

# NATIONAL LAW UNIVERSITY, DELHI

## B.A, LLB. (Hons.): III-YEAR, VI-SEMESTER Mid-Semester Examinations, April-2015

### Paper 6.2: Constitutional Law-II

Time: 2.00 Hours

Total Marks: 20

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.

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**Answer ALL the questions.**

Q.1 A, a candidate for an election from an assembly constituency of U.P. feels that he would be unable to exercise his right to cast his vote in Presidential election due to pending elections in some of the constituencies, including his constituency. He files a petition in the Supreme Court of India requesting the postponement of election of President till the pending elections of all the constituencies of all the states are over, otherwise the electoral college electing the President would be incomplete, making the election of President unconstitutional. Assuming you are Attorney General of India, advise the Government of India, discussing the relevant case law. **(5 Marks)**

Q.2 In a 100 member House, no political party could get the absolute majority. Party position was as follows:

Party X-35 members  
Party Y-34 members  
Party Z-21 members  
Independent-10 members.

In view of the above fact situation, solve the following propositions:

a) Assume that you are Governor of the state, enumerate various options within Constitutional framework that you may exercise for the formation of government. **(3 Marks)**

b) 16 members of Party Z decided to join Party X, so as to form the government. Examine the applicability of the relevant provisions of Tenth Schedule of the Indian Constitution and clearly delineate the remaining party position. **(4 Marks)**

c) After the members of the Party Z joined Party X, the leader of Party Y Mr. Dekha Ram commented about the leader of the Party X, Mr. Lekha Ram and accused him of horse trading. A young journalist Mr. Karim reports all these proceedings of the House in his Daily newspaper, Jan Jagna. Upon this, a privilege motion was moved against him and he was summoned to the House and was censured/reprimanded along with an order for imprisonment for one week was passed against him Mr. Karim moves High Court against the censure and against the order of imprisonment. Decide. **(4 Marks)**

Q.3 Cession of territory is to be distinguished from settlement/adjustment of a boundary dispute or a *bona fide* doubt or mistake as to the boundary line between India and a foreign state. Comment on the statement with reference to constitutional provisions along with relevant case law. **(4 Marks)**

# NATIONAL LAW UNIVERSITY, DELHI

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

### Mid-Semester Examinations, April-2015

#### Paper 6.3: Clinic-I (ADR)

Time: 2.00 Hours

Total Marks: 20

(Note: 10 minutes extra reading time.)

#### 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.

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#### Answer ALL the questions.

*This is a no clarification paper. Respond to the below noted question in light of the facts provided. In the event you believe you cannot answer without making further assumption(s), state the assumption(s), clearly noting the reason(s) why you believe it is necessary, and proceed to respond to the question.*

#### General facts

A tripartite long term agreement (JV agreement) was entered into between Skoda Auto AS (Skoda), a Czech automotive multinational entity incorporated in Mlada Boleslav (Czech Republic) with its entire board of Directors sitting at Mumbai; Volkswagen India Private Ltd (VIP), incorporated in Mumbai, India, a wholly owned subsidiary of Volkswagen Aktiengesellschaft (VA), a German multinational; and Autoliv Inc. incorporated at Dusseldorf (Germany), for production of Skoda Yeti Outdoor Car (SUV) at VIP's automobile manufacturing facility at Chakan (Maharashtra). The agreement was signed by Skoda at Mlada, VIP at Mumbai and Autoliv at Dusseldorf in May 2012, and contained an agreement to arbitrate. Relevant extracts from the agreement between the parties are noted below (No other provision is of any relevance):

#### **63.1 Laws of India not to be contravened**

*Subject to Article 65.2 nothing in this Contract shall entitle the parties to exercise the rights and privileges conferred upon it by this Contract in a manner which will contravene the laws of India.*

#### **65.1 Disputes Resolution**

*Subject to the provisions of this Contract, the Parties agree that any matter, unresolved dispute, difference or claim which cannot be agreed or settled amicably within a period of thirty days (30) days may be submitted to an arbitral tribunal for final decision as hereinafter provided.*

#### **65.2. Venue and Law of Arbitration**

*The conciliation or arbitration proceedings pursuant to this Article, unless the Parties otherwise agree, shall be held in Dusseldorf, Germany, and shall be conducted in the English language. The arbitration shall be conducted in accordance with the Rule of International Chamber of Commerce (ICC). Insofar as practicable, the Parties shall continue to implement the terms of this Contract notwithstanding the initiation of arbitral proceedings and any pending claim or dispute. The arbitration agreement contained in this Article 65.1 shall be governed by the laws of India.*

Under the agreement, the frame of the car was manufactured in India, the chassis imported from Skoda Plant in Chengdu (China), while electrical and electronics systems were supplied by VIP from its plant in Aurangabad. Further Autoliv Inc. was to provide cockpit module, drive shafts, automotive springs, airbags, and sound system to VIP which in turn assembled them into the frame utilised for production of Yeti by Skoda at Chakan facility. Parts supplied by Autoliv Inc. were sourced directly from its Dusseldorf plant in Germany. Under the agreement, quality checks were conducted by Skoda representatives at the respective manufacturing sites i.e. Aurangabad and Dusseldorf, before the materials were shipped to Chakan.

