shares to the public. By then, the firm had paid only 70% of the total nominal value of those shares to the company. The company shall be liable under the circumstances if the said offer letter does not satisfy all the requirements of a prospectus under the Companies Act, 2013 and associated Rules. (3)

(e) A listed company has raised capital through issue of equity shares to the public for the purpose of completing a certain project. Once the project is complete, the company still has surplus funds from the capital so raised. The company can use this fund for the purpose of buying the equity shares of a competitor listed company, so long as the Articles of the first company allows for such purchase and the holders of such equity shares give their approval by way of a special resolution vide postal ballot after the first company has fulfilled its statutory obligations to give notice of such resolution. (3)

Q.6. (a) Donnell and Associates Supply Co. Ltd., incorporated under the Companies Act, 2013, has passed an ordinary resolution of its members on November 1, 2018 to issue 1000 secured optionally convertible debentures of value INR 10000 each. The debentures are supposed to be redeemed on October 30, 2029. The prospectus for the subscription of debentures was issued by the company on November 15, 2018 and the debentures were allotted during the period December 15 – 25, 2018. On December 26, 2018, the company executed a trust deed in relation to the debentures and appointed Eugene Young as the trustee. Young does not have any existing pecuniary relationship with the company, although he had taken a loan of INR 60 lakhs from the company in 2016, which he had repaid by November, 2017. Bobby Donnell, one of the members of the company, believes that this entire action by the company leaves several glaring legal loopholes and has approached you as his counsel to know about all the grounds on which such action may be challenged. Advise. (6)

(b) Answer the following questions relating to the validity of the following charges and associated scenarios with arguments and legal authority in support where applicable:

(i) A acquires a fixed charge over a property owned by company B. B failed to register the charge within the next one and a half years. Meanwhile C acquired a floating charge over all properties of company B, without being aware of the existence of the fixed charge. A subsequently compelled B to go to the Central Government and get the charge registered, but right before the registration was complete, C sought to crystallize his charge. Following registration, who will have better right over the property with regard to which the fixed charge had been created, A or C? (3)

(ii) D acquires a floating charge over the properties of company E. Meanwhile F has approached a court of law seeking recovery of money that company E owes to him. The court has passed a garnishee order nisi in F's favour. While this order is being carried out, D seeks to crystallize his charge. Will F have a superior claim over the assets of company E, as compared to D? Would the answer change in any way depending on the status of the garnishee order? (2)

(iii) G has got a fixed charge over certain assets of a company and has got the charge registered too. H buys one of those assets from the company. When G got to know this, he informed H that the asset is not free from encumbrance, but H refused to acknowledge such encumbrance, claiming that he was a bona fide transferee without knowledge of preexisting charge, and hence is not liable in any way to honour such charge and all liability should rest solely with the company. Comment. Had the charge not been registered, and the company had gone into liquidation, would the liquidator have been within his rights to dispose of such assets without prior permission of G? (3)

Q.7. (a) A public company incorporated under the Companies Act, 2013 has allotted 100 equity shares of nominal value INR 100 to Ally McBeal, received an amount of INR 5000 from her and issued a share certificate to her accordingly. Subsequently, Ally borrowed a sum of INR 3000 from a moneylender and surrendered the certificate to him with the understanding that if she cannot pay the money back with interest within 2 months, the shares would stand transferred to the moneylender. Accordingly, 3 months later, the moneylender approached the company with the certificate (and a duly registered copy of the transfer agreement), but the company refused to recognize him or Ally as a member, claiming that the directors of the company had acted in excess of their authority in issuing such certificate and allotting such shares that the company had no right to issue. The company even refused to pay him or Ally back the INR 5000 that has been paid to the company already according to the certificate, claiming that it had received only INR 2000 from Ally earlier. Advise both the moneylender and Ally about any rights that they may have against the company under such circumstances. (6)

(b) A person has approached you to seek advice about what sort of liabilities a company may owe for having received his application for membership following a transfer of shares from the erstwhile member, yet not changing the register of members to reflect such on the ground of the register having been closed for the purpose of calculation of dividend for the next 45 days. Advise. (3)

(c) Billy McBride and Tania Raymonde are two members of a listed Indian company, each owning 10 equity shares of nominal value INR 2000 per share, but there is a difference between the voting rights associated with Billy's shares and with Tania's shares. Both of them have individually taken loans of INR 15000 from the company. Billy's shares have been fully paid up, while Tania has paid INR 1500 for each of her shares, while a call has been issued by the company for the remaining INR 500. Before responding to the call, Tania has transferred to Donald all her shares at a consideration far less than the current market value of the shares. Billy has done exactly the same. The company is now trying to oppose such transfer on the grounds of inadequacy of consideration, as well as in exercise of the company's right of lien with regard to all the shares against the individual loans given to Billy and Tania. Comment on the validity of the company's actions. (5)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 3rd Semester – 2017 Batch

CRIMINAL PROCEDURE CODE

Full Marks – 70

Time Allowed: 3 hours

Bare Act without any comment is allowed.

**ANSWER ANY FIVE QUESTIONS FROM AMONGST QUESTION 1 TO 6.
QUESTIONS 7 AND 8 ARE COMPULSORY.**

QUESTION NO 1.

3 + 5 = 8 MARKS

- (a) What are the processes to compel appearance of the witnesses as well as accused?
- (b) Independence of prosecuting agency is a mandate envisaged under the CrPC and directed by judiciary in numerous cases. Discuss in the light of decided cases and amendment in CrPC how far such requirements are fulfilled.

QUESTION NO 2.

4 + 4 = 8 MARKS

- (a) What do you mean by FIR? Discuss elaborately the rule relating to the registration of FIR, value of timely registration and the ways to remedy situations of non-registration in light of the provisions of the CrPC and decided cases.
- (b) Every search of a place has potential risk of invasion of privacy. Discuss in detail power of police to carry out search and seizure under CrPC. What safeguards are provided to protect the rights of the citizens? Give your views citing decided cases.

QUESTION NO 3.

4 + 2 + 2 = 8 MARKS

- (a) What do you understand by 'joinder of charge'?
- (b) Can an accused be allowed to file any materials or submit documents at the stage of framing of charge?
- (c) In what cases can an accused person be lawfully convicted of an offence that he was not charged of initially? In other words, can he be subsequently convicted of an offence which was not listed out in the list of charges framed against him at the trial?

QUESTION NO 4.

5 + 3 = 8 MARKS

- (a) There are broadly four categories of criminal trial prescribed in CrPC. Discuss basic characteristics of each category of criminal trial.
- (b) Are there any different trial processes in circumstances when cases instituted on Complaint from cases instituted on Police report?

QUESTION NO 5.

3 + 5 = 8 MARKS

- (a) What do you mean by preventive measures?
- (b) Mention four common modes of surveillance practised by police for tracking suspect and their legitimacy in the light of the relevant provisions of CrPC. (8 Marks)

QUESTION NO 6.

6 + 2 = 8 MARKS

- (a) On the one hand CrPC constantly emphasizes upon speedy trial of criminal cases and suggests that hearing may be conducted on a day to day basis. On the other hand the judiciary has declared that the 'right to speedy trial' is a fundamental right guaranteed under Article 21 of the Constitution. Explain in the light of decided cases and provisions of CrPC how far right to speedy trial is protected for accused.

- (b) In a series of cases the Supreme Court declared that legal aid is fundamental right of the accused and basic feature of fair trial principle. Discuss how far provision relating to legal aid is adequate in CrPC.

Q 7. ATTEMPT ANY FIVE SHORT NOTES

5 X 3 = 15 MARKS

- (a) Inquest
- (b) Cancellation of bail
- (c) Abdul Karim V. State of Karnataka (2001) SCC (Cri.)59.
- (d) Sentence hearing
- (e) Appointment of Commission by Court
- (f) Plea Bargaining

Q. 8. IDENTIFY AND ELABORATE UPON DIFFERENCES BETWEEN (ANY FIVE)

5 X 3 = 15 MARKS

- (a) Bailable offence and Non-bailable offence
- (b) Cognizable offence and Non-cognizable offence
- (c) Summons trial and warrant trial
- (d) Compoundable offence and non-compoundable offence
- (e) Discharge and Acquittal
- (f) Investigation and inquiry

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 7th Semester – 2015 Batch

Criminology, Penology and Victimology

Full Marks –50

Time Allowed: 3 hours

All Questions Compulsory (5x10=50)

1. Discuss the nature of Criminology.
2. Discuss the characteristics of Organised Crime.
3. Discuss the Behavioral Characteristics of Cyber Crime Criminals. Remedies available for Victims of Cyber Crime.
4. Which Schools approaches to Criminology fits into the modern period and why? Give reasons and Explain.
5. How to prevent recidivism? Suggest new measures.
6. Discuss alternate forms of punishments used in place of detention. Discuss its impact in Criminal Justice Administration
7. Define Punishment. Discuss the concept of Death penalty in India.
8. Discuss the role of Court and prosecution in protecting victims' rights in India.
9. Is the present Juvenile Justice (Care and Protection) Act, 2015 is able to reform, rehabilitate and reintegrate child in conflict with law in to the society? Discuss.
10. Discuss role of court in awarding compensation.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 7th & 9th Semester – 2014 & 2015 Batch

Deviance, Control and Society

Full Marks –75

Time Allowed: 3 hours

ESSAY TYPE QUESTIONS (Attempt any five questions)

5x15=75 marks

1. In the film *Taxi Driver*, the protagonist's approach to the city is along the lines of the ethnographic methods followed by the proponents of Social Disorganization theory. Elucidate your views on the above statement, and comment on whether the film is an accurate analogy to this school of criminological thought.
2. With which primary school of criminological thought is the assertion that 'the law should restrict the individual as little as possible' most consistent? Do you think that this is a feasible pursuit in modern society?
3. Reflecting on the notion of free will and the psychological explanations of criminality, examine the so-called 'Crime of the Century' that was the Leopold and Loeb case of the murder of Bobby Franks.
4. According to Foucault, this is the major outcome of the Panopticon: 'to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power'. Comment. Clarify your views particularly with respect to the concept of social media.
5. Referring to the landmark study of William Chambliss on the Law of Vagrancy, explain the relationship between laws and the larger social context in which they emerge and exist.
6. 'Sociological explanations of crime share a common refrain- "there's something wrong with the system".' Do you agree with this statement? How would the Sociological theories differ from the other predominant schools of criminological thought?

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 3rd Semester – 2017 Batch

Economics I

Full Marks –50

Time Allowed: 3 hours

Question Number 1 is COMPULSORY. Answer any TWO from the rest.

- 1a) Explain the Coase theorem with a suitable example in presence of a negative externality. What are the sources of prohibitive transaction costs? Explain with the help of prisoners' dilemma. (5+5)
- b) Consider the problem of airport noise adversely affecting homeowners in the vicinity of an airport. What legal intervention can internalize this externality at the least cost? Is it right to say that an eminent domain approach will produce less efficient consequences than a nuisance approach? Can creation of time limited noise easements produce the desired outcome? (4+3+3)
- 2) Each year, Amar grows 200 units of commodity X and 100 units of commodity Y for his own consumption and for sell to the outside world. X and Y are the only goods which provide utility to him. They are also his only source of income.
- a) If the price of X is Rs 2/unit and that of Y is Rs 10/unit, Amar chooses to sell 20 units of Y while retaining 80 units for his own use. Show his utility maximizing situation indicating both his initial production level and the final consumption level. (8)
- b) Suppose the price of Y falls to Rs 6/unit while price of X remains unchanged. Will Amar be made better or worse off by this price fall? Use indifference curves and budget lines to support your answer. (7)
- 3a) Akbar works in a factory where he gets an hourly wage rate of Rs 50. He chooses to work for 7 hours a day at this wage rate. Show his labour-leisure choice using appropriate set of equations and diagrams. (5)
- b) If the employer wants him to work for 9 hours a day, what kind of incentive is required to be given? Will Akbar be necessarily better off if he accepts such a contract, or should he continue to supply 7 hours of work effort as before? (10)
- 4) The equation of the total cost curve facing a perfectly competitive firm in the short run is
- $$TC = 50 + 2q^2$$
- a) Explain why this firm will never shut down its production in the short run as long as the commodity is not a free good.
- b) If the firm faces a market price of Rs 100/unit, what will be its profit maximizing level of output?
- c) If $TC = F + 2q^2$, find the value of F for which the price of Rs 100/unit allows the firm to just break even. (5+5+5)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES
LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

Enforcement of Intellectual Property Rights

Full Marks –70

Time Allowed: 3 hours

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

1. (a) “The term ‘enforce’ means, to execute a particular law, writ, judgement, or the collection of debt or fine. However, in the context of intellectual property rights it means to prevent or obtain remedies for infringement of conferred rights.”- Explain.
(b) “As enforcement of intellectual property rights gains greater preponderance on the international agenda, developing countries must develop appropriate policy responses.”

