

NATIONAL LAW UNIVERSITY, DELHI
B.A.LLB.(Hons.): III-YEAR, VI-SEMESTER
Special Repeat Examinations, October-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.

Answer ALL the questions.

- 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. **(5 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. **(10 Marks)**
- Q.2(a) A tenant left the premises to visit her daughter and was taken from there to a mental home. The daughter maintained the premises so that the tenant could eventually return. What is the status of possession of the premises qua tenant? Explain by deploying concept of possession. **(5 Marks)**
- (b) If A momentarily hands his watch to B, from whom it is stolen by C, who then loses it on D's property, where it is then found by E, the question who has the right to possess—which is often considered the same as the question who has legal possession—will depend on who brings action against whom. Elaborate upon the above statement by explaining legal position. **(10 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. **(7.5 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. **(7.5 Marks)**
- Q.4 Geox is an economically prosperous country neighbouring Altopia. It does not have significant cultural ties to the people of Altopia. Given that Altopia is economically poor, and that Geox has the capacity to provide economic assistance, does Geox have any obligations to assist the State or people of Altopia? Can Altopia claim that Geox has a duty to assist using the concept of global justice? **(10 Marks)**
- Q.5 Can Rawls's difference principle be applied at the global level? **(15 Marks)**

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

Answer ALL the questions.

- Q.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. **(10 Marks)**

- Q.2 Decide the Constitutional validity of the following:

- a) A Minister, who is not a member of either House of legislature was reappointed a Minister, after the expiry of six months period.
- b) Regulatory and compensatory taxes are regarded as trade barriers and are violative of freedom of trade and commerce envisaged in Indian Constitution.
- c) Law declared by the Supreme Court of India is binding on all the courts within the territory of India, including the Supreme Court.
- d) A forward class girl married a backward class boy would be entitled to the benefit of reservation for Backward Classes provided as per the provisions of the Constitution of India.
- e) The nomination form filled by X as a candidate in the Parliamentary elections to be held in July 2015, was rejected by the Returning Officer. X filed immediately a writ under Art. 226 for the enforcement of his constitutional right/fundamental right as envisaged in the Constitution of India. **(5X3=15 Marks)**

- Q.3 Sarkaria Commission, while looking into the question of invocation of Art. 356 said in its Report:

"Art. 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a breakdown of Constitutional machinery in the state."

Comment on the above statement and highlight its significance and relevance according to the judicial pronouncements and Constitutional provisions. **(10 Marks)**

- Q.4 Explain the different methods for amending the provisions of the Indian Constitution given under Art. 368 and also discuss briefly, the relevance of Basic Structure Theory enunciated in Kesavananda Bharati Case in 1973, in the present times, whether it is still holds good, even after approximately four decades keeping in mind the organic nature of the constitution. **(10 Marks)**

- Q.5 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.

(13 Marks)

- Q.6 Write short notes on any four of the following:

- 1) Doctrine of Colourable Legislation
- 2) Difference between Tax and Fee
- 3) Sovereign Immunity and Fundamental Rights (Public Law Doctrine-Arts. 300 and 21)
- 4) All India Services
- 5) Three language Formula and its Present day Relevance

(4X3=12 Marks)

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Special Repeat Examinations, October-2015
Paper 6.3: Clinic-I (ADR)

Time: 3 Hours

Total Marks: 70

Instructions:

1. Read the questions carefully and answer. All questions are compulsory.
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Answer ALL the questions.

Q.1 Write Short Notes on:

- a) Four stories about mediation according to Prof. Hazel Genn.
- b) Susan Oberman's five models of mediation in the context of theory of conflict, empowerment of parties and definition of success.
- c) Concept of 'failed negotiation' in the context of strategic and cognitive barriers. **(3X5=15 Marks)**

Q.2 Analyze the concept of Mandatory ADR mechanisms in the light of the views of Prof. Frank Sander, Prof. Hazel Genn, Marc Galanter and Lord Woolf (Report) and the requirement of 'good faith' participation and the consequences thereof. Also analyze the Indian Jurisprudence on mandatory ADR programs. **(10 Marks)**