Production at the Chakan plant started in November 2012, and the first batch of the cars rolled off in January 2013. Skoda Yeti was an immediate success and consequently had a waiting period of three months for delivery. To respond to increased demands, Skoda requested VIP for increased share in usage of the Chakan facility to scale up its production, which was promptly agreed to by VIP. However, in April 2013 Skoda announced that it would delay delivery of Skoda Yeti by at least five months. Skoda also initiated an internal communication with VIP expressing concerns of substandard parts being supplied by VIP. It also alleged that declining quality of infrastructure at the facility was one of the primary reasons why Skoda had been unable to meet increased domestic production targets and had to delay delivery of cars. Skoda called upon VIP to replace earlier provided substandard materials and refused payments until the replacement was done. VIP wrote back asking Skoda to make necessary payments failing which it would not be permitted further use of Chakan facility to manufacture its car.

In light of the communication received from Skoda, VIP wrote to Autoliv alleging receipt of substandard quality products from latter's Dusseldorf facility. Autoliv responded noting that it had undertaken a thorough quality review and had found nothing amiss. In view of pending complaint from Skoda, VIP again wrote to Autoliv in May 2014 reiterating its earlier complaint of poor quality parts being received. When attempts to amicably settle the matter failed, two separate and independent arbitration proceedings were initiated: (Arbitration 1) by Skoda against VIP, and (Arbitration 2) by VIP against Autoliv. *(Note: No issues or arguments on questions of existence or validity of arbitration agreement are to be discussed.)*

#### **Arbitration 1**

Skoda invoked the arbitration clause in JV Agreement and requested VIP to appoint an arbitrator. On the failure on part of VIP to respond, Skoda approached the Chief Justice of India requesting appointment of an arbitrator. VIP raised a preliminary objection to the effect that the CJI did not have the jurisdiction to appoint an arbitrator since CJI could make an appointment only if the matter was an international commercial arbitration. You are the CJI's designate, decide on the sole question of jurisdiction in accordance with applicable case law.

**(4 Marks)**

#### **Arbitration 2**

Failing to get an adequate response, VIP cancelled its outstanding orders and initiated arbitration proceedings seeking damages. Aggrieved Autoliv approached the Chakan district court seeking interim measures to prevent VIP from engaging another supplier. VIP entered an appearance and raised a preliminary objection to the jurisdiction of the court on the ground that considering that the A&C Act 1996 was not applicable, Indian courts had no jurisdiction. You are the court clerk to the judge to whom the matter has been assigned. She has asked you to prepare a note on the matter, clearly highlighting various issues involved and applicable case laws. (Use any format for the note).

**(16 Marks)**

# NATIONAL LAW UNIVERSITY, DELHI

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

### Mid-Semester Examinations, April-2015

#### Paper 6.4: International Law

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.

Q.1 The island of Shangri-La is a self-contained and bountiful region. It has a population of 3,000 people who feel a special kinship with nature and have a unique culture. It has been considered a part of Atlantis, a heavily industrialised and prosperous country for reasons of contiguity (i.e. geographic proximity with Shangri-La). It has been ruled by Atlantis for the past 200 years. Atlantis has a democratic system and the islanders of Shangri-La have the right to vote and stand for office. Due to their particular cultural ethos and values that focuses on being one with nature, avoid confrontation and seek peace, no islander has become the head of state, prominent politician or even occupied important positions in the government of Atlantis or any of the state institutions such as judgeship of the constitutional court. They have also never claimed greater representation in Atlantis government.

The islanders feel that their culture is distinctive and warrants political independence. At the end of a sober and peaceful meeting of the islanders, they reach consensus and set up a Parliament and proclaim the independence of Shangri-La. Atlantis has been taken by surprise at this development and has refused to comment on this unilateral declaration of independence by Shangri-La.

- a. Evaluate the right of the islanders to self-determination. **(3 Marks)**
- b. Arkham is a country that believes in acting strictly in accordance with international law. Identify relevant issues that arise out of these facts and advise Arkham on whether Shangri-La is an independent State and whether it should recognise it. (Where facts are insufficient to answer the questions, advice Arkham on factual clarifications it should seek from the relevant parties.) **(5 Marks)**

Q.2 Four countries a, b, c, d entered into a multilateral treaty to decide and formulate the boundaries as far as territorial waters on the sea coast were concerned. The treaty enshrined perpendicular lines determining territorial waters. If such perpendicular lines were drawn the rights one country would get reduced substantially. The international custom was to have straight lines determining territorial waters. If customary international law were followed would have a fair share of territorial waters.