Do you agree? Briefly describe the policy options for developing countries in view of changing global governance of intellectual property enforcement.

[4+10]

2. The general enforcement obligations imposed by the Anti-Counterfeiting Trade Agreement (ACTA), emulating those in Article 41 of the TRIPS Agreement¹, is that Parties

¹ **Article 41**

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it

shall ensure effective action against any act of infringement of IPRs covered by the Agreement, including expeditious remedies to prevent infringements and remedies which constitutes a deterrent to further infringements. It also requires that procedures adopted for its implementation shall be 'fair, equitable, and provide for the rights of all participants subject to procedures to be appropriately protected' and that these procedures shall not be 'unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays'.

In the light of above statement critically analyse the provisions relating to criminal enforcement emphasising the justification of criminalisation of private rights under ACTA. [14]

3. (a) "The enforcement provisions are crafted as broad legal standards, rather than as narrow rules, and their inherent ambiguity will make it harder for mediators or dispute-settlement panels to pin down clear-cut violations of international law...we predict that the level of enforcement under the TRIPS Agreement will greatly disappoint right-holders in the developed countries, and that resource to coercive measures will not appreciably improve the situation in the short and medium terms."

Do you agree with the above assessment about TRIPS's enforcement provisions? Justify your answer.

(b) After the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), commentators widely praised the agreement for transforming the international intellectual property system, however after fifteen years of existence, it is apparent that the TRIPS Agreement has failed to strengthen intellectual property enforcement to the satisfaction of the *demandeur* countries of the developed world.

Why the TRIPS Agreement fails to provide effective global enforcement of intellectual property rights? Discuss critically. [4 + 10]

4. (a) Why has intellectual property gone international? Explain
(b) "The enforcement agenda is growing into a seamless web surrounding the developing world and suffocating healthy and balanced social economic development. It could even be a life-or-death fight. The developing countries, despite their tremendous diversity, must setup a united front, develop a series of practical strategies and proactively initiate a pro-development enforcement agenda."

affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

Considering the above statement briefly discuss the economic implications of strict enforcement of various Intellectual Property Rights for the developing countries and suggest the ways for developing countries to resist the unreasonable pressure and make their own pro-development agenda. [4+10]

5. (a) Critically examine the factors which are to be considered while granting interim injunction in a suit relating to intellectual property with the help of decided case laws.
(b) Can Indian courts pass an order directing the attorney of the plaintiff to conduct search and seizure (similar to *Anton Piller* order)? Discuss with the scope of Order 39 Rule 7 of Civil Procedure Code in this regard. [8+6]
6. Write short note (*any two*): 7X2
- (a) Border Measures under the Customs Act, 1962
- (b) Cross-border Injunctions in the Enforcement of Intellectual Property Rights
- (c) Private Enforcement of Intellectual Property Rights and Choice of Law

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 1st Semester – 2018 Batch

ENGLISH- I

Full Marks –30

Time Allowed: 2 hours

1. Answer any **ONE** of the following questions : (**10x1=10**) **500 words**
 - a) Discuss Robert Browning's *Porphyria's Lover* and *My Last Duchess* as poems dealing with the theme of psychological aberration.
 - b) Examine how the characters of Uma and Mrinal act as representatives of Tagore's idea of the 'New Woman' with special reference to *The Exercise Book* and *The Wife's Letter*.
 - c) Explore the significance of the title of Tendulkar's play *Silence! The Court is in Session* and discuss the satire and irony inherent in it.

2. Explain any **ONE** of the following statements with reference to the context : (**5x1=5**) **250 words**
 - a) "Yes, I have a lot to say. For so many years, I haven't said a word. Chances came, and chances went. Storms raged one after another about my throat. And there was a wail like death in my heart. But each time I shut my lips tight. I thought, no one will understand. No one *can* understand!"
 - b) "One thing surprised me: why didn't you force Bindu to leave? I understand it now: deep inside, you were all afraid of me. Deep inside, you could not help respect the intelligence that God had given me."
 - c) "This grew; I gave commands; / Then all smiles stopped together. / There she stands/ As if alive."

3. Do as directed: (**10x1= 10**)
 - a) None of the two participants were willing to withdraw. (Correct the sentence)
 - b) I agree that we could have done more to help. (Begin: We haven't.....)
 - c) As soon as the bell rang, the teacher left the class. (Begin: No sooner...)
 - d) A good tree bringsgood fruits. (use an appropriate word)
 - e) One must endure what one cannot cure. (Change to Passive Voice)
 - f) The child said, "Hurrah! Mother has come!" (Change to indirect sentence)
 - g) It is extremely foolish to waste time in reading trash. (Change into interrogative sentence)
 - h) I (walk) along Esplanade when I (realize) that a man with a ginger beard was following me. (Use appropriate form of Tenses)
 - i) I have hour and half before lunch break. (Insert appropriate articles)

- j) Undue favour shown by a person of high position to his known people. (One word substitution)

4. Read the following extract and answer the question. (5) (**Within 150 words**)

*There will be time, there will be time
To prepare a face to meet the faces that you meet;
There will be time to murder and create,
And time for all the works and days of hands
That lift and drop a question on your plate;
Time for you and time for me,
And time yet for a hundred indecisions,
And for a hundred visions and revisions,
Before the taking of a toast and tea”.*

- a) How does the speaker give a perspective of modern human life through these lines?

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 –7th Semester – 2015 Batch

Entertainment & Media Law

Full Marks – 50

Time Allowed: 3 hours

(ANSWER ANY TWO OF THE FOLLOWING QUESTIONS)

1. a) In the wake of the #MeToo movement and serious allegations of sexual impropriety against several media personnel, the Parliament comes up with an amendment to the Press Council of India Act. The newly added provision aims at constituting a 'Gender Equity Commission' within the Press Council. This commission, a five member body, would consist of a retired Supreme Court Judge as the Chairperson, two members from the media nominated by the Press Council, and two members nominated by the Central Government. This Commission would be the primary forum of approach for any media person who would face any act of sexual impropriety. Upon receipt of such complaint, the Commission would conduct an inquiry into the allegations, and if they would find any prima facie merit in the allegations, they are empowered by the newly introduced provision to pass binding directives including but not limited to, temporary suspension of the accused, and other such orders to the concerned organisation that the Commission deems fit. If the organisation refuses to take any action, the Commission would be empowered to even suspend the operations of the concerned media outlet. This provision would cover all types of media organisations, including print, electronic and online media. Of course, this provision would operate without prejudice to any right of the accused under the existing laws of the land to seek appropriate remedies, civil or criminal.

Immediately after coming into force of the provision, one witnessed a floodgates of complaints filed against a number of senior reporters and journalists, against whom very serious and immediate actions were taken by the Commission. However, independent commentators started noticing a scary trend in the events. They observed that most of such complaints were being made against journalists who have been critical about the present government in the recent past. The Commission, dubbed a "Kangaroo Court" by many, started being looked at as a governmental tool in getting even with a critical media, and a concealed effort of suppressing dissent, the "safety valve in a democracy".

A group of media watchdogs decide to challenge the constitutionality of this provision, for being violative of Articles 19(1)(a) and (g) of the Constitution. Critically evaluate the merits of their argument, with appropriate references to the context. (15)

- b) A Corporate House called Screaming Lungs Co. doing, *inter alia*, an almost monopolistic media business would, in order to further their business interests, like to associate with other corporate houses in the form of 'private treaties'. The basic purpose of such 'private treaties' is to ensure

that the companies with which Screaming Lungs has such agreements would get favourable coverage in all its media segments – print, broadcasting and online. In exchange, Screaming Lungs will be offered equity shares in the said company and the value of such shares will naturally rise in light of the favourable media coverage it gets from Screaming Lungs, which is such a prominent market player. However, the SEBI and the Press Council of India would vehemently try to prevent such treaties, referring to them as ‘media malpractices’. Analyse this situation and figure out the existence of any special position of power or responsibility accorded to the business of media in the larger corporate environment. (10)

2. a) The Ministry of Information and Broadcasting has issued an advisory to all television channels, which states that condom ads will be shown on television only from 10 P.M. to 6 A.M. The motivation behind this advisory has been stated as “to protect children from indecent content”. A group of advertisers have decided to go to court against this “misguided reform aimed at creating taboos”, alleging violation of several of their Fundamental Rights. Moreover, they allege that this advisory is a huge backward leap, so far as the ever-evolving obscenity jurisprudence it concerned.

Do you find any justification in their contentions? Analyse, with appropriate references. (15)

- b) In an interview to the Man’s World Magazine, Arnab Goswami, when asked as to whether he is the ‘judge, jury and executioner’, completely blurring the line between Arnab the objective journalist (if ever there was one) and Arnab the crusader, proudly proclaims:

“I agree that I am. I don’t know about the executioner part, but I am certainly the judge and jury on my show. There’s nothing to hide. I feel it is my job to call out people. I feel tame discussions don’t help. I have also come to the conclusion that stories that you pick up, you need to really go to the core rather than skim the surface. I have two hours every night to do it. I turned The Newshour into less of a news bulletin, and more of a ‘seeking accountability forum’. That’s the kind of journalism I can do. I cannot go on TV every night and read the news. I’d be bored to death. We pick up two issues — one on public impact and one on deep journalistic investigation. And then go to the core of it. The fun is in getting accountability before the courts do. If you have a forum that can give you justice before the courts do, it’s good. I’m not scared of anyone, including the courts, because I’m not getting into their territory. I’m picking up issues, raising it to the level of public consciousness, and forcing public opinion to come in a certain direction. In fact, I feel the courts should be grateful to us for bringing so many issues to prominence. Like, why are women not allowed in the Haji Ali shrine? The courts were not intervening in it with as much alacrity as they did after I picked up the subject. So, we have this role where we are a public forum for seeking accountability. And it’s very popular. Sometimes the phones are buzzing all night. In 2013-14, I began to realise that this form of journalism, which is not really classical journalism at all — in the classical

sense, I'm not even a journalist; I'm a journalist in a more modern sense — this form of modern journalism now must be totally independent. That's why I didn't want to be subservient to a corporate media house. I broke free in 2016.”

In the context of the ever-increasing role of the media and their not-so-occasional meddling with judicial proceedings, how do you assess his observations? Articulate, citing appropriate references.

(10)

3. a) The Parliament makes amendments (*fictitious*) to the Contempt of Courts Act, 1971 wherein special criteria for accreditation of legal correspondents covering the Supreme Court of India is laid down. The criteria, *inter alia*, include:

1. He must have a Law degree recognized by the Bar Council of India under the Advocate Act.

2. He should ordinarily have seven years' Court reporting experience in a daily newspaper and/or a national or international news agency or electronic Media Organization of which at least five years must be at Supreme Court or at any High Court(s) in India.

Provided, however, that out of the said period of five years three and a half years at least should, immediately prior to the application for accreditation, be continuous.

OR

He should have five years continuous regular court reporting experience for an Electronic Media Organization, immediately prior to the application for accreditation, of which at least two years must be in Supreme Court or at any High Court(s) in India.

3. He has regularly reported the proceedings of the Supreme Court for at least six months for a daily newspaper or for one year for an electronic media organization, on temporary accreditation granted to him and continues to represent a daily newspaper of not less than 40,000 circulation certified by the Registrar of Newspapers, the Audit Bureau of Circulation (ABC) or the Director of State Information Bureau or a national or international news agency or an electronic media organization.

Different media organisations including your clients have decided to challenge these provisions in the Supreme Court, and want you to challenge the constitutionality of the said provisions. In light of established case law, do you think their challenge would hold any merit? (15)

b) In order to encourage the Bengali Film industry, the Government of West Bengal, through necessary amendments to the West Bengal Cinema (Regulation of Public Exhibitions) Rules, 1956, made it mandatory that in every movie theatre and at least one screen in a multiplex, Bengali films have to be mandatorily screened during the primetime, between 12 noon and 9 P.M., for at least 120 days in the year.

