

NLUJAA

National Law University and Judicial Academy, Assam

One Year LL.M. Degree Programme, II-Semester (Academic Year: 2018-19)

Semester End Examination (June, 2019)

**Subject Code: 2.1 (CN) Independence of Judiciary and Changing Contours
(Optional Paper - II)**

Time: **3:00 Hrs.**
Total Marks: **100**

INSTRUCTIONS:

1. Read the questions carefully and answer.
 2. Unnecessary queries on the Question Paper shall not be entertained.
 3. Do not write anything on the question paper. It will be treated as malpractice.
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Answer any four questions from the following. All questions carry equal marks.

1. Write Short Notes: (12½ x 2)=25 Marks
 - (a) Limited Government and Constitutionalism
 - (b) Judicial Activism vs Judicial Restraint
2. Make a comparative analysis of the presence of 'Independence of Judiciary' as a feature of the constitutional scheme of India, USA, UK and Australia citing the contribution of the judiciary in promoting and protecting the same in these countries. 25 Marks
3. Starting from the United Nation's Charter, almost all international documents pertaining to the protection and promotion of human rights, *inter alia*, preaches in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. This indicates that an independent judiciary is indispensable not only for municipal development of citizen's rights but also for universalization of these rights. On this backdrop, make a brief analysis of the steps taken by the United Nation and its subsidiary agencies to secure the independence of judiciary in both international and municipal level. 25 Marks
4. The Supreme Court of India, applying its innovation and creativity, through different judicial interpretations leave no single chance to make our judiciary free from executive will and domination. Critically evaluate, in the light of the above, the role it has demonstrated in bringing a change especially, in the process of appointment of Judges of Supreme Court of India and the transfer and appointment of Judges of the High Courts of India citing past experiences and judicial pronouncements.

Does the judicially installed 'Collegium System' is able to serve its purpose without any hindrances? Provide your estimation on the pros and cons of the same highlighting the

ongoing tussle between the executive and judiciary as to the fixation of new Memorandum of Procedure (MoP). 15+5+5=25 Marks

5. The guardianship of judiciary, in enforcing the Constitution, extends where there is a constitutional litigation concerning rights of the private parties or the governments. Critically analyse, in the light of the above, the enormous duty imposed by the Constitution of India on our constitutional courts as the conscience keeper of the Constitution in this regard indicating the possible grey areas where independence of judiciary is likely to get affected while doing so.

Whether the incidents of allegations (i.e., of corruption and bribery, of misbehavior and sexual harassment etc.) against the Judges of higher judiciary undermines its sentinel value? What role according to you should be played by our judiciary while dealing with such cases? Provide juristic opinion in support of your answer. 15+10=25 Marks

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One Year LL.M. Degree Programme, II-Semester (Academic Year: 2018-19)

Semester End Examination (June, 2019)

**Subject Code: 2.1 (EL) Environmental Law and Policy
(Optional Paper - II)**

Time: **3:00 Hrs.**

Total Marks: **100**

INSTRUCTIONS:

1. Read the questions carefully and answer.
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Answer any four questions from the following. All questions carry equal marks.

1. "It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits."

The Law Commission of India, in its 186th Report, highlighted the need for separate Environment Courts in India. Elucidate the need and the significance of such courts.

2. The Supreme Court, in *Vellore Citizens' Welfare Forum vs. Union of India* 1996 (5) SCC 34 647 observed that "The traditional concept that development and ecology are opposed to each other is no longer acceptable. 'Sustainable Development' is the answer."

Discuss the 'sustainable development' principle, tracing its origin at the international level and emphasizing its reflection in the domestic sphere, through appropriate references to international documents, and cases as decided by the apex court in India.

3. Authors Philipp Aerni et al., in the article titled, 'Climate Change and International Law: Exploring the Linkages between Human Rights, Environment, Trade and Investment' write that, "The law of the WTO and an ever increasing number of preferential trade agreements play an important role in defining appropriate framework conditions for climate change policies of countries and for future environmental agreements. There is a complex relationship between the two areas, generally expressed in terms of the trade and environment debate."

Elaborate upon the potential conflict between trade promotion and environment protection, drawing upon the *India-Solar Cells* case.

4. "The National Environment Policy seeks to extend the coverage and fill in gaps that still exist, in light of present knowledge and accumulated experience. It does not displace, but builds on the earlier policies."

Discuss:

- (a) The salient features of the National Environment Policy, 2006, focusing on the objectives, and
(b) The 10-step guide as provided by Richard Rose for lesson drawing, that is, how countries may learn from each other about policy initiatives.

15+10=25 Marks

5. Section 3 of the Environment Protection Act, 1986, states that, "Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution."

- (a) Do you think that the Central Government has 'sweeping powers' under this Act?
(b) Discuss the powers of the Central Government to appoint officers, give directions and make rules in respect of any matter listed under Section 3.

5+20=25 Marks

6. Write short notes on:

- (a) The constitutional provisions relating to 'Environment' in India.
(b) The example set by the Southern Nevada Water Authority [SNWA] towards water conservation and management.

(12½+12½)=25 Marks

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**Subject Code: 2.1 (BL) International Trade and Competition Law
(Optional Paper - II)**

Time: **3:00 Hrs.**
Total Marks: **100**

INSTRUCTIONS:

1. Read the questions carefully and answer.
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Answer any four questions from the following. All questions carry equal marks.