Countries a, b followed doctrine of incorporation along with monism, country d followed doctrine of modified incorporation along with pluralism, whereas c followed doctrine of transformation along with dualism and a rigorous internal ratification procedure of 3/4<sup>th</sup> majority of its parliamentarians voting in favour of a treaty for it to come into force. There was a minority government in power in c and majority of parliamentarians voted against the treaty and it could not get enforced. These two sets of disputing countries went to ICJ to resolve their dispute.

The claims of a, b, d were:

- a. That such perpendicular line for determining of territorial waters is part of treaty obligation of c;
- b. Even if the treaty did not get ratified in country c, acceptance of perpendicular lines is part of regional customary international law;
- c. Even otherwise, the treaty obligations led to the formation of instant customary international law.
- d. Country c signed and agreed to the treaty and should abide by it in good faith.
- e. Country c is a servant of its own pact *ó pacta sunt servanda*.

Based on these facts:

- i. Discuss the possible arguments on behalf of countries a, b and d (also draw arguments from different case laws and class discussions).
- ii. Also discuss the arguments on behalf of country c (also draw arguments from different case laws and class discussions).

**(12 Marks)**

**NATIONAL LAW UNIVERSITY, DELHI**  
**B.A, LLB. (Hons.): III-YEAR, VI-SEMESTER**  
**Mid-Semester Examinations, April-2015**  
**Paper 6.5: Labour Laws**

Time: 2 Hours

Total Marks: 20

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.

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**PART A**

Shri Shri Dev Ram is a spiritual guru who offers people solace from the stressed life that they lead by offering *ōJeena isi ka naamō* courses to build their capacities in meditation, soul searching and art of living a life. These courses which claim establishment of greater tuning between *atma* and *parmatma* are conducted by Shri Shri Dev Ram along with his disciples in his ashram in Himachal Pradesh. The courses are residential in nature having varied durations ranging from 1 week to 3 months. His associates only charge nominal amount for their services in order to maintain themselves. The ashram is an integrated complex having training halls, dormitories and rooms for participants to stay, eatery and a unit for preparation of fitness supplements, health drinks, oils, gels etc. Shri Shri Dev Ram emphasises that healthy mind resides in healthy body and claims that the course can have desired impact only if strict diet based on healthy food and these supplements is followed. Being trained in *ayurveda* and *yoga* his preparations have been found to be very effective. The supplements are given free of charge to the participants and they are also sold in the market at the cost price. There are 20 doctors, 30 assistants and 20 helpers engaged in the unit which prepares these supplements. Apart from them there are around 100 *ōbuti pickersō* who are hired for collecting some rare roots, shoots, flowers, seeds etc (collectively referred to as butis) from the Himalayas required for preparation of these supplements. These 100 buti pickers work between the months of March to November. Buti pickers are people traditionally doing this work who are extremely familiar with the Himalayas. They are able to reach areas already identified as rich in certain specific butis and are able to pluck and preserve the butis in the required manner. They are paid in accordance with the rates fixed keeping in mind the number, kind and quality of buti picked by them and its condition when delivery is made. The butis are delivered by them monthly after going through a strict scrutiny undertaken by a doctor specially recruited for this purpose, who finally decides the appropriateness of and quality of each buti for preparation of supplements and thus determines the payment accordingly and in the process even rejects some of the butis.

The unit for processing of butis and final preparation of supplements situated inside the ashram is run by a contractor. Though assistants and doctors are selected by Shri Shri Dev Ram and paid by him directly, the contractor on his own engages helpers for performing crucial task of sorting, washing, drying and grinding of the butis. After these preliminary tasks the intermediate product is delivered by them to the assistants. Many a times the assistants direct the helpers to dry or grind the butis again in case they are not upto the mark. After 5 years of work as helpers they are generally absorbed as assistants. Assistants work in close association with doctors in the preparation of supplements though even helpers perform many tasks in the process of final preparation. This practice has been in place for the past 20 years. However, in the year 2015 Kailash and two other helpers are denied promotion to assistant grade because three people are directly appointed as assistants in the unit.

Q1. In 2014 Buti pickers demand increase in the payment made to them for the work they do for Shri Shri Dev Ram. The latter rejects the demand and the dispute is referred by the state government to the labour court. Shri Shri Dev Ram contends that his ashram is not an industry and that buti pickers are not workmen. Decide. **(8 marks)**

Q 2. The 3 helpers along with the other helpers and assistants in the unit raise dispute regarding non- promotion of those three helpers. Is it an industrial dispute? **(4 marks)**

**PART B**

Q.3 *ōThe Centre of Indian Trade Unions (CITU) believes that the exploitation of the working class can be ended only by socialising all means of production; distribution and exchange and establishing a Socialist State. Holding fast the ideal of socialism, the CITU stands for the complete emancipation of the society from all exploitation.ō*  
How do you differentiate the ideological trend inferred from the above statement followed by CITU from other trends prevalent internationally and in India? **(3 Marks)**

Q.4 Identify the contours of limitations of law and interpretations that impede exercise of freedom of association and concomitant rights reading of *right to strike* under the Constitution and the Trade Unions Act, 1926, with the help of legal provisions and judicial interpretations? **(5 Marks)**