While the people associated with the Bengali film industry were elated by this “much-needed boost to the cause of the regional cinema”, a section of hall owners and distributors slammed this

move stating that it is a “sure shot recipe for revenue loss, compelled by the state upon hapless private parties”. They are mulling options, including filing an Article 226 writ petition before the Calcutta High Court. They want your opinion on the issue, as to whether such writ would be tenable in any way. Render suitable advice to your clients. (10)

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 5th Semester – 2016 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

QUESTION NO. 1

[9 Questions x 2 Marks = 18 Marks]

Pick the best option with proper reasoning in the light of the relevant provision of the India Evidence Act:

- a) Indian Evidence Act applies to
 - i. Execution Proceeding
 - ii. Contempt Proceeding
 - iii. Order passed by magistrate for disposal of property at the conclusion of trial
 - iv. All of the above

- b) X is murdered in Punjab. Y is the accused in the murder case of X. Which of the following is the relevant fact?
 - i. Y visited his uncle in Delhi on the next day of the incident and stayed there for two weeks
 - ii. X and Y had previous enmity
 - iii. Y was having high temperature on the day of the incident
 - iv. All of the above

- c) Which of the following is an exception to the doctrine of estoppel?
 - i. Where a minor represents fraudulently or otherwise that he is of age and thereby induces another to enter into a contract with him
 - ii. When the true facts are known to both the parties
 - iii. When the representation is against the statute
 - iv. All of the above

- d) X is accused of an offence of murder. He was arrested by the police. On being interrogated by the police, he confessed his crime and gave the information about the place where he kept the incriminating articles. On the following day of the interrogation, he took the police to the spot and pointed out the place from where incriminating articles were recovered. The statement and conduct of the accused are relevant under
 - i. Section 8
 - ii. Section 27
 - iii. Both (i) & (ii)
 - iv. None of the above

- e) X and Y entered into a contract. X didn't perform the obligation of the contract. Y sued him for the breach of contract and gave him the notice to produce copy of the agreement. At the stage of trial, Y called for the said agreement but X refused to produce it. Y gave secondary evidence of the contents of the agreement. Now, X seeks to produce the agreement for contradicting the secondary evidence of Y.
- i. X cannot do so
 - ii. X can do so with the order of the court
 - iii. X can do so with the consent of Y
 - iv. Both (ii) & (iii)
- f) Which of the following is relevant?
- i. Identity of family resemblance
 - ii. Identity of complexion
 - iii. Lameness
 - iv. All of the above
- g) Cross-examination of a witness
- i. Must relate to relevant facts and has to be confined to what the witness testified in the examination in chief
 - ii. Must relate to relevant facts but need not be confined to what witness testified in examination in chief
 - iii. May not relate to relevant facts but must relate to what the witness testified in examination in chief
 - iv. May not relate to relevant facts and may not be confined to what the witness testified in examination in chief
- h) Which of the following is not the exception to the rule of hearsay evidence?
- i. Dying Declaration
 - ii. *Res Gestae*
 - iii. Expert Evidence
 - iv. Confession
- i) Point out the incorrect statement:
- i. Admissibility is based on logic
 - ii. The facts which are admissible are generally relevant
 - iii. The facts which are relevant are not necessarily admissible
 - iv. Relevancy is based on probability

QUESTION NO. 2

[8 Questions x 4 Marks = 32 Marks]

Attempt the Following Questions in the light of the Relevant Provisions of the Indian Evidence Act and decided cases, if applicable

- a) X is charged for an offence. Y, a friend of X, met the investigating officer and said that his friend [X] has sent him to hand over the money to him as a reward for hushing up the criminal case (pending against X) in pursuance of the talk they [X & Y] had with him [investigating officer]. Whether the statement made by Y can be held admissible against X?

- b) X, a shopkeeper, is accused of receiving stolen property and it is proved that he was in possession of that particular stolen article. However, he denied the knowledge of it being stolen and pleaded ignorance about it. Mention four relevant facts.
- c) X has placed an order in Amazon.com via the website of the company on 1st October 2018. It was promised that the product would be delivered within 7 days of placing the order. The customer wrote to Amazon after 10 days for non-delivery of the item. The representative of Amazon responded that as per their record the product was delivered on 5th October 2018. However, the customer denied receiving the product. In reply, the company sent the scanned copy of the document bearing the signature of X on the receiving copy. What could be relevant facts apart from the document alleged to be signed by X.
- d) A husband is accused of killing his wife and daughter suspecting wife's character. The father of the accused informed the father of the deceased through telephone that the accused has killed the deceased. The father of the deceased, one of the prosecution witnesses, narrated in the court that the information of death was given to him by father of the accused. The defence has argued that the statement about the death of the victim from her father is hearsay and hence not admissible. The prosecution argued that this statement falls within the exception of the hearsay rule and should be considered. Discuss the validity of the statement?
- e) X is convicted by the competent court for stealing the car of Y. Subsequently, Y filed a case against Z for the same car by alleging that X sold the car to Z before his conviction. Whether the previous judgement [between X and Y] is relevant for the subsequent pending case between Y & Z?
- f) Whether the Indian Evidence Act applies to statement containing a declaration of a person given that the law permits for such kind of declaration?
- g) X is an accused of murder of Z. He was arrested by the police in connection with the murder. Y [friend of X] went to meet X when the latter was produced for remand in the court. In the meeting X made the following statement to Y – "I have murdered Z and have taken my revenge". Whether the statement is valid?
- h) X went on a holiday and hired a room in the hotel "Blue Star". Y, an employee of the hotel gave a price list to X, which contains charges of room on per day basis. X opted for deluxe room in the evening at 7.00 p.m. on 25th July and left the room on the following evening at 6.00 p.m. (26th July). The hotel has charged X for two days because as per the norm, day is counted from afternoon (12.00 p.m.) till next afternoon. However, it was not written in any document. The manager of the hotel wants to give oral evidence in this regard. Whether the court will allow him to adduce oral evidence?

QUESTION NO. 3

[20 Marks]

- a) Whether the court will accept oral evidence for proving document? Cite relevant provisions. [8 Marks]
- b) Discuss the law relating to hostile witness with the help of decided cases. [6 Marks]
- c) Discuss the application of inquisitorial system in the Indian Evidence Act. [6 Marks]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 3rd Semester – 2017 Batch

FAMILY LAW II

Full Marks –65

Time Allowed: 3 hours

1. (a) Amita, a hindu female converted to Islam in 2013 and married Rahim, a Muslim. In 2018, her Hindu father died intestate. She claimed property rights but her brother objected saying after repeal of Caste Disabilities Removal Act, she is not entitled to the said property.

Whether a Hindu converted into Islam is disqualified to receive a property of a father, who died intestate? Support your answer with relevant case laws. [7.5]

(b) Rahman, a muslim male died heirless. Before his death he made a bequest of his total property.

Is he allowed to do so? Is there any exception to the one- third rule. [3+ 4.5=7.5]

2. (a) What are the general principles relating to intestate succession among Parsis? [4]

(b) George, a Christian male, had three children, Johnny, Maria and Henry. Johnny died, leaving four children, Maria died, leaving one child, and Henry alone survived the father. George died intestate. Calculate the respective shares by applying rules for the distribution of the intestate's property. [3.5]

3. On 31st August, 2018 the Law Commission of India presented Consultation Paper on Family Law Reform. Briefly discuss the suggestions it provides for reforming various family laws in India. [7.5]

4. Write short notes: (Any Four) [5 x 4 = 20]

(a) AUL

(b) RADD

(c) Females as Karta

- (d) Son's liability to pay father's debt
- (e) Disqualifications under the Hindu Succession Act, 1956

5. Difference between:

[5x3=15]

- (a) Shia and Sunni laws of inheritance
- (b) Dayabhaga and Mitakshara
- (c) Hiba – bil- Iwaz and True Hiba-Bil-Iwaz

IP & Competition Law

Full Marks – 40

Time Allowed: 3 hours

Attempt any three questions:

(3 x 10 =30)

1. Kacha Apple has been selling apple juice in apple shaped containers. They have neither registered the mark “Kacha Apple” nor have they registered the shape of the container. They have been selling the same in India since 1967. The common public are very fond of the drink “Kacha Apple”. In 2016, “Raw Apple” launches an Apple based drink in the market. They immediately get their trademark registered. Now Kacha Apple notices that Raw Apple has a container which looks like an Apple with a black cap. Kacha Apple files for passing off. Raw Apple sues for infringement. Decide.
2. “Polkamaster” is a leading car manufacturer in the world. However, they do not retail in India. They have a famous car model ‘Y2’ which is a “well known trademark” within the definition of the Act. A spare parts dealer of cars based in India & otherwise associated with Polkamaster starts selling accessories under the trade name “Vaitu”. Polkamaster challenged the same being deceptively similar. “Vaitu” apparently has a meaning in the local language and not associated with Polkamaster. Help Polkamaster argue its case.
3. “Lecatamol “is a drug for thyroid available in the USA. It is also available in Bangladesh by way of a license since 2016.

However, it is not available in India. Matterhorn Pharma wants to manufacturer it by way of a compulsory license. Advise the Patent Controller if a Compulsory License can be imposed.

4. La Rouge is a leading pharmaceutical company. They hold a patent for Topaz a cancer drug. Now they have made improvements to the drug due to which it can reduce migraines. La Rouge has filed for a renewal of the patent for Topaz under the brand name Toprimate. Decide.

5. Write Short Notes on (Any two) : 5 x 2=10

a) Patentability of living substances.

b) An internet service provider with 14% market share has started offering recently released movies for free. Is this an instance of anti – competitive practice?

c) How can one protect one's innovation and research without compromising on the free market and pricing for all?

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 7th Semester – 2015 Batch

INTELLECTUAL PROPERTY LAW - I

Full Marks – 70

Time Allowed: 3 hours

BARE ACT (COPYRIGHT ACT - WITHOUT COMMENTS) IS ALLOWED

ANSWER ALL QUESTIONS

NO EXPLANATION SHALL BE OFFERED

1. Durga Puja Committee in FD Block of Salt Lake thought that it would build this year's pandal on the theme of Harry Potter. The exterior of the pandal was being built to resemble Hogwarts Castle. A mock steam engine train too was being constructed next to it, to resemble Hogwarts Express. JK Rowling and others filed a case against the Puja Committee for violating Indian Copyright Act and demanded Rs 20 Lakh as compensation. Argue for both sides and Decide.

2. Khan, producer of a film created a set for shooting his film with the help of an Art Director. The set is replica of Taj Mahal, made of plaster of paris. Kapoor, producer of an advertisement used the same set for shooting of his advertisement film without permission of Khan. Khan has sued Kapoor. Argue for both and decide. 10

3. Sudipto owns a studio where he himself takes photo of customers. To celebrate anniversary of his studio, Sudipto made collage of 30 best photographs taken by him in last one year and displayed outside his studio. Pritam, a journalist scanned the collage and put it in You Tube. Examine issues involved in this situation. 10

4. Nausad, India's highly respected music director commented on "*Kanta Laga.....*" - "Look what they have done to my song. It was such a melodious song and they have completely ruined it. I would rather not have royalty money than have my composition treated with such disrespect". Advise on the basis of Copyright Act 1957. 10

5. Star India has acquired exclusive rights from the BCCI to exploit the information related to cricket matches through broadcasts and also all other methods like Internet and Mobile Rights. Therefore, Star India is restraining mobile service providers from disseminating live scores of matches through SMS on a fixed service charge. Offer arguments for and against Star India. 10

6. Indian Singer's Rights Association (ISRA) has claimed that public communication of recorded songs of their members in Club or Lounge without authorization is illegal since it violates Performer's Right of its members. Examine legality of this claim. 10

7. CP imported original DVDs from USA and carried out the business of offering such movie titles on rental basis. WB, producer of such movies contended that CP had not obtained any license from it for offering the DVDs on hire and therefore, liable for copyright infringement. Decide. 10

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

Intellectual Property Rights, International Trade & Human Rights Law

Full Marks – 40

Time Allowed: 3 hours

PART I

Answer ANY 2 of the following:

(15x2)

Q1. *“Applying Marx’s theory of Historical Materialism, one might claim that Intellectual Property is a superstructural phenomenon corresponding to the industrial and the post-industrial phase of development in capitalist societies.”*

- Peter Drahos (1996)

Opine on the retrospective appositeness of the above.

Q2. *“The coming into being of the notion of ‘Author’ constitutes the privileged moment of individualisation in the history of ideas, knowledge, literature, philosophy and the sciences. Even today, when we reconstruct the history of a concept, literary genre, or school of philosophy, - such categories seem relatively weak, secondary and superimposed scansions in comparison with the solid and fundamental unit of ‘the Author and the Work’.”*

– Michel Foucault (1969)

Analyse the above observation juxtaposing it against the ethos enshrined in the relevant UN instruments, and comment upon its viability from the perspective of a present day Common Law scholar.

