

NATIONAL LAW UNIVERSITY, DELHI

B.A, LLB. (Hons.): III-YEAR, V-SEMESTER

Mid-Semester Examinations, October-2014

Paper 5.1: Jurisprudence-I

Time: 2.00 Hours

Total Marks: 20

Instructions:

1. Read the questions carefully and answer. All questions are compulsory.
 2. 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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Gem, a colony of Bran, achieves independence in 1960 after 100 years of colonial rule. The colonial rule ends after a protracted struggle by the people of Gem through The Gem Independence Act duly passed by the legislature of Bran. In 1962 the new Constitution of Gem comes into force which establishes Gem as a sovereign, democratic republic. The institutions established by the Constitution gain strength and by 1970 they are successful in upholding the fundamental aspects of the Constitution widely regarded as constituting its eternal core. The supremacy of the Constitution is maintained, members of Parliament and in turn the governments are elected through elections conducted every five years. The doctrine of separation of powers and rule of law is maintained through judicial review.

Gradually the initial enthusiasm of independence dies and indifference to the plight of millions, lethargy, corruption, nepotism sets in the administration to which all changing governments fall prey. The administration as well as the government gets disconnected from the general public and the discontent among people rises. Students, businessmen, workers and others spearhead the protest marches which culminate into a mass movement for overthrowing the dysfunctional democracy.

In 1980 Nirman, a civil society activist, who had been working with the people of Gem for the past 40 years in his pursuit of wiping out every tear from every eye by introducing mechanisms and self sustaining systems to enable them to fend for themselves is persuaded by the protestors to redeem the pledge of the freedom fighters and put Gem onto the road of progress and prosperity. Nirman's selfless service for 40 years had already secured him great reverence and following among the people of Gem, therefore they immediately recognise him as their true leader. The masses launch civil disobedience against the orders of the old government while Nirman's suggestions are followed and are implemented happily by the people. Nirman being a well intending person conducts a referendum in Gem in 1982 where people overwhelmingly support assumption of leadership of Gem by him. Immediately he issues Nirman Proclamation of 1982. Nirman proclamation provides for a system of conducting referendum on all the policy decisions and laws to be introduced or altered in Gem. However in his zeal to establish himself as a statesman of international standing, Nirman retains the power to introduce changes in the laws passed through a referendum generally to give effect to international obligations especially those relating to international trade. Nirman proclamation which has reference to the eternal core does not provide for judicial review. It introduces the system where mediators facilitate dispute resolution. Mediation, for dispute resolution being in tune with the traditions of Gem, becomes very popular among people with 90% of the total disputes being presented for mediation as against 10% being instituted in regular courts of the erstwhile regime. The regular courts feebly protest against setting up of mediation centres and ineffectually assert that the latter are illegitimate.

Law making through referendums takes into account non-participation (due to certain cultural traditions) of women and other marginalised sections of Gem in the same. Therefore Nirman conducts door to door surveys to elicit their opinion. In case of conflict between the opinion of the majority participating in the referendum and the opinion of marginalised sections elicited through the survey, effect is given to the latter provided it is in consonance with the international human rights treaties to which Gem is a party. Nirman makes Gem a party to many international treaties and considers himself absolutely bound by those international obligations. Especially the treaty establishing international trading mechanism brings prosperity to the people of Gem. By one means or the other he is able to introduce new laws as well as amend already existing ones to give effect to international obligations. He also cleverly interprets and uses treaty provisions so as to secure the interests of the people of Gem. However, the officials, fearing loss of power, put up strong resistance against Nirman. In 1985 one of the officials of the old regime files a writ of *quo warranto* against Nirman in the Supreme Court of Gem.

Q 1.

- (a) You have firm belief in Alexander Pope's words: "for forms of government let fools contest; whatever is best administered is the best." Nirman engages you as a counsel to plead his case in the Supreme Court. Argue. **(6 Marks)**
- (b) Contemplate arguments from your opponents and write a rebuttal. **(6 Marks)**

Q 2. Identify the rule of recognition of Gem in 1984. What are the assumptions that need to be satisfied for recognising the same. **(4 Marks)**

Q 3. Identify the *grundnorm* of Gem in 1984. What are the identifying marks of *grundnorm*. **(4 Marks)**

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Mid-Semester Examinations, October-2014

Paper 5.2: Constitutional Law-I

Time: 2.00 Hours

Total Marks: 20

Instructions:

1. Read the questions carefully and answer.
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Q.1 Tadoba Public School (TPS) is the premier school in Mainpuri, Uttar Pradesh. It is owned and managed by the Beautiful Forevers Trust. TPS boasts of a sprawling 50 acre campus just on the outskirts of Mainpuri. While the market value of one acre of land in the locality is Rs. 5 lakhs, the government, in order to improve the quality of education in Mainpuri, sold 50 acres of land to TPS for Rs. 50 lakhs. TPS is affiliated to the Uttar Pradesh School Education Board, which prescribes the courses, syllabi, and textbooks along with conducting the class X and class XII board examinations.