1. "From the early days of the Silk Road to the creation of the General Agreement on Tariffs and Trade (GATT) and the birth of the WTO, trade has played an important role in supporting economic development and promoting peaceful relations among nations."

Discuss the evolution of the multilateral trading system from the GATT to the creation of the World Trade Organization (WTO), focusing upon the 8 rounds of negotiations.

2. "The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities...But a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system."

Elaborate upon the 2 non-discrimination principles under the GATT, citing relevant cases.

3. Section 3 (1) of the Competition Act, 2002, states that, "No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India."

(a) Discuss the types of agreements which may come under the purview of Section 3, with the help of relevant case-law.

(b) Are there different standards of proof for such agreements?

20+5=25 Marks

4. Section 4 (1) of the Competition Act, 2002, states that "No enterprise or group shall abuse its dominant position."

- (a) Elaborate upon the activities which can be covered by Section 4, with the help of relevant case-law.
- (b) Why is dominance *per se* not anti-competitive?

20+5=25 Marks

5. “Work in the WTO on investment and competition policy issues originally took the form of specific responses to specific trade policy issues, rather than a look at the broad picture. Decisions reached at the 1996 Ministerial Conference in Singapore changed the perspective.”

Discuss the linkages between trade law and competition policy, focusing upon

- (a) the work of the Singapore Working Group, and
- (b) relevant cases as decided by the WTO Dispute Settlement Body (DSB).

10+15=25 Marks

6. Write Short Notes on:

- (a) The potential conflict between trade advancement and environmental protection, with the help of relevant cases.
- (b) The note-worthy differences between the MRTP Act and the Competition Act.

(12½+12½)=25 Marks

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**Subject Code: 2.2 (CN) Constitution of India and Affirmative Actions
(Optional Paper - III)**

Time: **3:00 Hrs.**
Total Marks: **100**

INSTRUCTIONS:

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Answer any four questions from the following. All questions carry equal marks.

1. What are the goals of affirmative action? Explain with the help of judicial pronouncements either of Indian or American context.
2. Discuss the constitutional questions involving interpretation of Article 16 of the Constitution of India, explained in the Mandal Commission case.
3. Discuss the extent of similarity in Constitutional Safeguards pertaining to affirmative action between India and the USA with the help of relevant cases.
4. Discuss the evolution of Affirmative Action in USA. Also discuss the role of the 14th Amendment of the American Constitution as a base of affirmative action in the country.
5. Discuss the judicial stand on Reservation in Promotions in India.

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**Subject Code: 2.2 (BL) Commercial Disputes Resolution Mechanism
(Optional Paper - III)**

Time: **3:00 Hrs.**

Total Marks: **100**

INSTRUCTIONS:

1. Read the questions carefully and answer.
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Answer any four questions from the following. All questions carry equal marks.

1. X had entered into a partnership with the Y & Z to constitute a partnership firm for the purpose of carrying on the business in Delhi. The partnership deed contained an arbitration clause for resolution of any dispute. Differences started creeping up between X and other partners, X send a notice to Y & Z, being dissatisfied with their conduct. X further asserted malpractices happening inside the firm, which were supported by the Y & Z. There were also allegations of collusion amongst Y & Z for driving out the clients of X and forging the accounts of the firm. X offered his retirement from the firm and asked for his share of the salary and the profits incurred by the firm. He had further called upon the Y & Z to settle dispute within 15 days and to arrange for his retirement, failing which he will refer the matter to arbitration as per the arbitration clause in the partnership deed.

Decide the arbitrability of the matter with help of decided case laws.

2. "Almost all leading institutional rules contain limitations on the nationality of sole and presiding arbitrators. These limitations are designed to implement one of the basic objectives of international arbitration, being to provide an internationally-neutral means of resolving disputes between parties from different countries". Comment on the nationality requirement as per LCIA Rules. Also discuss the requirement as regards to the qualifications/background of the arbitrator with the help of a case law.
3. "Though the arbitration is a contractual process, it does not follow that the agreement to arbitrate only attach those who have personally signed the written arbitration agreement. If a third party performs under a contract or in connection with the contract between the two other parties, then the said party is bound by the arbitration clause in the original parties' agreement". In the light of given statement explain various doctrines supporting operation of an arbitration agreement may be extended to non-signatories.

4. A bilateral investment agreement (BIT) is an accord establishing the terms and conditions for private investment by nationals and companies of one country in another country, explain in detail India's history with BIT and give an overview of India Model BIT, 2016 explaining various standards of protection.
5. Write a short note on:
 - a) Grounds for refusal of enforcement of an award under New York Convention
 - b) Appointment of Arbitrators in India

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**Subject Code: 2.2 (EL) Climate Change and Law
(Optional Paper - III)**

Time: **3:00 Hrs.**

Total Marks: **100**

INSTRUCTIONS:

1. Read the questions carefully and answer.
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Answer any four questions from the following. All questions carry equal marks.

1. What are the elements and dimensions of adaptation under United Nations Convention on Climate Change? Also discuss the National Adaptation Programs of Action.
2. Discuss the following:
 - (a) National Appropriate Mitigation Actions
 - (b) Nationally Determined Contributions
3. Short notes on:
 - (a) Durban Forum on Capacity Building
 - (b) Common but Differentiated Responsibilities and Respective Capabilities
4. Critically appraise the three market based mechanisms of Kyoto Protocol.
5. What are the key institutions and mechanisms of Technology development and technology transfer under UNFCCC?