Next, discuss how such a stance might actually translate into practice, should one try to draw upon its essence whilst attempting to formulate a comprehensive policy framework designed for the ‘protection’ of all the diverse formats of traditional knowledge.

Q3. “*Intellectual property is important, but the appropriate intellectual property regime for a developing country is different from that of an advanced industrial country. The TRIPS scheme failed to recognise this. In fact, intellectual property should never have been included in a trade agreement in the first place...*”

– Joseph E. Stiglitz (2005)

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

PART II

Answer ANY 1 of the following:

(10)

Q1. Historically, it has been a long-held and vigorously defended position that, the granting of a time-bound monopoly / preferential status to a piece of intellectual property/asset - works directly in aid of incentivisation of creativity and original thinking.

While this may indeed have held good in bygone eras, - given the level of technical and informational sophistication that we as a global community have achieved, - a situation akin to the “*Tragedy of the Anti-Commons*” may not necessarily be a figment of theory.

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

Q2. Comment, with suitable illustrations, and with specific reference to the “*Property Paradox*” - on the conflicting perspectives that are reflected through advocacy for maintenance of the prior art domain versus the according of due protection to indigenous clusters of intangible cultural expressions.

International Commercial Arbitration

Full Marks – 50

Time Allowed: 3 hours

1. M/s. NPS Pvt. Ltd. had entered into a Fire Industrial all Risk Policy with OIC Co. Ltd. There is an arbitration clause in the policy. Interestingly, as per the onerous clauses depicted in the policy, it is expressly stipulated that once the insurer disputes the liability under or in respect of the policy, there can be no reference to the arbitrator.

What is the current Indian legal position with regard to onerous clauses in Arbitration? [5]

2. (a) In 1999, Australia and New Zealand sued Japan for its over-fishing of the Southern Bluefin Tuna, in violation of the Convention for the Conservation of Southern Bluefin Tuna and the United Nations Convention for the Law of the Sea.

Discuss the possible solutions to the jurisdictional damage caused by the Southern Bluefin Tuna Case.

[7.5]

(b) Discuss the consequences of “Brexit” on International Dispute Resolution. Also, give your own views in this context.

[5+2.5=7.5]

3. (a) Is Fraud Arbitrable in India? Support your answer with relevant case laws. [5]

(b) What do you mean by Red List, Orange List and Green List provided in IBA Guidelines on Conflicts of Interest in International Arbitration? [5]

(c) What are the basic guidelines for drafting International Arbitration Clauses? [5]

Write Short Notes: (Any three)

[3x5=15]

(a) Emergency Arbitration

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

(c) Commercial

(d) Scott v. Avery Clause

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LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

International Finance

Full Marks –70

Time Allowed: 3 hours

Section A

Attempt **any one** of the two : 10

Draft:

Q1) Cross Default Clause including acceleration

Or

Q2) Representations including the consequences of false Reps.

Section B

Please answer **any four** out of the five questions in this Section. 10*4=40

Q3. Royal Bank of Australia has approached Rajasthan National Bank based in India for a P2P based highway project based out of India. What are the steps that the agent bank must take to ensure that due diligence of the project takes place in a proper manner? Under the current laws a highway toll can be imposed for five years but not more on opening of the highway. This was not disclosed to the financier. Is this fraud or fraudulent misrepresentation?

Q4. What is the concept of corporate control in an Indian company? Is the current Indian market hostile to takeover bids?

Q5. Critique the SEBI's draft crowdfunding Regulations? Are the Regulations sufficiently addressing the needs of a nascent Indian market?

Q6. Indian Funds Bank had underwritten a syndicated loan for Silver sacks with a carefully worded disclaimer Clause. Silver Sacks later found that there was mis- representation regarding the financial information about the company. Decide on the liability IFB.

Q7. How can the Rights of minority lenders be protected against the majority in a syndicated loan especially in case of difference tranches.

Section C

8. Write Short Notes on **any Four: (5*4=20)**

- a) Forward Exchange and spot exchange
- b) Currency swaps
- c) Set off and Netting in a commercial Transaction
- d) Acceleration Clause
- e) Hedge Funds.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 5th Semester – 2016 Batch

INTERPRETATION OF STATUTES

Full Marks –55

Time Allowed: 3 hours

ALL QUESTIONS ARE COMPULSORY

1. A well established rule of interpretation is that a benevolent Statute should be given a progressive construction to further the legislative objectives. Moreover, the court has to bear in mind that the beneficial piece of social welfare legislation aimed at promoting and securing the well being of the people, will not be narrowly interpreted, which will defeat the very object and purpose of the Act. The Right of Children to Free & Compulsory Education Act, 2009 is one such legislation which confers Fundamental right to Education at free of cost.

Do you consider that the approach taken by the Court has really effectuated the policy of the legislation to extend the benefit, rather than one which curtails it? Substantiate your answer with the help of relevant Supreme Court verdicts. 10 marks

2. What was the interpretative strategy used by the Supreme Court in *Indian Young Lawyers Association & Ors v. State of Kerala & Ors*,

In your opinion, did the court properly address the conflict between Religious faith as well as Constitutional right to enter the temple i.e. ‘Throwing open of Hindu public temple to all classes of section of Hindus both Men and women, irrespective of any age restriction’ If yes, substantiate this decision. If not, what could have been an alternative interpretation adopted by the Apex Court? 5+5=10 marks

3. Discuss the changing trends and strategy adopted by the Supreme Court in *Navtej Singh Johar & Ors v. Union of India* in recognizing the rights of LGBT communities in India. Do you think that interpretative tools and techniques adopted by the Supreme Court are influenced by the opinion of Jurist/ authors writing including law reviews. Comment. 6+4=10 marks

4. The Consumer Protection Act, 1986 has been enacted to protect the interest of the consumers and to make provisions for the establishment of consumer authorities for settlement of consumer disputes and matter connected therewith. Section 31 of the said Act makes evident that the rules and regulations made under the 1986 Act shall be laid before each House of the Parliament.

Section 31 of Act however provides that ‘Rules and regulations to be laid before each House of Parliament. –

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

(b) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

In accordance with above provision, the State Government of Madhya Pradesh has framed the Madhya Pradesh Consumer Protection Rules which reads as:

“R.6.- Salary and other allowances and terms and conditions of the President and Members of the State Commission”

One public spirited person who is litigating on consumer related cases filed a writ petition before High Court of Madhya Pradesh for quashing of *Rule 6* on the ground that said rule prepared by the State of Madhya Pradesh have not been tabled before the State legislative assembly. Hence the rule should be declared *ultra vires* to the parent statute. Decide the legality of the said rule. 6 marks

5. Discuss the criteria adopted by the Judiciary in applying the *Doctrine of implied repeal*. Support your answer with examples. 4 marks
6. Write short notes on any *three* of the following: 3x5=15 marks
- a. Use of Wikipedia as an Interpretation aid.
 - b. Interplay between *statutory rules* and *bye laws*.
 - c. Technical words retain their technical meaning.
 - d. Precedent *Sub-silento*
 - e. Construction of *Amending Statutes*.
 - f. Repeal with a *Saving Clause*

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 5th Semester – 2016 Batch

JURISPRUDENCE

Full Marks –70

Time Allowed: 3 hours

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

Q.1 “The root cause of failure is that the elements out of which the theory was constructed, viz. The idea of orders, obedience, habits and threats, do not include and cannot by their combination yield, the idea of rule, without which we cannot hope to elucidate even the most elementary form of law.... The union of primary and secondary rules occupies the central place in a legal system”- H.L.A Hart. Critically evaluate. **(14 Marks)**

Q.2 Explain with examples the following terms used by Austin:

i) Sovereignty, ii) Subjection and iii) Independent political society.

Can you locate such sovereign in a nation which has a liberal written constitution characterised by separation of powers and limits on legislative powers. **(14 Marks)**

Q.3 Explain the scheme provided by Roscoe Pound to balance the competing interests in any given case.

Explain the affirmative actions provided in favour of Schedule Caste, Schedule Tribe and other socially and educationally backward classes under Article 15(4) and 15(5) of Constitution of India in terms of balancing metaphor as propounded by Roscoe Pound. **(14 Marks)**

Q.4 In the *Republic of Covfefe*, singing songs was prohibited. On a particular evening, Ms. Maggi caught her brother, Mr.Noodle, singing loudly in their living room and reported it to the policeman walking past their house. The policeman arrested Mr.Noodle, who was later held guilty following the due process of law of Republic of Covfefe. Some years later, another nation, *Republic of Indiana*, attacked Republic of Covfefe and occupied it. After its victory in the war Republic of Indiana decided that prohibiting singing was arbitrary. All those who participated in such prosecution were guilty of violating the human rights of the prosecuted and should be punished accordingly. As a result, both Ms. Maggi and the policeman were sent to jail. Decide. **(14 Marks)**

Q.5 A poor family in The Republic of Hunger was living in such extreme poverty that they hardly had any food on their plates for about two weeks, with no help arriving from the authorities. Unable to witness the suffering of his family any longer, the head of the family called for a meeting of all members and told them that all of them would soon die due to starvation. To save themselves from the pain of starvation, all the family members decided that they should end their lives by consuming poison. As a result, all of them consumed poison and died, save the head of the family, whom the

authorities rescued on time, and arrested for suicide attempt and abetment of suicide. Assuming yourself the Chief Justice of the Republic, decide on the lines of *Explorers Case*. **(14 Marks)**

Q.6. (A) One day Robin was hunting a deer in an abandoned forest and almost had the animal in his gunfight when an interloper appeared, killed the deer, and ran off with the carcass. Can Rohit sue the interloper for the value of the deer? Give reasons for your answer.

(B) "Corpus means that there exists such physical contact of a person with a thing as to give rise to a reasonable assumption that others will not interfere with it." - Explain. **(4+10=14 Marks)**

Q.7 (A) Define ownership. Explain the various kinds of ownership with suitable illustrations.

(B) "A right without an object in respect of which it exists is as impossible as a right without a subject to whom it belongs." Discuss. **(3+6+5=14 Marks)**

Q.8 Write critical notes on **any two**: **(7x2= 14 Marks)**

- i) Post- colonial legal theory as a challenge to Eurocentric jurisprudential thought process.
- ii) 'Sovereign is the one who decides on the exception'.
- iii) 'The movement of progressive societies has hitherto been a movement from status to contract'.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 7th Semester – 2015 Batch

LABOUR AND INDUSTRIAL LAW - II

Full Marks –70

Time Allowed: 3 hours

INSTRUCTIONS

1. All questions are compulsory
2. This is an OPEN BOOK exam. You are allowed access to all material you desire to carry, except those stored electronically.

ALL THE BEST

1. In July, 2013, Ms. Urvashi Singh, a junior journalist working with a reputed newspaper, raised allegations of sexual harassment against Mr. KJ Birbal, the editor of the paper. She alleged that Birbal, who had a powerful presence as the paper's founder editor, behaved inappropriately with her on several occasions in the past. Her allegations were printed by an informal, online news portal which carried a full-length account of her experience of working under the famous editor.

According to Ms. Singh, Mr. Birbal would call her regularly to his chamber on the pretext of discussing matters connected to the newspaper. These conversations would often turn personal and he regularly passed flattering comments on her appearance which made her uncomfortable. However, considering his position in the media and her regard for him as a journalist, she brushed them aside and did not react. However, things took a different turn when Birbal proposed to her, and when she remained silent, without waiting for her reply forcefully attempted to kiss her in the privacy of his chamber. She fought him off and escaped that day, and tried to avoid being alone in his presence thereafter. However, he continued to pursue her and texted her saying that associating with him can benefit her immensely and hasten her upward mobility in the media industry. When she ignored these texts, he called her to his office and shouted at her for her arrogance and threatened to terminate her job. As per her account, she was the first woman from her family to be working outside the home and this was her first job right out of college. She felt shaken at the possibility of her career and dreams being shattered if an editor of Birbal's reputation terminated her employment, and decided mentally to submit to his whims. She notes that thankfully, his advances had stopped suddenly after this incident, and she felt relieved for a while. Soon after, she was sent away on an assignment to a rural area in the neighboring state in February 2013, and enjoyed her work there immensely. Upon her return, she was immediately asked by Birbal to meet him with her story at his house. Though

apprehensive, she was excited about her work at the rural area, and felt he may be appreciative of her efforts and finally promote her to junior editor which was due for some time. However, her enthusiasm turned to ashes as she was molested and sexually abused by Birbal repeatedly and could not escape. Birbal promised to make her junior editor in lieu of her silence, although within a week another female journalist close to Birbal was promoted to the said post. While she grappled with the indecision on whether to report the incident due to the humiliation and professional setback this could cause her, her friends and colleagues encouraged her to speak up and she made up her mind.

