

NATIONAL LAW UNIVERSITY, DELHI
B.A.LL.B.(HONS.), V YEAR, IX SEMESTER
End-Semester Examinations, December-2016

Paper 9.1: International Trade Law

Time: 3.00 Hours

Total Marks: 50

Instructions:

1. **All questions carry EQUAL marks.**
2. Read the questions carefully and answer. No clarification shall be sought on the question paper.
3. Do not write anything on the Question Paper except your Roll No.

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- Q.1 Indian and Bangladesh are members of the WTO, UNO and ILO (International Labour Organisation). The ILO Convention on Child Labour is considered as one of the core conventions which every member is expected to implement. The UN Charter obligates Members to promote human rights. The child labour is rampant in the textiles industry of Bangladesh and textiles are the major exports of Bangladesh. India prohibits the imports of textiles from Bangladesh on the ground of child labour.
- a) Prepare a brief for India supporting Indian measures; and
 - b) Prepare a brief for Bangladesh contesting Indian measures;
- Q.2 Thailand imposed a total ban on the importation of cigarettes. But it allows local factories to produce cigarettes in accordance with the strict rules issued by the Government. In accordance with the rules, the nicotine content of cigarettes, produced inside Thailand shall not exceed 1/3rd of the nicotine content found generally in cigarettes; and this 1/3rd nicotine content is strictly defined by the rules. The U.S.A., a major exporter of the cigarettes to Thailand challenged this measure in the W.T.O. Discuss and decide the case.
- Q.3 The Chapeau of Article XX of the GATT, 1994 has been twisted beyond recognition; and this has had both positive and negative implications. Discuss these implications in the context of the Shrimp Turtle case and the Brazil-Retreated Tyre case.
- Q.4 The Dispute Settlement Understanding of the WTO represents a shift from the power oriented diplomacy to the rule based system of settlement of disputes. Critically comment upon this statement.
- Q.5 Distinguish between the concept of 'actual value' under the GATT, 1947 and 'transaction value' under the Agreement on the Implementation of Article VII of the GATT, 1994.
- Q.6 An Indian Tractor manufacturing company had been importing substantial quantities of bearings from a Japanese company over a period of time; and the Japanese company was manufacturing those bearings as per the specifications given by the Indian company. Since the Indian Company had been a regular customer of the Japanese company over number of years, the Japanese company started manufacturing the bearings without formal orders from the Indian company; and this practice also went on for quite a few years. In 2010, the Indian company found a local manufacturer who could supply the bearings at half the price of the Japanese company; and the Indian company switched over to the local supplier. By that time, the Japanese company came to know about it, it had already produced the bearings. Since these bearings could not be disposed of otherwise, the Japanese company sold them to the Indian company at 70% discount. When these bearings reached Indian ports, the Customs Authorities insisted on the ad valorem duty on the original value (i.e., without 70% discount). The Indian company appealed to the High Court. Decide the cases.
- Q.7 Amul is a co-operative marketing society engaged in doing business in Gujarat. It is supported by the Government through liberal loans for infrastructural development such as refrigeration etc. Further, in accordance with a law passed by Gujarat state, it enjoyed monopoly position in the dairy market of Gujarat. Amul has been buying milk from Gujarati dairy owners always at reasonable prices including a profit margin to the dairy owners. But at times, this price could be less than the milk price in neighbouring states such as Rajasthan. Amul started exporting milk to the European Community and Nestle, a European dairy company, found it hard to compete with Amul. It started alleging that Amul could sell the milk in Europe because of its monopoly position in Gujarat, made possible by a law passed by the State of Gujarat. The European Community filed a complaint against the Government of India under Article XVII of the GATT, 1994. Decide the case by reference to the following issues:
- a) Is the Amul a 'State Trading Enterprise' under Article XVII of the GATT?
 - b) Is the monopoly position of Amul in violation of the provision concerning 'commercial consideration' under Article XVII: 1(b) of the GATT?
 - c) Did Amul discriminate against Nestle under Article XVII of the GATT?
- Q.8 Distinguish a non-violation complaint from a violation complaint highlighting the injury requirement in these cases.
- Q.9 Critically analyse the jurisprudential nature of the authorization to retaliate under the DSU. Does it amount to a sanction under International Law?
- Q.10 Discuss the concept of cross retaliation under Article 22.3 of the Dispute Settlement Understanding.

