

NATIONAL LAW UNIVERSITY, DELHI

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

Repeat/Improvement Examinations, August-2015

Paper 6.1: Jurisprudence-II

Time: 3 Hours

Total Marks: 70

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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PART-A

- Q.1a) "A right to religious freedom is plainly required by ethical independence". Explain the above statement of Ronald Dworkin in the context of influence of religion in fundamental ethical choices. **(4 Marks)**
- b) "It must be recognized that the de-emphasis of religion in public life necessitated by the adoption of a secular constitution has created a real problem; what is required is the development of a sense of loyalty to abstract ideals". Elaborate the above statement in the light of D.E. Smith's analysis of Secularism in India. **(6 Marks)**
- Q.2a) A sells B a bureau, which, unknown to both, contains jewels in a secret drawer. Who has possession A or B? Decide by citing relevant case laws and principles. **(4 Marks)**
- b) i) Explain the various modes of acquisition of possession. **(4 Marks)**
ii) "X is having goods in the warehouse of A and he sell them to B. A has subsequently agreed to hold it for B. Has possession been transferred? Decide by explaining the law applicable. **(2 Marks)**
- Q.3 a) "Kocourek suggests that if the infliction of death is regarded as a tort to the person killed, then we can explain this only by postulating that the legal persona survives death, for, since the wrongful act is that of causing death, the act is not complete until the victim is no longer living". Elaborate upon the above statement by explaining the concept of legal personality. **(5 Marks)**
- b) The land is bound by a restrictive covenant that the title shall not be transferred to a coloured person or persons. A corporation consisting entirely of coloured persons bought the land. Is it a valid legal transaction? Decide by citing relevant case law and principles. **(5 Marks)**
- Q.4 Write short notes on:-
a) Mediate and immediate possession. **(2.5 Marks)**
b) Purpose theory of Personality. **(2.5 Marks)**

PART-B

- Q.5 The German Constitutional Court in *Karlsruhe* had struck down the Aviation Security Act on grounds of violating human dignity. The Indian Parliament is considering passing a legislation similar to the German Aviation Security Act that would allow shooting down of hijacked aircrafts. Would you support the legislation? Analysing the pros and cons of the legislation, give reasons for your answer. **(12 Marks)**
- Q.6 Can Rawls's difference principle be applied at the global level? **(12 Marks)**
- Q.7 Xenobia is a country whose people value physical strength and endurance. It has a unique culture where violence is not condemned; corporal punishment is regarded as necessary for discipline, and assault is not considered a serious offence. Xenobia is facing severe international pressure to ratify international human rights instruments that regard violence against persons (especially women and children) as serious violations that should be treated as criminal. Xenobia has been resisting ratification since it wishes to preserve its culture, and argues that human rights are not universal. Do you agree with Xenobia? Should Xenobia ratify international human rights instruments? **(11 Marks)**

NATIONAL LAW UNIVERSITY, DELHI
B.A, LLB. (Hons.): III-YEAR, VI-SEMESTER
Repeat/Improvement Examinations, August-2015
Paper 6.2 : Constitutional Law-II

Time: 3 Hours

Total Marks: 70

Instructions:

4. Read the questions carefully and answer. All questions are compulsory.
 5. No clarification shall be sought on the question paper.
 6. Do not write anything on the question paper except your Roll No.
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Que.1 *'The power of the President and the Governor under Arts. 72 & 161 is absolute and cannot be fettered by any statutory provision, but is open to judicial review on limited grounds.'*

Explain the scope, extent and differences between the powers of the President and the Governor under Arts. 72 & 161 respectively, with the help of the relevant and recent case laws. **(7 Marks)**

Que.2. Art.124 (4) sanctions action for removal of a judge on proved misbehaviour or incapacity. The words misbehaviour or incapacity have not been defined in the Constitution of India. Explain with the suitable instances and decided case law, the different facets of conduct as opposed to good conduct as interpreted to be within the sweep of these words. **(8 Marks)**

Que.3. Imagine that a petition has been filed and is pending in the Supreme Court of India, relating to the following propositions:

- (i) Argue on behalf of petitioner as well as defendant/respondent, on the basis of relevant legal and Constitutional provisions
- (ii) Briefly discuss the appropriate remedies, if any in the alternative to the already resorted to
- (iii) Explain the types of reliefs, which Supreme Court can grant in the present proposition/s, on the basis of similarly situated decided cases, if any **(1x4.5x6=27 Marks)**