The management of the newspaper, perplexed by this development, immediately took action by transferring Mr. Birbal to a different office and urged Ms. Singh to file an official complaint with the Internal Committee, set up in pursuance of the *Vishakha* guidelines. Ms. Singh filed her complaint in September 2013 before the committee, but she contended before the management through a letter that the composition of the IC needed to change since Dr. SatishBhosale, the chairperson of the IC and opinion editor for the newspaper, was unsympathetic and insensitive in his approach towards the complainants, as demonstrated by their past experiences. In October 2013, the management decided to remove Dr. Bhosale from the IC and replaced him with another. The proceedings began in November, 2013 and culminated in February the next year. The IC found Mr. Birbal guilty of Sexual

Harassment and ordered his dismissal from service, which was promptly complied with by the management.

In a Writ Petition before the High Court, Mr. Birbal challenged the order of dismissal on the grounds that the IC lacked jurisdiction to determine the matter as the alleged violation took place outside the purview of the workplace. He argued that the Act does not apply to his case since Ms. Singh was a willing participant and they were in a consensual relationship during the time, though they broke off ties later. The HC accepted this argument and reinstated Birbal. The management of the newspaper has appealed against this order by the HC and the matter has come before your bench at the Supreme Court. Provide your reasoned judgement discussing the following:

- i. Whether the matter ought to be decided based on the SH Act or the rules introduced by the management in pursuance of the *Vishakha* guidelines? Did the IC lack jurisdiction to try the matter?
- ii. Whether the HC's Writ Jurisdiction could be invoked in the said case? Whether the HC was wrong in interfering with the decision reached by the IC?
- iii. Was Dr. Bhosale's removal illegal since he was denied a hearing by the management? Was the IC competent to try the matter without being reconstituted following his removal?

- iv. If the IC decision is challenged on merits, how should the case be decided, presuming Ms. Singh's version is true? If she was promoted to junior editor, would it constitute harassment?

Base your judgement on the relevant provisions of the Act, the guidelines and decided cases.

[6+8+6+10= 30 marks]

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

implications of a 'one-time compensation' versus 'mandatory insurance' model. [12+8 = 20 marks]

3. "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

-Article 22, Universal Declaration of Human Rights (1948)

i. In light of the above, highlight the arguments usually employed by the political right and left in critiquing traditional social security programmes. Do you agree with their criticism? Can the current model of social security adequately address the issues raised?

ii. Do you feel that government should be obligated to ensure 'a right to social security' for all its citizens? Does such a right exist in India? Justify, with reference to the Indian Fundamental Rights framework.

iii. In your opinion, can Universal Basic Income provide a more viable model for social assistance than those traditionally employed by States?

[7+8+5=20 marks]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

Law and Secularism

Full Marks – 60

Time Allowed: 3 hours

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

Q.1 Charles Taylor argued that modern social imaginary involves a shift from hierarchical, mediated access societies to horizontal, direct access societies. He emphasised that political secularism is functional requirement of modern citizenship. Based on this understanding of Taylor, examine the relationship between bourgeois liberal democracies and political secularism. **(15 Marks)**

Q.2 “For all its familiarity, the requirement that government be neutral on the matters of religion is not a long standing principle of constitutional law. Not until 1947 did the Supreme Court hold that government must be neutral towards religion.” Critically examine this statement of Michael J. Sandel with regard to separation of Church and State in terms of strict and lofty neutrality within the American constitutional jurisprudence. **(15 Marks)**

Q.3 ‘The forces of westernisation and modernisation at work in India are all on the side of the secular state. Industrialisation, urbanisation, the break of joint family system, greatly increased literacy and opportunities for higher education- all tend to promote the general secularisation of both public and private life’- Donald E. Smith. Critically analyse this statement. Does this statement hold true for contemporary political realities in India? **(15 Marks)**

Q.4 American courts have usually tried to avoid sitting in judgment on ‘religious error’ or ‘religious truth’. The Indian Supreme Court has travelled an opposite path, seeking to cleanse Hinduism of what it reads as superstition, and providing it with a modernist and rationalist definition of religious errors and religious truths. This unusual path taken by Indian Supreme Court has given it enormous power to shape rational Hinduism. Based on this statement critically examine the ‘Doctrine of essential practices’ as developed by Supreme Court. **(15 Marks)**

Q.5 Write an essay on the the critique of secularism as presented by Ashish Nandy in his essay ‘An Anti-secularist Manifesto’. **(15 Marks)**

Q.6 Differentiate between the first and the second threshold of French Secularism as enunciated by Bauberot. Examine the possibility of replicating French model of secularism in South Asian setting. **(15 Marks)**

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 3rd Semester – 2017 Batch

Legal History I

Full Marks –70

Time Allowed: 3 hours

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

1. Trace the origins of quasi-feudalism and feudalism in ancient Indian society? Do the salient features of Indian feudalism reveal a more authoritarian system than the feudalism found in Europe? 6 + 4 = 10

2. Why did the *varna* system emerge in ancient India? What are the salient features of the *varna* system? 5 + 5 = 10

3. Explain, with reference to the different stages of socio-economic development in the ancient and modern periods, whether the position of women in ancient Hindu society change significantly with the passage time? 10

4. Discuss the definition and meaning of *dharmā*? Briefly mention the branches of *dharmā* and how they have influenced lawmaking in ancient India? 5 + 5 = 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 notes:** 5 x 4 = 20 Marks

7. Trace the structure and functions of local administration in ancient Indian society. 2 + 3 = 5

8. Does a study of the working of *mahasabha* in ancient India reveal a society based on egalitarianism? 5

9. Evaluate the functions of oligarchies and republics in ancient India? Did these two distinctive yet closely related forms of government reveal a highly developed form of governance? 3 + 2 = 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 W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 1st Semester – 2018 Batch

Legal Methods

Full Marks – 60

Time Allowed: 3 hours

General Instructions

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

- 1. Please study the judgment provided in Annexure I to this question paper.**

(30 marks)

Based on your study please answer the following questions.

- (a) Please articulate the material facts (6)
 - (b) Please articulate the ratio / holding (6)
 - (c) Please articulate one orbiter with reasons (6)
 - (d) Please write a dissenting judgment of no more than 500 words. (6)
 - (e) Please describe one distinctive aspect of the common-law system as demonstrated in this judgment? (6)
2. The mayor of a Village in southwest France threatens residents with severe punishment if they die, because there is no room left in the overcrowded cemetery to bury them. In an ordinance posted in the council offices in 2017, the Mayor told the 250 residents of the village of Serpentine that "all persons not having a plot in the cemetery and wishing to be buried in Serpentine are forbidden from dying in the parish. Offenders will be severely punished."

The mayor said he was forced to take drastic action after an administrative court in the nearby town ruled that the acquisition of adjoining private land to extend the cemetery would not be justified. Please assume that in the village of Serpentine, an Ordinance is the law.

A

Based on these facts answer the following:

(30 marks)

- (a) Monsieur Lafarge was born in Serpentine 100 years ago and lived there his entire life. When he dies at the ripe old age of 100 it emerges that he had not purchased a plot in the cemetery. However his dying wish was to remain in the village in which he had always lived. His successors wish to challenge the ordinance in the Courts and approach you, the local lawyer. Advice them on the possible outcomes of the decision of the Court using your knowledge of the various rules on statutory interpretation. (12)
- (b) Based on your answer in (a), why do you feel that courts have rules of statutory interpretation? (6)
- (c) Can this ordinance or law be challenged on the basis that it is not a good law? If so, on what grounds? (6)
- (d) Why is 'critical morality' essential in creating and interpreting the law? Give an example (not the one in the question). (6)

Annexure I

217 NY 382
New York Court of Appeals

Donald C. MacPherson, Respondent,
v
Buick Motor Company, Appellant.

Benjamin Cardozo, J.

The defendant is a manufacturer of automobiles. It sold an automobile to a retail dealer. The retail dealer resold to the plaintiff. While the plaintiff was in the car, it suddenly collapsed. He was thrown out and injured. One of the wheels was made of defective wood, and its spokes crumbled into fragments. The wheel was not made by the defendant; it was bought from another manufacturer. There is evidence, however, that its defects could have been discovered by reasonable inspection, and that inspection was omitted. There is no claim that the defendant knew of the defect and willfully concealed it. The charge is one, not of fraud, but of negligence. The question to be determined is whether the defendant owed a duty of care and vigilance to any one but the immediate purchaser.

The foundations of this branch of the law, at least in this state, were laid in *Thomas v. Winchester* (6 N. Y. 397). A poison was falsely labeled. The sale was made to a druggist, who in turn sold to a customer. The customer recovered damages from the seller who affixed the label. "The defendant's negligence," it was said, "put human life in imminent danger." A poison falsely labeled is likely to injure any one who gets it. Because the danger is to be foreseen, there is a duty to avoid the injury. Cases were cited by way of illustration in which manufacturers were not subject to any duty irrespective of contract. The distinction was said to be that their conduct, though negligent, was not likely to result in injury to any one except the purchaser. We are not required to say whether the chance of injury was always as remote as the distinction assumes. Some of the illustrations might be rejected to-day. The principle of the distinction is for present purposes the important thing. *Thomas v. Winchester* became quickly a landmark of the law. In the application of its principle there may at times have been uncertainty or even error. There has never in this state been doubt or disavowal of the principle itself.

Later cases, however, evince a more liberal spirit such as *Devlin v. Smith* (89 N. Y. 470). The defendant, a contractor, built a scaffold for a painter. The painter's servants were injured. The contractor was held liable. He knew that the scaffold, if improperly constructed, was a most dangerous trap. He knew that it was to be used by the workmen. He was building it for that very purpose. Building it for their use, he owed them a duty, irrespective of his contract with their master, to build it with care. From *Devlin v. Smith* we pass over intermediate cases and turn to the latest case in this court in which *Thomas v. Winchester* was followed. That case is *Statler v. Ray Mfg. Co.* (195 N. Y. 478, 480). The defendant manufactured a large coffee urn. It was installed in a restaurant. When heated, the urn exploded and injured the plaintiff. We held that the manufacturer was liable. We said that the urn "was

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of such a character inherently that, when applied to the purposes for which it was designed, it was liable to become a source of great danger to many people if not carefully and properly constructed."

We hold that the principle of *Thomas v. Winchester* is not limited to poisons, explosives, and things of like nature, to things which in their normal operation are implements of destruction. If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. That is as far as we are required to go for the decision of this case. There must be knowledge of a danger, not merely possible, but probable. It is possible to use almost anything in a way that will make it dangerous if defective. That is not enough to charge the manufacturer with a duty independent of his contract. Whether a given thing is dangerous may be sometimes a question for the court and sometimes a question for the jury. There must also be knowledge that in the usual course of events the danger will be shared by others than the buyer. Such knowledge may often be inferred from the nature of the transaction. But it is possible that even knowledge of the danger and of the use will not always be enough. The proximity or remoteness of the relation is a factor to be considered. We are dealing now with the liability of the manufacturer of the finished product, who puts it on the market to be used without inspection by his customers. If he is negligent, where danger is to be foreseen, a liability will follow. We are not required at this time to say that it is legitimate to go back of the manufacturer of the finished product and hold the manufacturers of the component parts. To make their negligence a cause of imminent danger, an independent cause must often intervene; the manufacturer of the finished product must also fail in his duty of inspection. It may be that in those circumstances the negligence of the earlier members of the series is too remote to constitute, as to the ultimate user, an actionable wrong. The difficulty which it suggests is not present in this case. There is here no break in the chain of cause and effect. In such circumstances, the presence of a known danger, attendant upon a known use, makes vigilance a duty. We have put aside the notion that the duty to safeguard life and limb, when the consequences of negligence may be foreseen, grows out of contract and nothing else. We have put the source of the obligation where it ought to be. We have put its source in the law.