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Paper 9.2: Judicial Process and Interpretation of Statutes

Time: 3.00 Hours

Total Marks: 50

Instructions:

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Do not write anything on the question paper except your Roll No.

Q.1. Explain with reasons the applicable Rules/Principles of Interpretation in the following facts:

- a) Petition under Art.32 of the Constitution was filed in the Court challenging the imposition of sales tax on betel leaves by the sales tax officer. It was contended, relying on the dictionary meaning of the word 'vegetable' that betel leaves are vegetables and therefore they would be exempt from sales tax. The Supreme Court rejected this contention and impose sales tax on betel leaves. Explain with reason which rule of the interpretation was applied by the Supreme Court.

(3 Marks)

- b) Section 6 of The Hindu Minority and guardianship Act, 1956 read as:-

"The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property) are:-

I. In the case of a boy or an unmarried girl- the father, and after him, the mother."

The Constitutional validity of the above section was challenged as violating Art.14 and 15 of the Constitution. The Court declared it constitutionally valid. Which rule of the interpretation was applied and how this section was interpreted by the Court?

(3 Marks)

Q.2 a) Golden Rule fails, when it is sought to be applied in concrete situation-why? Illustrate.

(2 Marks)

- b) Therefore, the rules of interpretation should be first to find out the object of the enactment and then, language permitting, choose that interpretation which achieves the object-all other interpretation being absurd because they do not achieve this object.

Explain the rules laid down by Lord Coke in Heydon's case (1584) with the help of a decided case.

(3 Marks)

Q.3 Explain the doctrines laid down by the Supreme Court in the interpretation of Art.13 of the Constitution.

(4 Marks)

Q.4 "Whether the children of Muslim parents are entitled to grant of maintenance under section 125 Cr.P.C. for the period till they attain majority and in the case of female children till they get married or their rights are restricted to the grant of maintenance only for a period of two years prescribed under section 3(i) (b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986?"

Explain with the help of case laws.

(4 Marks)

Q.5 Explain the following with the help of illustrations and case laws:-

- a) Ejusdem Generis Rule
- b) Role of internal aids in Interpretation of Statutes.
- c) Rules of Interpretation of Procedural statutes.

(2 Marks)

(2 Marks)

(2 Marks)

Q.6 "The subject is not to be taxed without clear words for that purpose; and every Act of Parliament must be read according to the natural construction of its words."

J. Lord Wensleydale in the case of *Tenant V. Smith* (1892) AC150.

Explain with suitable examples and cases.

(5 Marks)

Q.7 The Bombay Police Act, 1951 was enacted in the year 1951 with the object of consolidating and amending the law relating to the regulation of the exercise of powers and performance of the functions by the State Government for maintenance of public order.

In 2005, the Maharashtra legislature amended the Bombay Police Act, 1951 and incorporated Sections 33A, 33B and 33C in the Act.

P.T.O.

Section 33A provides that holding of a performance of dance, of any kind or type, in any eating house, permit room or beer bar is prohibited and punishable.

Section 33B provides that nothing in section 33A shall apply to the holding of a dance performance in a three starred or above hotel.

Section 33C provides that nothing in this Act shall be subject to judicial review.

The Maharashtra Government justifies the ban by alleging that bar dancing is vulgar and corrupts morals. It also raised the alarm of human trafficking, as most dancers hail from places outside Maharashtra. It has also been brought to the notice of the Government that such performances of dances are giving rise to exploitation of women.

Both of the provisions i.e. sections 33A and 33B have been challenged in the Hon'ble Supreme Court of India by the organisations representing dance bars, restaurants and bar girls.