- (A) Writ petition by the petitioner acquitted in trial, but was illegally detained in jail for 10 years.
- (B) Father of the petitioner got electrocuted and died due to the negligence of the Electricity Board.
- (C) Writ petition regarding the election of the Legislative Council of a State quashed by the High Court of that State, appeal to Supreme Court against that HC order by the candidate, who lost in that election.
- (D) Petition against the transfer of a public servant made on the administrative grounds, in the public interest and in accordance with the statutory rules, for the violation of the Fundamental Rights, as personal hardships were faced by the concerned petitioner due to that transfer.
- (E) Writ petition challenging levy of additional duty of customs imposed on inter-state sale on the commodity, affecting free flow of trade, filed by the affected traders.
- (F) Writ petition by a teacher appointed by the Assistant Secretary on the advice of the Board, against the dismissal order passed by the Board.

Que.4. Employees of the Research and Analysis Wing (RAW), Cabinet Secretariat, Govt. of India, New Delhi, when shifted to a new building, already housing Counter Intelligence Section (CIS), strict security measures were introduced. Employees, when going from one floor to the other, every time had to show their identity cards, which was resented to, by the employees and they demanded the withdrawal of this regulation. One day, many employees collected in the galleries leading to CIS rooms and started shouting and demanding immediate withdrawal of the regulation. All attempts to pacify them proved unsuccessful. Many more employees joined them and they turned aggressive, breaking into various rooms of CIS and four out of them forced entry into the room of Director, CIS and forced him to stand in one corner of the room and did not allow him to move from that spot and kept him hostage there for approx. 8 hours and shouted obscene, abusive and threatening slogans against the CIS and its officers. Ultimately, with the help of local police, at about 8.30 p.m., the Director could be rescued and all the agitators were arrested and suspended. Four employees, who detained Director CIS, illegally were dismissed the very next day, without holding any enquiry. They had filed a writ petition in the High Court, challenging the dismissal order as unconstitutional and violating basic principles of natural justice.

Decide with the help of relevant case laws.

(12 Marks)

Que.5. Write short notes on any four of the following:

- (a) Concept of Collective Responsibility [Art. 75(3)]
- (b) Conduct of Government Business [Art.77]
- (c) Institutions of Local Self Government
- (d) Doctrine of Colourable Legislation
- (e) Official Language

(4x4=16 Marks)

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Repeat/Improvement Examinations, August-2015

Paper 6.3: Clinic-I

Time: 3 Hours

Total Marks: 70

Instructions:

1. Read the questions carefully and answer. All questions are compulsory.
2. **Students are permitted to bring bare act for arbitration portion only of the Arbitration and Conciliation Act 1996.**
3. No clarification shall be sought on the question paper.
4. Do not write anything on the question paper except your Roll No.

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1. Write short notes on: **(5 X 5 = 25 Marks)**
 - a. Duties of Referral Judge under Section 89, CPC
 - b. Difference between mediation and conciliation
 - c. Internal threat to civil justice system according to Prof. Hazel Genn
 - d. The one missing component from the ADR literature according to Andrea Schnieder
 - e. Effectiveness of Multi-door court house concept
 2. Discuss the three key considerations which are the hallmark of participatory justice. Enunciate and elaborate the guiding principles required to design a fair participatory model of justice. **(10 Marks)**
 3. Critically analyse the issues regarding the working of the court annexed ADR mechanisms in India under the provisions of CPC and the Legal Services Authorities Act, 1987. **(10 Marks)**
 4. Light Transport Solutions (LTS) specialized in providing inter-continental road transport solutions. It had its principal place of business at London, United Kingdom, a branch office at New Delhi and was carrying on the business of surface transportation, and door to door road freight services. LTS under agreements dated 15.09.98 and 11.01.1999 (former relating to general cargo and latter to specialized fragile cargo) appointed Carry Everywhere Services (CES) as General Sales Agent (Commercial) for various states in India. Pursuant to the agreement, CES furnished to LTS a bank guarantee of Rs.5 crores. The aforesaid agreements could be terminated by either side by giving to the other, written notice of 60 days in advance as per Article 3 of the agreements.

LTS terminated the agreements by notice dated 1.3.2003. This was done on the ground that CES had failed to remit and pay to LTS, all sums and monies received by it in the course of agency on account of sale of freight bills. According to LTS, CES had to pay a sum of Rs. 96,21,137/- besides such further sums as may be ascertained after rendition of accounts by CES. Interest at 24% was also claimed w.e.f. 01.05.2003 till payment.

According to LTS, CES had, in its letter dated 15.06.2003 admitted liability upto Rs. 83,54,655/- and failed to pay the same and had attempted to arbitrarily adjust the same against incorrect claims. It further claimed that all amounts that were unilaterally adjusted by CES were false claims. In light of actions of CES, LTS attempted to encash the bank guarantee. To prevent the same CES instituted a suit and other court proceedings on 29.08.2003 before Bombay High Court.