From this survey of decisions, there thus emerges a definition of the duty of a manufacturer which enables us to measure this defendant's liability. Beyond all question, the nature of an automobile gives warning of probable danger if its construction is defective. This automobile was designed to go fifty miles an hour. Unless its wheels were sound and strong, injury was almost certain. It was as much a thing of danger as a defective engine for a railroad. The defendant knew the danger. It knew also that the car would be used by persons other than the buyer. This was apparent from its size; there were seats for three persons. It was apparent also from the fact that the buyer was a dealer in cars, who bought to resell. The maker of this car supplied it for the use of purchasers from the dealer just as plainly as the contractor in *Devlin v. Smith* supplied the scaffold for use by the servants of the owner. The dealer was indeed the one person of whom it might be said with some approach to certainty that by him the car would not be used. Yet the defendant would have us say that he was the one person whom it was under a legal duty to protect. The law does not lead us to so inconsequent a conclusion. Precedents drawn from the days of travel by stage coach do not fit the conditions of travel to-day. The principle that the danger must be imminent does not change, but the things subject to the principle do change. They are whatever the needs of life in a developing civilization require them to be.

There is nothing anomalous in a rule which imposes upon A, who has contracted with B, a duty to C and D and others according as he knows or does not know that the subject-matter of the contract is intended for their use. We may find an analogy in the law which measures the liability of landlords. If A leases to B a tumbledown house he is not liable, in the absence of fraud, to B's guests who enter it and are injured. This is because B is then under the duty to repair it, the lessor has the right to suppose that he will fulfill that duty, and, if he omits to do so, his guests must look to him (Bohlen). But if A leases a building to be used by the lessee at once as a place of public entertainment, the rule is different. There injury to persons other than the lessee is to be foreseen, and foresight of the consequences involves the creation of a duty (*Junkermann v. Tilyou R. Co.*, 213 N. Y. 404).

In this view of the defendant's liability there is nothing inconsistent with the theory of liability on which the case was tried. It is true that the court told the jury that "an automobile is not an inherently dangerous vehicle." The meaning, however, is made plain by the context. The meaning is that danger is not to be expected when the vehicle is well constructed. The court left it to the jury to say whether the defendant ought to have foreseen that the car, if negligently constructed, would become "imminently dangerous." Subtle distinctions are drawn by the defendant between things inherently dangerous and things imminently dangerous, but the case does not turn upon

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these verbal niceties. If danger was to be expected as reasonably certain, there was a duty of vigilance, and this whether you call the danger inherent or imminent. In varying forms that thought was put before the jury. We do not say that the court would not have been justified in ruling as a matter of law that the car was a dangerous thing. If there was any error, it was none of which the defendant can complain.

We think the defendant was not absolved from a duty of inspection because it bought the wheels from a reputable manufacturer. It was not merely a dealer in automobiles. It was a manufacturer of automobiles. It was responsible for the finished product. It was not at liberty to put the finished product on the market without subjecting the component parts to ordinary and simple tests (*Richmond & Danville R. R. Co. v. Elliott*, 149 U. S. 266, 272). Under the charge of the trial judge nothing more was required of it. The obligation to inspect must vary with the nature of the thing to be inspected. The more probable the danger, the greater the need of caution.

The judgment should be affirmed with costs.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 7th Semester – 2015 Batch

Medicine & Public Health Law

Full Marks –40

Time Allowed: 3 hours

PART I

Answer ANY 2 of the following:

(10x2)

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, of which, the attainment of Universal Health Coverage continues to be a conspicuous challenge - opine on the (retrospective) appositeness of the above statement, with special reference to the aspirations of the National Health Policy, 2017.

Q2. Trace the evolution of the Hippocratic Oath from its original form to the modern version. Identify with appropriate justifications, the points which you feel are key to lending it optimum social relevance.

Q3. Discuss the impact of *Common Cause v. Union of India* on the prevailing interpretations of Autonomy and “Personhood”, and the effect this has had on contemporary society, and *inter alia*, the medical fraternity, - particularly when juxtaposed against the legacy of *Aruna Shanbaug*, *Gian Kaur*, the twin tests of Beneficence & Non-Maleficence, Bolam, Bolitho (with regard to the Best Interest Test), and the Prudent Patient Test.

PART II

Answer ANY 2 of the following:

(10x2)

Q1. Ashish, 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, Ashish’s father admits him to the best psychiatric specialist (State-run) hospital in town, where he is assured of round-the-clock care and surveillance. It so happens that on one occasion, - in between shifts, and after being administered his last dosage of the day, - Ashish climbs out of his bed, undid the French window nearest to it and jumps to his death.

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

Opine and rule.

Q2. Peter and Zoë Barnes are Siamese twins. While Peter is (otherwise) fully healthy, Zoë has been born without a heart and only a pair of very rudimentary lungs. This has resulted in Zoë’s having to depend entirely on Peter for all his vascular and pulmonary functions. In the initial years, little Peter 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 Peter’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 very real and imminent possibility of a potentially fatal cardiac arrest and complete collapse facing Peter.

The only solution to avert this disaster, he advises, would be to operate upon the twins, whereupon, Peter 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 Zoë would be left to fend for her own survival, something for which she is clearly not equipped.

Mr. & Mrs. Barnes, when posed with this momentous choice of effectively selecting between their two children, voluntarily waive away their rights to decide in their 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*.

Opine and rule with appropriate rationale.

Q3. Dr. Praneil Sharma is a very promising young physician who specialises in geriatrics. As part of his practice, he associates himself, among other organisations, - with a state-of-the-art retirement home. Eventually, he moves into the premises as the full-time in-house doctor of said home.

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

It so happens that, Ms. Qureishi has also been diagnosed with early-stage cancer, and has, on repeated occasions made it widely known to her fellow residents, caretakers, and obviously to Dr. Sharma as well, - her living will with emphatic orders asserting that, “*putting an end to her misery*” was what she would surely favour, should the situation arise.

With passage of time, Ms. Qureishi’s health begins to decline as she steadily succumbs to the ravages of advanced cancer, until there comes the day when she categorically instructs Dr. Sharma to do whatever may be needful to put her out of her misery, given that her age and disease have “*debilitated her to the point of indignity*”.

In a state of almost relentless agony, utter dependence and (being fully sentient), - experiencing “*excruciating indignity*” every waking moment, she endeavours to remind Dr. Sharma of her desire for his help, but, as the nursing staff are witness, Dr. Sharma spares no pains to ensure her patient’s life and well-being for as long as possible. However, after it becomes obvious that Ms. Qureishi’s condition has deteriorated beyond any help, - she expires rather abruptly of a massive cardiac arrest.

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

Examine and rule.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 7th Semester – 2015 Batch

Outer Space Law

Full Marks – 45

Time Allowed: 3 hours

Instructions:

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

1. “It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe - *Cujus est solum ejus est usque ad coelum*. But that doctrine has no place in the modern world...” Elaborate the statement with the help of Article II of the Outer Space Treaty.

8 Marks

2. “Third phase of development of space law in the international level originated out of a compromised approach, and has failed utterly to balance the interests of developed and developing countries.” Substantiate.

8 Marks

3. Why the registration of space objects is significant? What are the concerns in the interpretation of Article II of the Registration Convention?

4 + 4 = 8 Marks

4. What are the advantages of asset based financing in private space activities? Elaborate upon different type of interests in space assets that are protected under the UNIDROIT system.

3 + 5 = 8 Marks

5. Compare the liability norms under the US space legislation with that of the space liability law prevailing in the Republic of Korea.

8 Marks

6. Write short notes on the following

- (a) Strategic Defense Initiative
- (b) Choice of law for patent infringements in outer space

4 x 2 = 8 Marks

7. Republic of Satanio is a major space faring nation having extensive missions to mars. In January 2016, Satanio brought 1 ton of rare earth materials (herein after materials) from mars. Out of which, 20 kilogram of materials were given for scientific investigation to Gredesia, a State with high-level scientific facility. Upon investigation, the Gredesian scientists found that the materials were highly valuable as source of clean energy. In December 2017, Satanio auctioned 500 kilogram of materials for carrying on another mission to mars for bringing more such materials. The auction resulted in an unprecedented sale of material for a price of \$200 billion. Satanio declared that the remaining materials would not be sold since they are required for meeting the energy needs of its own people. Having failed to procure the materials from Satanio, Clean Energy Pvt. Ltd. (a private company involved in production and distribution of electricity in Gredesia) offered \$10 billion to procure 15 kilogram of materials from Gredesian Government. The Gredesian Government has agreed for such sale to promote its own mission to mars. Kingdom of Theran has challenged the activities of both Satanio and Gredesia as violative of the Outer Space Treaty 1967 and the Moon Agreement 1979. Sketch the arguments for all three States.

Note: All three States involved are the parties to the Outer Space Treaty 1967 and the Moon Agreement 1979.

13 Marks

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 1st Semester – 2018 Batch

Political Science - I

Full Marks: 65

Time Allowed: 3 hours

Q1.) Answer any three questions:

3x15=45 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 intellectual foundations and achievements of the Behavioural school of Political Science. What is the Post-Behavioural approach to the study of Politics? (8+4+3=15)
- c) Do you agree that Political Science is a 'social' science? Give reasons for your answer. (15)
- d) 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)
- e) Discuss the natural, historical and economic theories of rights. (5+5+5=15)
- f) 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)
- g) Explain critically the origin and development of the Pluralist Theory of Sovereignty by referring to the views of Harold J. Laski and Mac Iver. In this context, also highlight, the characteristic features, merits and demerits of this Theory. (3+3+3+3+3=15)

Q2) Answer any four short notes: (4x5=20)

- a) Relationship of Political Science and Geography
- b) John Stuart Mill as a positive liberal thinker
- c) Distinction between Method and Approach
- d) Relationship between Liberty and Law
- e) "Will not force is the basis of the state."
- f) Realpolitik
- g) Greatest good of the greatest number
- h) Impact of globalization on Third World

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 5th Semester – 2016 Batch

Public International Law and Human Rights

Full Marks –70

Time Allowed: 3 hours

Answer Any Seven of the following Question Jurisprudentially (7 x 10 = 70)

1. With the growth of Treaties, '*International Custom*' has been sidelined. But International Custom is required to break the notion of State Consent. Examine the role of 'Custom' as a source of International Law under Article 38 of Statute of the World Court (ICJ Statute).
2. Article 31 and 32 of Vienna Convention of Law of Treaties, 1969 forms the backbone of treaty interpretation in International Law. Analyze the principles embedded under the said provisions.
3. In the realm of International Legal Jurisprudence, the dissenting and separate opinions of Judges of International Court of Justice, (ICJ) have humanized the landscape of International Law to a larger extent. Evaluate with the help of relevant opinions.
4. The contribution of India in International Law is fractured and limited. Most of the contribution stems from academics and judicial interpretation. Trace India's role and contribution in the sphere of International Law.
5. The concept of 'VETO' (Article 27 of UN Charter) categorically augments *Rule of Power* to the Permanent members of the Security Council (P5) for their political gains, thereby transforming 'VETO' as highly controversial. Critically Scrutinize.

6. The purpose and Principles of United Nations Charter has been a saving grace in Modern International Law, considering the fact that International Law is dominated by the western forces. Critically analyze the Purposes and Principles under Article 1 and 2 of UN Charter.
7. The International Court of Justice is criticized by States and Scholars for its passivity in terms of rendering Justice, this is because of thick Jurisdictional constrain under which the world court operates i.e. on '*Consensual framework*'. Describe the Jurisdictional structure of ICJ under Article 36 of the Statute of the world court (ICJ Statute).
8. The sole enforcement mechanism in Modern International Law is the '*Draft Articles on State Responsibility, 2001*' which is one of the herculean work undertaken by International Law Commission. Enumerate the guiding features of the said instrument.
9. Write short notes on the following:
 - a) Jus Cogens.
 - b) Advisory Opinion of ICJ.
 - c) Uniting for Peace Resolution (UPR).
 - d) Defacto and Dejure Recognition.
 - e) C.G Weeramantry.
10. Diplomatic Law is a branch of International Law, which is regarded as highly progressive in terms of application of International Law; in this regard the contribution of Vienna Convention on Diplomatic Relations (VCDR), 1961 is mammoth. Assess the contribution of Vienna Convention of Diplomatic Relations, 1961, in the progressive development of International Law.

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

Securities Law

Full Marks –50

Time Allowed: 3 hours

Instruction to the Examinees

Examinees are allowed to refer Securities Law Module –I to answer the questions.

The question paper is divided into 2 parts. Part-A and Part-B.

Answer both (two) the questions from Part-A, answer any two question from Part-B.

PART –A

Answer any both the questions from this part

2x15 = 30 marks

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

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

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

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

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

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

(₹ in lakh)

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

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

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

The company has shown sales to various companies and well-known brands such as Fizer Limited, Clenmark Pharmaceuticals Limited, Merk Limited, Jhandu Pharmaceuticals,

Klaris Life Sciences etc. as well as to various individuals. During inquiry/ investigation by the SEBI, these entities replied that after verification of their books of accounts and audited financial statements, they have not come across any services being availed from Alcon during the financial year 2010-11 and thereafter.