On the basis of above facts, answer the following:

- (i) Whether the Supreme Court of India has power of judicial review under the Indian Constitution to check the Constitutional validity of sections 33A, 33B and 33C of the Bombay Police (Amendment) Act 2005? Is there any limit on the scope of power of judicial review? **(2 Marks)**
- (ii) And, on what grounds, the organisations representing dance bars, restaurants and bar girls, could seek the judicial review of the sections 33A and 33B of the Bombay Police (Amendment) Act 2005? **(3 Marks)**

Q.8 A writ petition was filed, before the Supreme Court of India, in the backdrop of a declaration of drought in some districts or parts thereof in nine States that is Uttar Pradesh, Madhya Pradesh, Karnataka, Andhra Pradesh, Telangana, Maharashtra, Odisha, Jharkhand and Chhattisgarh. Recently in April 2016, drought or semi-scarcity has been declared in 526 villages followed by another 468 villages in Gujarat. All these States are respondents in this writ petition along with the Union of India.

According to the petitioner, drought ought to be declared in most parts of the respondent States of Bihar, Gujarat and Haryana.

The petitioner is seeking a direction to these three States to declare a drought and provide essential relief and compensation to people affected by the drought.

The petitioner has also prayed that all the respondents, including the Union of India, be directed to provide to the farmers affected by drought adequate and timely compensation for crop loss and input subsidy for the next crop.

A prayer has also been made for a direction to the respondents to make available timely payment for employment (more particularly to the drought affected people) under the Mahatma Gandhi National Rural Employment Generation Scheme framed under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short 'the NREGA Act').

It has also prayed that food grains be made available as specified under the National Food Security Act, 2013 (for short 'the NFS Act') to the rural populace in the drought affected areas irrespective of their classification of being above the poverty line or below the poverty line.

Similarly, it is prayed that milk or eggs be made available to all children who are covered by the Mid Day Meal Scheme or the Integrated Child Development Scheme in the drought affected areas. With particular reference to the farmers, it is prayed that crop loans for damaged crops and other debts of farmers in the drought affected areas be restructured and a fair, objective and transparent package for crop loss compensation be fixed. With regard to livestock in drought affected areas it is prayed that a direction be given to provide subsidized cattle fodder.

Answer the following:

- (i) As the present writ petition was admitted as public interest litigation by court, state the reasons, on what basis, the Supreme Court of India, would have considered it as public interest litigation? **(2 Marks)**
- (ii) In the present case, the Union of India, claims that the Supreme Court of India cannot intervene in the governmental process of policy-making, and therefore, cannot order the government to decide what to do in the drought management policy. Whether the Supreme Court, in the present facts of the case, can issue relevant directions to all the respondents including Union of India or it should restrain itself from issuing any such direction? Explain it with arguments while balancing the principles of judicial activism and judicial self-restraint. **(3 Marks)**

Q.9 A petition was filed by an ex-MLA before the High Court of State 'X'. It was averred in the petition filed by him before the High Court that he came to know from certain websites, which contained news items stating that on one of the night, while on a tour of his parliamentary constituency in State 'X' the respondent P (General Secretary of a renowned national political party 'M'), along with six of his friends committed rape on daughter of Mr. A (a political party 'M' worker). Considering the facts and relevant material in hand, the High Court said that the allegations were baseless against the respondent P and his friends. The High Court found him (ex-MLA) guilty of abuse of process. The High Court dismissed the writ petition with a cost of Rs.50,00,000/- (Fifty lacs). Thereafter, the ex-MLA challenged the High Court's order before the Supreme Court of India. He contended that the order for imposition of cost is uncalled for and is unjust and disproportionate as per the known canons of law. Decide the case with the help of case laws and also analyse the problem of abuse of judicial process in India. **(5 Marks)**

Q.10 Four domestic working women were raped by seven army personnel. The victims were helpless tribal women and vulnerable to intimidation. After lodging an FIR, no arrest was made by the police. Police investigation was also prolonged. Moreover, the family members and relatives refused to accept the victims due to social pressure. A non-government organisation, working for the welfare of domestic working women, has filed public interest litigation in the Supreme Court of India, and is seeking direction from the court to the appropriate authorities for the enforcement of the rape victims' access to justice. Argue on behalf of the petitioner, while mentioning the current status of law relating to the rights of the victims of crime under the Indian criminal justice system. **(5 Marks)**