In face of the pending suit, LTS invoked Clause 29 of the agreement (extracted below)

Clause 29.1: All disputes or differences whatsoever which shall at any time arise between the parties hereto touching or concerning the works or the execution thereof under this Agreement or the right touching or concerning the works or the execution thereof or to the rights or liabilities of the parties or arising out of or in relation thereto whether during or after completion of the contract or whether before or after determination, foreclosure or breach of the Agreement (other than those in respect of which the decision of any person is by the Agreement expressed to be final and binding) shall after written notice by either party to the Agreement to the other of them be referred for adjudication, to a sole Arbitrator to be appointed as hereinafter provided.

Clause 29.2. Any dispute or difference of any nature whatsoever any claim, cross-claim, counter-claim or set off of LTS against CES or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the Sole Arbitration of the Dean, Law Department, University of Central Asia, Almaty, Kazakhstan or a Professor of Law belonging to the University who may be nominated by the Dean. It is also a term of this agreement that no person other than the Dean or a person nominated by such Dean of the Law Department as aforesaid shall act as an Arbitrator hereunder. The award of the Arbitrator so appointed shall be final, conclusive and binding on all parties to the agreement subject to the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this clause.

Clause 29.3. The seat of arbitration will be Kolkata, and it shall be subject to Arbitration and Conciliation Act 1996. The language would be English.

LTS sent a notice dated 04.09.2003 under Section 21 of the Arbitration and Conciliation Act 1996 noting a request to Dean, Law Department. On 16.10.2003, the Dean, Law Department communicated to both parties that she intended to appoint Dr. Oleg Turgovich, Chair Professor, Inlayers Chair of Business and Commercial Laws, University of Central Asia, Almaty as the arbitrator. However no formal appointment had been made till 17.11.2003.

On 18.11.2003 CES approached the Chief Justice of the Calcutta High Court requesting appointment of an arbitrator. Multiple grounds were agitated before the designate of Chief Justice. CES further informed the designate that LTS had in the past part funded research projects conducted by the Inlayers Chair.

LTS has approached you, seeking your counsel to protect and preserve its rights and interests. What advice would you render to LTS? Identify relevant issues, applicable law and clearly note your conclusion in light of facts of the present Case. Draft your response in view of applicable statutory and Case laws.

(15 Marks)

- 5 Public policy has oft been referred to as an unruly horse. Would you agree with this statement? Respond clearly elaborating on public policy as a ground for setting aside an arbitral award.

(10 Marks)

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Paper 6.4: International Law

Time: 3 Hours

Total Marks: 70

Instructions:

1. Read the questions carefully and answer. All questions are compulsory.
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(Part A)

Q.1 Are individuals subjects of international law? **(10 Marks)**

Q.2 Iorca is a country that takes a strong stance against wildlife poaching. Iorca is mooted passing of a legislation that penalizes wildlife poaching anywhere in the world. It wants to include within its ambit foreign citizens who have no local presence or interest in Iorca.

Can Iorca validly exercise such jurisdiction under international law? Provide arguments for both sides, and decide. **(10 Marks)**

Q.3 Post 9/11, several scholars have been advocating that universal jurisdiction be expanded to include terrorism. Do you agree? Prepare a brief drawing from international law and policy. **(10 Marks)**

Q.4 Critically analyse the *Germany v. Italy* decision of the ICJ. **(5 Marks)**

(Part-B)

Q.5 How relevant is Immanuel Kant's conception of 'Perpetual Peace' as one of the theoretical foundations of Public International Law today? Does it smack of the same drawbacks which other conceptions of International Law emanating from Europe suffer from? Situate this in the larger debates concerning Public International Law theory in the world today. **(15 Marks)**

Q.6 The Lamaistic kingdom of Tibet entered into treaty with British India under British suzerainty and passed some territory to British India in the 1830s. British India got independence on 15th August, 1947 and became the modern republic of India and China became the 'People's Republic of China' in 1949. China claims all those territories which were passed to British India by Lamaistic Tibet because according to China, Tibet lacked the legal standing to pass on 'Chinese' territory. An argument for China is like there were different princely states in India, Tibet was a small principality under the 'suzerainty' of Chinese Emperor though on occasions Tibet controlled greater parts of China and there was Tibetan empire at different points of time in history.