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

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

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

Assuming you to be the adjudicating officer of SEBI and applying appropriate provisions of law write a detailed reasoned judgment levying appropriate penalties (if any) on Alcon.

15 marks

2. Assume that the following are the facts, situations and arguments of a case pending before you.

The modus operandi followed, while applying for shares of two public companies that came up with an initial public offering were similar. The parties concerned were also common in both the IPOs. In this case, it was found by the SEBI that the respondent received 12,053 shares out of which 3272 shares, which were transferred to the respondent before the day of listing of shares of the company with the stock exchange, 3598 shares on the day of listing and 5183 shares after the day of listing. The said shares were purchased by the respondent through off market transactions from 553 demat account holders.

These 553 demat account holders sold the shares to the said Respondent at the rate of Rs. 1170/- per share, though the market value of the said shares was much more than Rs. 1170/- per share. These shares were thereafter sold by the said Respondent at a higher

price. Upon investigation by SEBI, it was found that there is less material on record to conclusively establish that the 553 demat account holders were benami or fictitious. Investigation has not been able to substantiate this point. However, all the 553 accounts behaved exactly in the same manner in terms of price and timing, that too, in off market, which is not transparent. However, SEBI held that the said respondent has harmed the interests of common investors in the retail segment by cornering shares of the two public companies.

The said Respondent is not a registered share broker with SEBI. But it is an admitted fact that the said Respondent purchased the shares at the rate of Rs. 1170/- per share though the market value of the said shares at the time when they were purchased was much more and the shares were sold at an average market value of Rs. 1296.12 paise, which is higher than the purchase price paid by the respondent. Subsequently the respondent sold the same shares at a higher price. The respondent purchased the shares either prior to or on the date of listing of shares on BSE and NSE, i.e. when the market values of the shares were neither determined nor known to the purchaser. All the 553 demat account holders were paid the same Rs. 1170/- per share.

The demat accounts were signed by some persons with different spellings of their names and in different manners.

It is also a fact that most of the demat account holders were not having their trading accounts and many of them were having a common address. Number of demat accounts were having same address and that too, care of someone else.

From all the transactions mentioned above SEBI came to the conclusion that the demat account holders were not genuine and either they were benami or fictitious and the shares were purchased on behalf of someone, who had financed these demat account holders. The SEBI also alleged that the Respondents had done something which was against the interest of small investors because from their quota the shares were allotted to the demat account holders who were not genuine.

As a result of the aforestated transactions, SEBI held that the Respondents got undue benefit. It has been noted that many of the demat account holders had used addresses of others and had signed in a fishy manner in their demat accounts.

The SEBI held that the aforestated facts and the dealings of the Respondents were not fair and were in violation of the established norms of securities market.

The Respondent maintained that the price paid by him to the demat account holders for purchasing the shares of the two public companies was 'reasonable', though it was admitted by the respondent that the value of the said shares, during the period varied from Rs. 1172/- to Rs. 1339/-.

The respondent also made submissions to the effect that no Retail Individual Investor had made any complaint to the SEBI.

The Respondent also made a submission that common addresses given by several demat account holders would not show any irregularity.

Another submission made by the respondent was also to the effect that the shares could have been sold before they were listed with a stock exchange and such a sale cannot be said to be an illegality.

Additionally, the respondent also contended that since the alleged transactions in shares took place before the said shares were listed, the transactions are not illegal because the same qualifies to be a 'spot delivery contract'.

Analyzing the facts and arguments provided by both the parties and also applying appropriate provisions of law, write a reasoned judgment levying appropriate penalties (if any) upon the respondent in this case. 15 marks

PART –B

Answer any two questions from this part

2x10 = 20 marks

- 3. Discuss the importance of securities markets in an economy. 10 marks**
- 4. Compare and analyse the provisions of the insider trading regulations 2015 with that of 1992 insider trading regulations. 10 marks**
- 5. Write short notes on any two of the following topics 2x 5 = 10 marks**
 - a) ASBA system**
 - b) Types of capital Issues**
 - c) LIC –IDBI deal**

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 1st Semester – 2018 Batch

Sociology – I

Full Marks –75

Time Allowed: 3 hours

Essay Type Questions (Attempt any five questions)

5x15=75 marks

1. Eugen Ehrlich famously noted that “At the present as well as at any other time, the center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself.” Comment on this statement and highlight your views on the links between Sociology and Law.
2. Do you think that Charlie Chaplin’s film *Modern Times* can be seen as a commentary on the ‘rational’ Fordist system of industrial production? Substantiate your arguments by referring to the contributions made by Karl Marx on the concept of industrial capitalism.
3. Critically examine Immanuel Kant’s perspective on Enlightenment.
4. Do you think that gender socialization is not just about learning differences but also about learning inequality? Comment on whether it would be possible or even desirable to disregard gender differences through primary socialization.
5. Critically examine the notion of the Panopticon as designed by Jeremy Bentham. Do you think that human behavior is actually affected by such attempts at control?
6. “The judiciary should not take over the role of the clergy”- Dr. Faizan Mustafa.
“Rationality has no place in matters of religious faith”- Justice Indu Malhotra.
In light of these sentiments, what problems do you see emerging with the Essential Religious Practices doctrine? Do you think there exists a need in India for the judiciary to step in and actively try to prioritize scientific rationality over religious norms?

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

Sports Law

Full Marks –50

Time Allowed: 3 hours

Answer any two of the three questions. Support your answers with relevant authorities. National Sports Code 2011, WADA Code 2015, CAS Code 2017, THE SPORTS BROADCASTING SIGNALS (MANDATORY SHARING WITH PRASAR BHARATI) ACT, 2007 and the International Olympic Charter 2017 are the documents which will be allowed. The documents are to be without any markings or write-ups or short-notes. No queries will be answered during the examination.

Q.1a) Khasi was a swimmer who had been granted a TUE in 2014. Khasi is an International Player. She was participating in the swimming world championship held in 2016. However she had forgotten to renew her TUE. Though she was continuing to take the medication required. Accordingly one day before participating in the said competition, she applied for TUE. On the day of the competition Khasi used the medication and participated in the competition. She is declared the world champion in the 200 m free style. Subsequently she was required to give her urine sample for testing. She is found to have used a prohibited substance.

What are the legal issues involved in this case? What will be the outcome? Support your reasons with relevant authorities.

[3+5+5=13]

b) Juhi is an athlete who has been included in the Registered Testing pool. Accordingly she is required to update her whereabouts. What will be the consequence if she fails to update her whereabouts? What are the defenses available if she is not found as per her whereabouts? Support your answer with relevant authorities.

[3+4+5=12]

Q.2 Jessica is a sports enthusiast. She is interested in badminton. Her father admits her in a top coaching academy of the city. She is being coached by Mr. Babulal. Her academy is funded and administered by the Sports Authority of India. However the appointment of the coaches and the conduct of tournaments are left entirely to the discretion of the National Badminton Federation.

Jessica hopes to play for the country. In the meanwhile Babulal is also touted to become the head coach of the Indian Junior Badminton team. Babulal has a conversation with Juhi and tells her that if she wants to be selected she needs to practice hard. Importantly she needs to stay late and listen to Babulal. She, along with her father agree to the idea. One day Babulal asks Jessica to stay back for practice. Jessica, informs Babulal that she needs to tell her father about the same. Babulal becomes furious and insists that Jessica should only listen to him and not anyone else. Babulal further threatens that Jessica might not ever be selected if she does not listen to Babulal. Jessica is scared and remains quite but she refuses to stay back late and rushes off to her home.

If Jessica and her father decide to complain against Babulal for his behavior what are their legal options under the Sports law regime within India? Refer to the developments in the Indian sports law and support your answer with the relevant authorities.

[13+12=25]

Q.3 Chetan and Bahgat had joined their school cricket team. They regularly attended to the practice and also participated in the various competitions organized by their school. One day the Cricket Association of Bengal organized an interschool tournament. Chetan and Bhagat's school also participated in the tournament. Chetan and Bhagat were selected in the playing eleven. While playing Chetan got injured, when he collided with his opponent inadvertently. The injury was severe and Chetan had to be admitted in hospital. Chetan however has not recovered completely from the injury and hence is advised by the doctor not to play cricket or any other contact sport. Chetan wants compensation for his loss.

Who will be responsible to compensate Chetan? How does the hierarchy in sports work? Support your answers with relevant authorities

[13+12=25]

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 –9th Semester – 2014 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. “The Constitution of India ensures economic unity by ensuring freedom of trade commerce and intercourse throughout India. The freedom also includes freedom from taxation.” Critically examine the statement with due emphasis on freedom from taxation in the light of Constitutional provisions and judicial development so far.

13
 2. Answer the following-
 - a. “Subject to certain restrictions, set-off of losses in the previous year is generally allowed under the income tax act, 1961.” Elucidate it.
 - b. “To be resident in India, individual must be physically present in India in the relevant previous year for at least 60days.” Critically comment on it.

8+5 = 13
 3. Answer the following-
 - a. “Certain so called scholars are of the opinion that agricultural income is being taxed indirectly under Income Tax Act, 1961”. Do you agree with them? Elucidate your answer.
 - b. “Mr. A” has big building which has huge open space around two acres on its terrace. He collects good soil and create a thick layer with the good soil on the terrace. He starts cultivation and growing vegetables on the terrace. Such produce is sold in the open market and thereby “Mr. A” gets Rs. one lakh in year 2017-18. Is it taxable? Substantiate your answer with the help of statutory provisions and decided cases.

8+5=13
 4. Answer the following-
 - a. “Income from the house property is chargeable under the house property head even if letting out is the business of the assessee.” Critically examine the statement with the help of statutory provisions and decided cases.
 - b. “Mr. A” and “Mrs. A” purchase a house jointly under installment system from the SANAYA HOUSING CONTRUCTION CO. LTD on February 15, 2017. Under the system, both are liable to pay monthly installments which consists principal sum and interest. However, the entire installments are being paid by “Mr. A” only. During the P.Y. 2018-19 total of Rs 6 lakh (Rs. 3.5 lakh as interest and Rs. 2.5lakh as principal) has been due as installments. Will “Mr. A” and “Mrs. A” will be assessed individually or otherwise? Also, can Claim as to deduction of the amount of interest portion in the installment be made in calculating the income from such house

property? If yes, who can claim and upto what amount? Support your answer with statutory provisions and decided cases, if any.

8+5=13

5. Answer the following-

- a. "Income tax law in India is very harsh in case of transfer of land and building for undervalued consideration." Do you agree? Substantiate your answer with the help of statutory provisions and suitable illustration(s).
- b. "Mr. A" owns a plot of land at a very prime location in Kolkata. However, because of financial and other issues, he is not in a position to develop the land. A real estate developer, namely "ALPHANSO CONSTRUCTION COMAONY LIMITED (hereinafter "BUILDER") approaches to "Mr. A" and proposes to develop the land. Accordingly an 'arrangement' is made and suitable deed is executed and registered on May 12, 2017. Under the deed, "Mr. A" agrees to allow the BUILDER to develop the land and to construct on it 50 storied residential apartments consisting total 500units, in consideration of 50 such constructed units and Rs. 2 crores in cash. The cash consideration, in full, has been paid by the builder at the time of execution of the deed itself. The project partially gets completed and for the same completion certificate has been issued by the competent authority on July 20, 2019 and it is fully completed and for the same completion certificate has been issued by the competent authority on August 16, 2020. The 20 constructed units have been handed over to "Mr. A" on July 19, 2019 and rest 30 constructed units on August 15, 2020. Discuss the income tax implication in the hand of "Mr. A" in the relevant Previous Year(s). Refer relevant statutory provisions.

7+6=13

6. Answer following-

- a. "Under income tax law, an individual is required to pay tax on his/her own income and not on others' income." Critically comment on it with the help of statutory provisions and illustration(s).
- b. Discuss the income tax implication in the hand of share holder in case of forfeiture of shares and reduction in share capital of the company.

9+4=13

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

- a. Allowability of "unlawful loss and expenditure" under PGBP head of income.
- b. Elucidate the expressions "income accrue or arises" , "income due" and "income received"
- c. "Depreciation" under PGBP head of income.
- d. Provident Fund and Income Tax implications.
- e. "Exemption is better than taxation under GST." Elucidate it.