Every batch of TPS consists of 100 students, 25 of whom belong to the weaker sections and disadvantaged groups since 2010, as required under the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act). TPS receives Rs. 7000 per student every year, as reimbursement from the state government for fulfilment of its obligations under the RTE Act. TPS charges its students a fee of Rs. 25,000 per year.

Mainpuri is famous for the ruins of Jalaluddinabad, an ancient city from the Mughal era. A majestic fort sits at the centre of the ruins, where a light and sound show is hosted during September to January every year. In September, 2014 TPS decided to take students of classes II and III to this show and a circular was sent to all parents of students in classes II and III requesting them to pay Rs. 500 for the picnic. Only upon payment of this sum, would children be taken for the show.

Not being in a position to pay this amount, the parents of Vidya (Class III), approached Ms. Gomti Kumar (Principal of TPS) requesting that students admitted under the RTE Act be taken for the show without payment of the amount of Rs. 500. When Ms. Kumar ignored their plea, Vidya's parents approached the Allahabad High Court. A Writ Petition was filed, contending that the circular issued by TPS had violated the right to equality of students admitted under the RTE Act.

The relevant part of the Objects & Reasons of the RTE Act reads as follows:

“The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.”

While engaging with the materials discussed, identify the issues that need to be decided in this Writ Petition and the possible arguments from both sides. Further, in your view, is the Writ Petition likely to succeed and why?

(8 Marks)

P.T.O

- Q.2 On 25th August 2014, the Constitutional (One Hundred and Twenty Second Amendment) Act, 2014 was passed by both houses of Parliament and it received the assent of the President on 30th September, 2014. The Act amended Article 15 of the Constitution of India, whereby the word 'women' was deleted from Article 15(3), and the provision now reads:

Nothing in this article shall prevent the State from making any special provision for children

While referring **ONLY** to materials before *Keshavananda Bharati v. State of Kerala* in the module on 'Judicial Review' discuss whether the constitutional validity of the Constitution (One Hundred and Twenty Second) Amendment Act, 2014 can be challenged. Identify the different positions taken on this issue and also discuss whether the different positions would lead to different outcomes in this instance.

(5 Marks)

- Q.3 Please read the following excerpt from Upendra Baxi, *Outline of a Theory of Indian Practice of Indian Constitutionalism* and answer the question that follows:

If the practices of swaraj in colonial India, charismatically instituted but mass practiced, constituted the 'point of departure' the tasks of governance of an independent nation, the 'point of arrival' provide a register of practices of dissipation. Swaraj notions now get reconstructed in the idiom and grammar of the 'unity and integrity' of the new Indian state. The birth of the Indian Constitution also signals the end of potent practices of swaraj. The right to self-determination now gets scattered in intricacies of the difficult practices of the so-called Indian federation. The constituted 'Indian' self permits no derogation (if any), even when it furnishes space for relatively autonomous practices forming sub-national regional identity politics. The enforcement of 'constitutional patriotism' sets boundaries to the Indian post-swaraj languages and logics of human rights.¹ The militarized practices of governance continuously reproduce practices of confiscation of Indian citizenship; those whom the Indian state apparatus can successfully stigmatize as constitutional outlaws stand thus wholly denied of their rights as citizens and as human beings.

While considering the materials on 'Citizenship' and 'Personal Laws' in light of the above statement, comment on the tendency of the Indian constitution, constitutional law and constitutionalism to determine (virtually in a monopolistic manner) the demands of Indian nationhood by prescribing the rules for citizenship and the rights/ obligations of such citizens.

(7 Marks)

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Paper 5.3: Administrative Law

Time: 2.00 Hours

Total Marks: 20

Instructions:

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Answer ALL the questions.