Taking a cue from these discuss aspects of territory, treaty succession, state succession and state responsibility. You need to identify points and illustrate with examples based on discussions in the classroom. **(20 Marks)**

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Repeat/Improvement Examinations, August-2015

Paper 6.5: Labour Laws

Time: 3 Hours

Total Marks: 70

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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1. During the pendency of the proceedings before the Industrial Tribunal, Calcutta, the workmen of the Indian Iron and Steel Co., numbering more than a thousand illegally commenced a general strike on April 18, 2010 in connection with a fresh dispute. Clause 5 of the Standing Order prescribed for dismissal on the ground of participation in strike and instigation of loyal workers to go on strike. Notice was issued to the strikers that unless they returned to work by April 24, 2010, they would be deemed to have left service of their own accord. That notice having been ignored by the strikers a second notice was issued to them on April 27, 2010, terminating their service. The Government of India asked parties to settle the dispute. The ISCO Union which is a recognised Union settled the dispute during the conciliation proceedings and all workmen were decided to be reinstated without any backwages as per the settlement. However, 150 workmen were not taken back by the Bank. The Bank informed that refusal to reinstate the workmen was not by way of any dismissal, but a temporary discharge because of accumulation of stocks and denied any compensation on the ground of illegal strike. The aggrieved workmen filed an application under Sec. 10 (1) of the Industrial Disputes Act. The matter was referred for adjudication.

Discuss atleast **three contentions** those can be raised in favour of (1) the petitioner-workmen and (2) the respondent-management, with reasoning relying on the legal provisions and case laws under the Industrial Disputes Act?

(12 Marks)

2. Among the methods of industrial dispute settlement provided under the Act, comparing its procedures and efficiency, which one do you prefer as the better method? Give reasons and discuss the relevant legal provisions in respect of the form of settlement mechanism that you prefer?
- (10 Marks)**
3. Critically examine the legal regime which grants registration to a Trade Union but denies recognition to it? Which method of recognition of trade unions would you support and why?
- (10 Marks)**
4. The plaintiff was the successful bidder of Public Works Department for construction of public toilets in NCR region for the year 2013-14. He was paying payment to the Government, wages to the workers, remittance towards workers' amenities under the Welfare Act, are some of them. There were more than 250 workers under the plaintiff. The defendant issued a strike notice. It contained the usual threat, concede the demands, or else face a strike of indefinite duration. The plaintiff did not yield. Tension naturally mounted and the strike was called on from 22nd November, 2013. The Government initiated a conciliation process and prohibited continuance of strike. The workers disagreed to call off the strike. As for the contractor/plaintiff, it is a case of total loss. The contractor claimed damages from the striking workers. The amount claimed represents, according to him, price of loss that he suffered in business.

P.T.O.

- (i) Discuss whether the plaintiff would succeed in this case and whether the workers can claim immunity from tort of conspiracy under the Indian Trade Unions Act, 1926? Discuss the Indian and British jurisprudence in this regard? **(8 Marks)**
5. Lex is a lawyers firm based in Delhi. There are seventy five legal practitioners working in the firm. Diverse cases are handled by different practitioners depending on their competence. Some of them work on cases pertaining to IPR or law of contracts whereas some of them engaged in pro bono work to further the objective of the firm i.e. to enhance access to justice for the marginalised by offering them quality legal services free of cost. You join this firm as an apprentice trainee. Your service is terminated. You raise an industrial dispute under section 2A of the Industrial Disputes Act, 1947. The preliminary objection raised in the industrial tribunal is that Lex is not an industry and you are not a workman. Decide. **(5+5=10 Marks)**
- 6.
- (i) Radhey Shyam works as an assembly line worker in CARZ, a unit which manufactures cars. His service is terminated on 1st January 1960. There being no union in the unit in which he works, the termination is challenged by the automobile industry workers union of which Radhey Shyam and three other workers of CARZ are members. The management objects to the jurisdiction of the industrial tribunal on the ground that it is not an industrial dispute. Decide. **(5 Marks)**
- (ii) What would be your decision if the same issue is raised in 1980. **(2 Marks)**
- Q7. Hanu toys, engaged in manufacturing of stuffed toys has 70 contract workers working in its unit in Delhi. The workers carry out the task of cutting, stitching the outer cover, stuffing sponge into it and sewing of the toy to give it its final shape. Services of 10 contract workers are terminated. The workers approach the industrial tribunal challenging their termination. The employer takes a plea that they are contract workers and not the workers of Hanu toys therefore the industrial tribunal has no jurisdiction over the dispute. Decide. **(6 Marks)**
- Q8. The jurisdiction of industrial tribunals over dismissal for misconduct has undergone a metamorphosis. Discuss. **(7 Marks)**