6.5+6.5=13

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 1st Semester – 2018 Batch

THE LAW OF TORTS

Full Marks –70

Time Allowed: 3 hours

SUBSTANTIATE ALL ANSWERS WITH CASE LAWS

ALL QUESTIONS ARE COMPLUSORY

1. Mr. Ranjan Dutt was arrested from his home and taken into custody by the police, on charges of possession of illegal arms. He was detained in police custody for three days and was not allowed to have any contact with his lawyer or family. On the fourth day, his dead body was found near a highway with multiple burn injuries on it, along with a suicide note which said that no one was responsible for his death. Mr. Dutt's sister, Ms. Riya Dutt believes that the police had tortured Mr. Dutt and thereafter disposed of his body in this manner, to make it look like suicide. Riya wants to file a claim for compensation for the violation of her brother's right to life under Article 21 of the Constitution of India. However, the State is contending that Mr. Ranjan Dutt was a drug addict, who had escaped from police custody and committed suicide. Hence, the police could not be blamed for his death. Further, even if there was any fault on part of the police in failing to prevent Dutt's escape, possession of illegal arms could indicate terror links and the powers given to the police to investigate such matters fell within the ambit of "sovereign functions" of the state. Riya is unsure of how to proceed. She only knows that Mr. Ranjan Dutt was last seen in police custody and that the police have admitted that certain procedures during his stay in custody may have been carried out negligently. Give a comprehensive legal opinion on the viability of her case with the help of suitable precedents. **(15 marks)**

2. Great Punjab is a popular restaurant in London and Gurpreet, its owner, prides himself on its lively ambience and friendly staff. However, behind the scenes, there lies a different story. Santa Singh, the restaurant's wine steward and Banta Singh, the head chef [who rustles up speciality dishes, contractually, at Great Punjab] have fallen out over Santa's wine choices for Banta's signature tandoori dishes. Eventually Santa's quick temper gets the better of him—he grabs an empty wine bottle and hits Banta across the back of the head, severely injuring him. At this time, Pinky, the local librarian, who performs part time at the restaurant, is setting up equipments for her regular evening set of 80s rock music. As she begins on the first strains of her guitar, Santa storms out of the kitchen, trips over a lead that Pinky has negligently failed to tape down, and breaks his ankle.

Meanwhile, Gabbar is walking around the bar talking to customers. He is employed as a manager to make guests feel comfortable, and is a well-known figure at the bar. Gurpreet has borrowed Gabbar from his friend Veeru, for a year. Presently, Gurpreet pays Gabbar's salary. Basanti has been coming to the bar for a few weeks and Gabbar has been particularly welcoming. He often encourages her to stay late and then gives her a lift home in his sports car. After one such occasion Basanti complains that Gabbar has sexually assaulted her. A subsequent criminal investigation upholds her claim. Do Banta, Santa and Basanti have any claims for compensation against Gurpreet? Discuss, in light of the principles of vicarious liability. (5x3=15 marks)

3. Cubana is a company which provides drinking water to the inhabitants of the State of Gotham. In 1990, the company purchased a borehole to deal with the rising demand for water. In 1994, a Directive was passed by the Government of Gotham, requiring all companies supplying water in the State of Gotham to adhere to safety standards based on the presence of a chemical called AZB in water. Shortly after the Directive was passed, it was found that the borehole owned by Cubana was contaminated with higher levels of AZB than permitted. Investigations revealed that the same had occurred due to the operations of a tannery owned by Riddler Leathers Plc. Cubana wants to file a case against Riddler Leathers for contaminating its water source and jeopardizing its business. Riddler Leathers on the other hand, is contending that it has outsourced the tanning process to an agency called Bane, who handles the work exclusively through its team of experts, so liability, if any, should be Bane's alone. Advise Cubana in this regard. [An additional factor which may be considered is that prior to 1990, there was no knowledge that the presence AZB in water could cause harm]. Also, discuss the defences to strict liability. (10+5=15 marks)
4. Henry, Mark, Mary, and Anne are sitting in the students' common room discussing their performances for the upcoming Annual Night. Thomas, Mary's ex-boyfriend, walks by and whispers to Henry in his ear, 'Watch out! I'll get back at 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 store room for checking the contents of the bar. On seeing this, Thomas spitefully locks the store room door. It remains locked until Rudolf, the bar manager, comes on duty some time later and unlocks it. Mark and Anne, who had been busy inspecting the contents of the bar, have no knowledge that they had been locked in. You are asked to advise the parties as to whether they have any claims in any of the torts pertaining to trespass to the person, elaborating on the elements of the tort in question. (5x3=15 marks)
5. Critically analyse ANY ONE of the following cases: (10 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 2018 – 9th Semester – 2014 Batch

TRADEMARK LAW

Full Marks – 50

Time Allowed: 3 hours

Note: Answer any 5 of the following Questions

1. Analyze the procedure involved in the process of registration of trademarks in India while emphasizing on the powers of trade mark registry. Discuss the relative grounds on which the trademark registry can reject the trademark application. Support your answer with the help of decided case laws. (10)
2. Deepika Padukone is an established actress in Bollywood who hails from the city of Bangalore. The actress is well known for her acting skills and also for her sheer elegance in portraying varied characters in the movies such as OM SHANTI OM, RACE2, HOUSE FULL, DESI BOYZ, RAMLEELA, YEA JAWANI HAI DEEWANI, PIKU, BAJIRAO MASTANI AND PADMAVAAT. Of late, she acted in Hollywood movies as well taking her name and fame to further levels. One young Advocate from Bangalore who is a hardcore fan of Deepika Padukone, writes a romantic novel and titles it as “My Deepika Padukone”. The Novel probably portrays the real life events of Advocate from Bangalore and it is published by an international publishing house from USA in October, 2018. At the launch and release of the novel to the market, media persons asked the author few questions:
 - a. Whether the author has taken permission from Deepika Padukone to use her name as the title of the novel.
 - b. Whether Deepika Padukone consented to name the current novel in her name.
 - c. Whether the novel is about the life or it is a biography of Deepika Padukone.

All the questions were answered in negative and the author who is also an advocate stated that the novel has nothing to do with the life of Deepika Padukone and neither she consented for the novel nor her permission is taken. He further states that permission is not required to be taken for an author to write a novel, tell a story or to express his thoughts. While, Deepika Padukone came to know about the happenings and her manager got in touch with the author of the novel to get a copy of the novel. The author was more than happy to give a copy to novel but he conditioned that he would personally hand over a copy of the novel to Deepika Padukone. Of late, the author has met Deepika Padukone at her Bangalore residence on 23rd of November and shared a copy of his novel titled “My Deepika Padukone”. The author informs Deepika Padukone that he has been her fan since her debut in films in 2006 and she has been an inspiration for him to pen the novel. The author further informs the ace actress that his girl friend resembles Deepika Padukone and the novel is nothing but the story of his girl friend and himself. Off course, Deepika Padukone was very happy to meet her hard core fan and was happy about the fact that there is a novel written in her name and she took the opportunity to greet the author. In the back ground of the above facts, as a trademark attorney, analyze the following with the help of case laws: (10)

- a. Whether the author of the Novel is free to use Deepika Padukone’s name as the title of his novel.
 - b. Whether the author is trying to en cash the good will, image and reputation of Deepika Padukone?
 - c. Whether there can be trademark protection or brand recognition for names of celebrity personalities like Deepika Padukone?
 - d. Whether Deepika Padukone can approach the court of law asking for stopping the author from using her name as the title of the novel?
3. Discuss why the principles of trademark law are applied in the context of domain name dispute litigation? On what parameters trademark law adjudicates disputes between domain names and trademarks? Support your answer with decided case laws. (10)

4. 'Oppo' is a known smart phone 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 a camera phone and it is the 'best' for taking photos and 'selfies'. The slogan of the product "Oppo: the selfie phone" is very much indicative of the function of the product, but as well the company has on its own declared that its product is the 'best selfie phone' in the market. 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" 'LENOVO' 'SAMSUNG and 'NOKIA' want to seek revocation of the registration of trademark 'Oppo; the camera phone' before the trade mark registry. It is also observed that the trademark is descriptive as the title, product and advertisement are giving enough description about the product and therefore the registration be revoked. Analyze the present case in the context of 'descriptive trademark' with the help of decided case laws. (10)
5. Why do you think that marks which are 'inherently not distinctive' are not considered to be valid trademarks without collaborative evidence and factual circumstances in support of the mark in context? In what circumstances a mark which is not inherently distinctive can be considered as valid trademark? Discuss the role of concept of 'acquisition of distinctive character' in the determination of validity of a trademark with the help of decided case laws. (10)
6. Adidas is a famous sports goods company and over the years 'Adidas' brand of sports goods garnered good reputation in the market. Adidas has registered a trademark 'joggers' for its newly produced brand of shoes. Nike, another famous sports goods company having its own share in the market with proven credibility of its brand with an established consumer base. Nike, launched its new brand of shoes for which it has applied for '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)

7. Write short note on any FOUR of the following:

(2.5*4 = 10)

- a. Trademark for movie titles
- b. Collective mark
- c. IP Appellate Board and its Jurisdiction
- d. Trademark as brand ambassador of business
- e. Nation Wants to Know: fight for brand name

THE W.B. NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

LL.B. End Semester (Monsoon) Examination 2018 – 9th Semester – 2014 Batch

WATER LAW

Full Marks – 50

Time Allowed: 3 hours

[THE FOLLOWING BARE ACTS WITHOUT COMMENTS ARE ALLOWED IN THE EXAMINATION HALL: The Betwa River Board Act, 1976, The Brahmaputra River Board Act, 1980, The Inter-State Water Disputes Act, 1956, The River Boards Act, 1956, The Tungabhadra River Board Act, 1953, Damodar Valley Corporation Act 1948.]

Answer question no 1 and two from the rest

No clarifications please

1. Write short notes on any one of the following: [1X10=10 Marks]
 - a. Human Right to Water;
 - b. Indus Water Treaty, 1960;
2. Discuss the salient features of the Third World Water Forum, Kyoto, 2003. [20 Marks]
3. From 1974 - 75 onwards, the Government of Karnataka has been impounding all the flows in their reservoirs. Only after their reservoirs are filled up, the surplus flows are let down. The injury inflicted on State of Tamil Nadu (TN) in the past decade due to the unilateral action of Karnataka and the suffering TN had in running around for a few TMC of water every time the crops reached the withering stage has been briefly stated in a note. It is patent that the Government of Karnataka have badly violated the inter-State agreements and caused irreparable harm to the age old irrigation in TN State. Year after year, the realisation at Mettur is falling fast and thousands of acres in our ayacut in the basin are forced to remain fallow. The bulk of the existing ayacut in Tamil Nadu concentrated mainly in Thanjavur and Tiruchirapalli districts is already gravely affected in that the cultivation operations are getting long delayed, traditional double crop lands are getting reduced to single crop lands and crops even in the single crop lands are withering and failing for want of adequate wettings at crucial time. People of TN are convinced that the inordinate delay in solving the dispute is taken advantage of by the Government of Karnataka in extending their canal systems and their ayacut in the new projects and every day of delay is adding to the injury caused to our existing irrigation. The Government of Tamil Nadu are of the firm view that the water dispute with the Government of Karnataka has arisen by reason of the fact that the interests of the State of Tamil Nadu and the inhabitants thereof in the waters of Cauvery, which is an interstate river have been affected prejudicially by-(a) the executive action taken by the Karnataka State in constructing Kabini, Hemavathi, Harangi, Suvarnavathy and other projects and expanding the ayacuts - which executive action has resulted in materially diminishing the

supply of waters to Tamil Nadu, which executive action has materially affected the prescriptive rights of the ayacutdars already acquired and existing, and which executive action is also in violation of the 1892 and 1924 Agreements and (b) the failure of the Karnataka Government to implement the terms of the 1892 and 1924 Agreements relating to the use, distribution and control of the Cauvery waters. The bilateral negotiations hitherto held between the States of Karnataka and Tamil Nadu have totally failed. Also, all sincere attempts so far made by the Government of India to settle this long pending water dispute by negotiations since 1970 have totally failed. TN, therefore, requested the Central Government to refer the Cauvery Water Dispute to a Tribunal for adjudication under the provisions of Section 4 of the Inter-State Water Disputes Act, 1956 without any delay. Accordingly, a tribunal has been constituted. Decide the case with the help of relevant legal materials. [20 Marks]

4. “Chapter 6 of the Helsinki rules became one of the very important sources of settling the International Water Disputes”. In the light of above statement, discuss various sources of law for the settlement of International water disputes. [20 Marks]