Q.3 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

Q.4 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)**

Q.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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Special Repeat Examinations, October-2015
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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- 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 mooting 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. **(5 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. **(10 Marks)**
- Q.5 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. **(10 Marks)**
- Q.6 Quresha is a signatory to the Genocide Convention of 1948. It has duly ratified the Convention subject to a reservation that reads as follows: "The Government of Quresha interprets the obligations of the Genocide Convention as not affecting the prescriptions of the provisions of the Constitution of Quresha. Quresha does not wish to be bound by the Genocide Convention if its conditional ratification is not accepted."
- i) Help Quresha draft its arguments. **(5 Marks)**
 - ii) Is this reservation valid? Assuming that it is an impermissible reservation, what are the legal consequences of ratification subject to said reservation? **(5 Marks)**
- Q.7 Using Professor Martti Koskenniemi's criticisms of euro-centrism situate Immanuel Kant's *Towards Perpetual Peace* and see if Professor Akeel Bilgrami offers any solution, any counter to the tyranny of the north. Can there be any solution to this Euro-centrism by an alternative modernity from the south? Based on the two videos of Martti Koskenniemi and Akeel Bilgrami and the text of *Towards Perpetual Peace* by Immanuel Kant and all the class discussions on these try and identify the problems of Euro-centrism and offer possible solutions. **(5 Marks)**
- Q.8 Two states shared the waters of a river 'X' which flowed from state 'A' to state 'B'. River 'X' which is crucial for the lives and livelihoods of people from both states flows from state 'A' to state 'B'. There is also a huge commerce as the river is navigable and has been so since the dawn of civilization but lately due to silting navigation was not possible which raised economic concerns. Also the demand for energy arose which made the two countries explore opportunities for hydroelectricity. Both countries wanted to initiate making of a dam on the river, but also create a wide and deep canal alongside for navigation and use the water extensively for irrigation purposes. In order to accomplish the ambitions, countries 'A' and 'B' entered into a detailed treaty by 1989 and started operations from 1990 onwards.
- Both countries started the project in 1990, but soon state 'B' lost interest and stopped operations and funding (around 1993) because there was widespread agitation by its citizens against it. The project was also considered to be environmentally damaging and expected to destroy the fragile ecosystem of 'B' apart from submerging a place of religious worship which was intrinsically connected to its cultural heritage. This religious structure was also a national heritage site for country 'B'. It became an electoral issue in country 'B' and the ruling party which had entered into the treaty and proposed and initiated the construction of the dam lost elections. The new party stopped operations in 1993. By 2000, country 'B' had completely suspended operations. From 1995, country 'A' had a separate option plan ready and as soon as state 'B' officially suspended operations in 2000, state 'A' activated this separate plan. State 'B' terminated the treaty in 2001 by accusing how country 'A' is implementing a separate plan of operation by excluding country 'B', as against the treaty, which is why 'B' could terminate the treaty altogether.
- Both states decided to resolve their dispute at the ICJ. Prepare arguments on behalf of both the states and provide a possible decision which could be given by ICJ. **(10 Marks)**

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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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- Q.1 The GSK Pharmaceutical Company, Belur, had more than 800 workmen working in the establishment. On 1st January 2002, the Company came up with a notification whereby changing the working hours for Production Unit No.1. The new shift for a day was decided as 10 hours of work 2 hours of overtime and half an hour rest. Workmen raised a dispute in relation to the new hours of work and change in conditions of service without informing them. There was an illegal strike called for by the Kamgar Sanghatana for the period starting from 6-4-2002 to 30-5-2002. Immediately after the strike was called off, the management declared temporary closure of the Company without prior approval of the appropriate government from 12-6-2002 to 3-5-2004 on the ground of financial setback. The workmen raised dispute pertaining to this closure during the aforesaid period and claimed appropriate lay-off compensation. The matter was settled on 25-8-2005, between the Kamgar Sanghatana, which was a recognised union and the management. Clause 8 of the settlement stated that compensation would be paid for the days during which the mill did not function and marked as no work. The rival union, the Raymond Employees Union challenged the validity of the settlement. The Employees Union also filed an application under Sec. 33 6C (2) for lay-off compensation. In this factual background, discuss the legal positions in respect of the following issues?
- (a) Whether the new shift arrangement was bad according to law relating to working hours? Does the introduction of new shift of hours of work require any compliance with procedure under industrial law? **(4 Marks)**
- (b) Whether the contention of the Company that it was not lay-off but lock-out would succeed before the Court? If lay-off, discuss whether it is legal and justified according to law? **(3 Marks)**
- (c) Discuss the nature of the settlement and its binding value on workmen referring to the conflict in legal jurisprudence? **(4 Marks)**
- Q.2 The procedures relating to Lay-off, Closure and Retrenchment under Chapter 6V B of the Industrial Disputes Act has survived constitutionality challenges both on the substantive vices and procedural vices. Discuss and analyse the inter-related case law jurisprudence on the same? **(8 Marks)**
- Q.3 Critique of Minimum Wage jurisprudence developed in Workmen vs. Management of Reptakos Brett and Co. Ltd. referring to the evolution the concept so far. **(7 Marks)**
- Q.4 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)**
- Q.5 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)**
- Q.6 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 marginalized 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)**
- 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. **(7 Marks)**
- Q8. The jurisdiction of industrial tribunals over dismissal for misconduct has undergone a metamorphosis. Discuss. **(7 Marks)**