- Q.1 Critically examine the purposes and importance of the Administrative Law in India. How is it different and similar to Constitutional Law? **(4 Marks)**
- Q.2 The Central Government in exercise of its powers as under the Essential Commodities Act, has fixed up the maximum and retail prices of a commonly used drug which is widely used for medicinal purposes.
- The manufacturers of the drug argue that they should have been given an opportunity of being heard, before the price fixation on account of the principles of natural justice.
- Decide in light of the prepositions as laid down in Union of India V. Cynamide India Ltd. AIR 1987 SC180. **(6 Marks)**
- Q.3 A State government passed a Special Court Act enabling the setting up of Special Courts, Judges and prosecutors to try certain types of offences as the State Government may direct from time to time.
- Discuss the validity of such an enactment in light of the various parameters of Administrative Discretion and case law on the subject. **(6 Marks)**
- Q.4 Differentiate between Legislative, Administrative and Quasi judicial actions. Support your answer with statutory provisions and case law on the subject. **(4 Marks)**

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Mid-Semester Examinations, October-2014

Paper 5.4: CPC & Law of Limitation

Time: 2.00 Hours

Total Marks: 20

Instructions:

1. Read the questions carefully and answer. All questions are compulsory.
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Q.1 A sues B for rent of a property claiming to be the owner of the property on the last day of the limitation period for filing the suit. B in his written statement raised a preliminary objection that X was also a co-owner of the property and the suit filed by A alone was, therefore, liable to be dismissed. The court over-ruled the objection and allowed that X may be impleaded as a defendant (due to X's reluctance to join the suit as plaintiff). Hence, X was impleaded as a defendant. The court decided that B was liable to pay all the arrears of rent to A as he was the sole owner of the property. Subsequently, X filed another suit against A claiming his share in the rent as co-owner of the property. A alleged that the suit by X is barred by res-judicata however, X contends that he is not bound by the decision in the previous suit as he was only a pro-forma defendant in that suit.

Decide with the help of relevant provisions of Law and Cases:

- a. Can the court dispose off the suit on the preliminary issue/objections raised by B in the first suit? **(2 Marks)**
- b. Whether the court was right in impleading X beyond the period of limitation for filing the suit in view of the objection by B? **(4 Marks)**
- c. Whether the second suit is barred by res judicata? **(4 Marks)**

Q.2 A filed a suit against B alleging that he had brought in Rs.4, 000/- as capital under a partnership agreement between him and B, sues B for dissolution of partnership and for accounts. The lower court finds that the sum was due but dismissed A's suit on technical ground that the agreement between A and B did not constitute a partnership. A appeals from the decree and also applies for the first time in appeal for leave to amend the pleadings by adding a prayer for the recovery of Rs.4, 000/-. B raised an objection on the ground that by now the claim for money is time barred. However, the appellate court allowed the application for amendment and granted fourteen days to amend the pleadings. On the fourteenth day, A again moved an application for extension of time for amendment as his pleader was hospitalized during the time initially granted by the court. B objected to the extension of time beyond fourteen days on the ground that the Code provides for only 14 days and the court cannot extend this period.

- a) Whether the appellate court was right in granting leave to amend the pleading? **(4 Marks)**
- b) Whether the court can extend the time for amendment of the pleading beyond fourteen days? **(3 Marks)**

Q.3 Is there any difference between the coercive powers granted to a civil court in respect of summoning and compelling attendance of parties and witness in a civil case? Explain by referring to the provisions of the Code. **(3 Marks)**

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Paper 5.5: Law of Evidence

Time: 2.00 Hours

Total Marks: 20

Instructions:

1. Read the questions carefully and answer.
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Answer ALL the questions.

Q.1 Ajay goes to the police station and narrates the facts and circumstances in which he killed his aunt, her daughter, son in law and grand son aged about 4 years. The police registered a case under section 302 IPC against Ajay and arrested him. The FIR has four distinct parts:

- a) Particulars relating to his identity, address etc.
- b) Particulars relating to motive and preparations.
- c) Particulars relating to the actual killing.
- d) Particulars relating to after killing conduct such as hiding the dead bodies, concealing the knife and his blood stained clothes.

On the basis of information, the police recovered the dead bodies, knife and clothes. Ajay is on trial and the FIR is the only evidence against him. Decide in the light of relevant case law.

(4 Marks)

Q.2a) What do you understand by 'circumstances of the transaction resulting into the death' as mentioned in section 32 (1) of the Indian Evidence Act, 1872? Refer to relevant case law.

(3 Marks)

b) A was grievously injured. His dying declaration was recorded under the apprehension that he may not survive. A, however survived due to best medical treatment. Would the dying declaration constitute substantive evidence. If not can that be used for any other purpose? Give reasons.

(2 Marks)

Q.3 Write short notes on the following:

- a) May Presume
- b) Shall Presume
- c) Conclusive Proof

(2X3=6 Marks)

Q.4 Multiple choice questions. Please mention the correct response.

(20X0.5=5 Marks)

1. Admission:

- a) Is Conclusive of the matter admitted.
- b) Is not conclusive of the matter admitted but may operate as estoppel.
- c) Is conclusive of the matter admitted but may not operate as estoppel.
- d) None of the above.

2. In a criminal case, the guilt of the accused is said to be proved when it is proved:

- a) More than 50 percent
- b) More than 25 percent
- c) At least 50 percent
- d) Beyond reasonable doubts

3. When a fact is neither proved nor disproved it is said to be:

- a) Disproved
- b) Not proved
- c) Proved
- d) None of these

4. Evidence may be given of:
 - a) All facts
 - b) Facts and facts in issue
 - c) Facts in issue and relevant facts
 - d) Relevant facts but not of facts in issue

5. A is tried for the murder of B by beating him with a club with the intention of causing his death. Which of the following is/are fact in issue at A's trial?
 - a) A beating B with the club
 - b) A causing B's death by such beating
 - c) A's intention to cause B's death
 - d) All above

6. Which of the following is relevant under section 8 of Indian Evidence Act?
 - a) Motive, Preparation and Conduct of parties.
 - b) Relevancy of facts forming part of same transaction.
 - c) Facts which are the occasion, cause or effect of facts in issue.
 - d) All are above

7. In a criminal case, the question is whether A murdered B. In this case the fact that marks on the ground, produced by a struggle at or near the place where the murder was committed are:
 - a) Relevant facts under section 6
 - b) Relevant facts under section 7
 - c) Relevant facts under section 8
 - d) Not relevant facts

8. A accused makes a confession to Superintendent of Police (S.P.). In this case the confession made by A is:
 - a) Admissible in evidence against A
 - b) Whether admissible in evidence or not will depend upon the discretion of Court.
 - c) Not admissible in evidence against A
 - d) Is admissible in evidence against A because A is an accused

9. Facts which are not otherwise relevant becomes relevant if:
 - a) They are inconsistent with any fact in issue
 - b) They are inconsistent with any relevant fact
 - c) They explain the possibility or impossibility of any relevant fact
 - d) They relate to all the above.

10. Under section 32 (1), a statement is admissible in evidence as dying declaration when it relates to:
 - a) Cause of death of declarant
 - b) Any of the circumstances of the transaction which resulted into death of declarant
 - c) Both (a) and (b) are correct
 - d) Neither (a) nor (b) correct

11. Statements made under section 32 (1) as dying declaration is admissible in evidence:
 - a) Only in Criminal Proceedings
 - b) Only in Civil Proceedings
 - c) In criminal as well as civil proceedings
 - d) Only in case of murder and dowry death

12. Confession of an accused against his co-accused may be taken into consideration when:
 - a) All the accused persons are being tried jointly.
 - b) All the accused persons are being tried for the same offence
 - c) Confession has been proved
 - d) All above

13. Which of the following statements is correct?
 - a) All admissions are confessions but not vice versa.
 - b) All confessions are admissions but not vice versa
 - c) An admission can be made only in respect of a criminal case
 - d) A confession can be made only in respect of a civil wrongs

14. A make a confession to his family doctor, while he is in police custody. The confession is:
- Inadmissible in evidence against A as hit by section 24
 - Inadmissible in evidence against A as hit by section 25
 - Inadmissible in evidence against A as hit by section 26
 - Admissible in evidence as it is an extra-judicial confession and not hit by any of the provisions of Evidence Act.
15. According to section 26, confession made by accused while in police custody may be proved against him, when it is made:
- In the immediate presence of a High Court Judge
 - In the immediate presence of the lawyer of accused and informant complainant.
 - In the immediate presence of the lawyer of accused
 - In the immediate presence of a magistrate
16. Law of Evidence is:
- Lex talliemis
 - Lex fori
 - Lex loci solution is
 - Lex situs
17. Fact in issue means:
- Fact, existence or non-existence of which is admitted by the parties
 - Fact, existence or non-existence of which is disputed by the parties
 - Facts existence or non-existence of which is not disputed by the parties.
 - All the above
18. Consider the following statements:
- Confession caused by inducement, threat or promise is irrelevant in criminal proceedings when proceedings from a person in authority
 - Confession made by accused in the state of intoxication cannot be proved against him
 - Only (a) is correct
 - Only (b) is correct
 - Both (a) and (b) is correct
 - Both (a) and (b) are incorrect
19. Consider the following statements:
- Dying declaration can be made by a person to a police officer
 - Dying declaration made before a magistrate carries more weight
 - Dying declaration is not admissible under section 32(1) of Indian Evidence Act, if the person making the statement does not die after making the statement.
 - (a) is wrong
 - (b) is correct
 - All are correct
 - Only (a) and (b) are correct
20. A sues B for Rs.1000 and shows entries in his account books showing B to be indebted to him in this amount. The entries are:
- Relevant
 - Irrelevant
 - Conclusive
 - Relevant but not sufficient without other evidence.

