

LL. B. I Term

Paper – LB - 101 : Elements of Indian Legal System

Prescribed Legislations:

1. The Legal Services Authorities Act, 1987
2. The Gram Nyayalayas Act, 2008 (No. 4 of 2009)
3. The Advocates Act, 1961

General Readings:

1. R.W.M. Dias, *Jurisprudence* (5th ed., 1985)
2. Lon. L. Fuller, *Anatomy of the Law* (1976)
3. H.L.A. Hart, *The Concept of Law* (1961)
4. W. Friedman, *Law in a Changing Society* (2nd ed., 1972)
5. Glanville Williams, *Learning the Law* (13th ed., 2006)
6. M.P. Jain, *Outlines of Indian Legal & Constitutional History* (6th ed., 2006)
7. A. Lakshminath, *Judicial Process : Precedent in Indian Law* (3rd ed., 2009)

PART A : UNDERSTANDING THE BASIC ELEMENTS OF THE INDIAN LEGAL SYSTEM

I Concept of Law and Legal System

- (a) Introduction to the Legal Process: Nature and Functions of the Legal System 1
- (b) Major Legal Systems of the world: Civil Law System, Common Law System
- (c) Concept of Law: Schools of Law

Readings:

1. H.L.A. Hart, *The Concept of Law*, Chapters VI & IX (1961)
2. Lon. L. Fuller, *Anatomy of Law*, Part Two (1976)
3. R.W.M. Dias, *Jurisprudence* (5th ed. 1994)
4. Joseph Minattur, "Introduction" in Joseph Minattur (ed.), *Indian Legal System*, vii – xiv (2nd ed., 2006) 1
5. V.S. Deshpande, "Nature of the Indian Legal System" in Joseph Minattur, *op cit.* 1-21 12

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|----|--|----|
| 6. | N.R.M. Menon, "Our Legal System", <i>Legal Aid Newsletter</i> ,
November 1982. | 17 |
| 7. | R. David & J.E.C Brierley, <i>Major Legal Systems of the World Today</i>
17-31, 484-515 (3 rd ed. 1985). | 24 |

II Sources of Law

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|------------|-----------------|---------------|
| (a) Custom | (b) Legislation | (c) Precedent |
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Readings:

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|----|--|----|
| 1. | Dias, <i>op cit.</i> | |
| 2. | M.P Jain., "Custom as a Source of Law in India",
<i>3 Jaipur Law Journal</i> 96 (1963) | 30 |
| 3. | I. C. Saxena, "The Doctrine of Precedent in India",
<i>3 Jaipur Law Journal</i> 188 (1963) | |
| 4. | Rupert Cross and J.W. Harris, <i>Precedent in English Law</i> (4 th ed., 1991) | |
| 5. | Glanville Williams, <i>Learning the Law</i> 67-96 (11 th ed., 2003) | 53 |
| 6. | G.W. Paton and David P. Derham, <i>A Textbook of Jurisprudence</i> ,
Chapter VI (4 th ed., 2004) | |
| 7. | A. Lakshminath, <i>Judicial Process : Precedent in Indian Law</i>
(3 rd ed., 2009) | |

III Rule of Law

Readings:

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|----|---|----|
| 1. | W. Friedman, <i>op. cit.</i> , pp. 500-512 | 61 |
| 2. | J. S. Verma, "50 years of Freedom under Rule of Law : Indian
Experience", <i>4-7 Law and Justice</i> 83 (2000) | 70 |
| 3. | Upendra Baxi, "The Rule of Law in India", <i>4 International Journal of
Human Rights</i> 6-25 (2007) [available at www.surjournal.org] | |
| 4. | M.N. Venkatachaliah, "Rule of Law : Contemporary Challenges",
<i>45 Indian Journal of Public Administration</i> 321 (1999) | 77 |
| 5. | H.M. Seervai, "Rule of Law" in <i>The Position of the Indian Judiciary
under the Constitution of India</i> 83-96 (1970) | 86 |

IV Modern Judicial System

Readings:

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|----|---|
| 1. | M.P.Jain, <i>op cit.</i> |
| 2. | Supreme Court Practice and Procedure, Hand book of Information,
Supreme Court of India, New Delhi (2007) |

V. Nyaya Panchayats, Lok Adalats and Legal Aid

- (a) The Constitution of India, 1950 (relevant provisions)
- (b) The Legal Services Authorities Act, 1987
- (c) The Gram Nyayalayas Act, 2008 (No. 4 of 2009)

Readings:

1. M.P. Jain, *op. cit.*, pp. 221-225, 238-242 (6th ed., 2006)
2. U. Baxi, "From Takrar to Karar; The Lok Adalat at Rangpur,- A Preliminary Study", X *Journal of Constitutional & Parliamentary Studies* (1976)
3. R Swaroop, *Legal Aid & Lok Adalat* 5-43 (2003) 93
4. U. Baxi, *The Crisis of Indian Legal System* 295-327 (1982)
5. N.R.M. Menon, "Settlement in the Open",
www.telegraphindia.com/archive/1001212/editoria.htm 110
6. A. K. Agarwal, "Strengthening 'Lok Adalat' Movement in India",
AIR 2006 Journal 33
7. The Legal Services Authorities Act, 1987, Chapters VI and VIA 113
8. R.C. Chopra, "Legal Aid Movement in India : Its Development and Present Status", <http://causelists.nic.in/nalsa> 119
9. Reports of Law Commission of India on Panchayats and Gram Nyayalaya [14th Report (1958) and 114th Report (1986)]
<http://lawcommissionofindia.nic.in>
10. J. S. Bisht, "Lok Adalat : A Mechanism of Alternate Dispute Resolution", XXXI *Indian Bar Review* 165 (2004) 126
11. *State of Punjab v. Jalour Singh*, AIR 2008 SC 1209

PART B – LEGAL HISTORY OF INDIA

I. Administration of Justice during the British Period

- (a) Early Administration of Justice at Madras, Bombay and Calcutta
- (b) The Mayor's Courts (1726)
- (c) The Adalat System: Reforms of Warren Hastings
- (d) The Supreme Courts at Calcutta, Madras and Bombay
- (e) The Regulating Act, 1773
 - (i) Working of the Court - *Raja Nand Kumar, Patna, Cossijurah*, cases
 - (ii) The Act of Settlement, 1781
- (f) Reforms of Cornwallis

Readings:

1. M. P. Jain, *op. cit.*
2. C. Fawcett, *The First Century of British Justice in India* (1934)
3. B.N. Pandey, *The Introduction of English Law into India* (1967)
4. Raj Kumari Agrawala, "History of Courts and Legislatures" in Joseph Minattur, *op. cit.*, pp. 112-25

II. High Courts

- (a) Establishment of High Courts (b) History of writ Jurisdiction

Readin:

M.P.Jain, *op.cit.* pp. 252-278

III. Growth of the Indian Legal Profession

- (a) History of the Indian Legal Profession (b) The Advocates Act, 1961

Readings:

1. M. P. Jain, *op.cit.*, pp. 669-690.
2. A.N. Veera Raghavan, "Legal Profession and the Advocates Act, 1961",
14 *Journal of the Indian Law Institute* 228-262 (1972) 140
3. Samuel Schmitheener, "A Sketch of the Development of Legal
Profession in India" 13 *Indian Bar Review* 308 (1986)

NOTE :

1. The topics, legislations and cases given above are not exhaustive. The teachers teaching the course are at liberty to add new topics/legislations/cases.

2. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.

3. The question paper shall contain one compulsory question. The question papers set for examinations held during the years 2007-08 and 2008-09 are given below for guidance of the students.

LL.B. I Term Examinations, December, 2008

Note: Answer *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:-
 - (a) Legislation as a source of law in India;
 - (b) Constituent elements of customary law;
 - (c) System of *stare decisis* in India;
 - (d) Mayor's Courts;
 - (e) Warren Hastings' Adalat system.
2. Once our concept(s) of what law is/are clear, we find that the existing definitions of law are either incomplete or incorrect and, indeed, no definition is needed. Discuss.
3. In the statute, there is always an element of implicit law, while some element of enactment or creation enters into the rules of customary law. But, if we take legislation as a prototype of made law and custom of unmade law, we see that the two are equally important at every stage of development of the given society.
Analyse the above statement in detail.
4. Formulate a concept of Rule of Law which would enable us to fulfill the administrative and welfare needs of contemporary India.
5. There exist several complexes of norms, institutions and processes in the Indian society by which disputes are settled : the official legal systems and the traditional system(s). Discuss, pointing out the advantages of, and the problems, if any, posed by this multiplicity of legal systems.
6. The Supreme Court, established under the 1774 Charter, became an institution which was disliked and dreaded equally by the officers of the Government, the Government and the Indians. Discuss the major cases which led to this situation and the Act passed to settle the issues.
7. Discuss the scope of the power of High Courts (1861) to issue writs: (a) within the Presidency towns, (b) outside the limits of the Presidency towns, with reference to the relevant High Court and Privy Council decisions.
8. Parliament, in 1961, enacted an Advocates Act which rectified the problems faced by lawyers both during the British period and after independence. Discuss.

LL.B. I Term (Supplementary) Examinations, May-June 2009

Note: Attempt *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:-
 - (a) Common law legal system;
 - (b) Subordinate legislation as a source of law;
 - (c) Charter of 1726 concerning judiciary;
 - (d) Jurisdiction of Courts administering criminal justice in India (Flow Chart);
 - (e) Report of Second Law Commission, 1858.
2. Discuss briefly the contribution made by positivist, historical and sociological schools of law in defining the term 'law'. Can you define the term 'law' in the light of the Constitution of India?
3. In a student union election to be held in a University, students filed nominations for the post of President, Vice-President, General Secretary and Joint Secretary whereas the constitution adopted by the University for students election provided for the post of President, Vice-President, Secretary and Joint Secretary. Acting on the basis of the Constitution, the Election Officer rejected the nomination of all those candidates who had filed for the post of General Secretary. The students protest and demand that as they had been contesting elections for the last twenty years for the post of General Secretary and their candidature had never been cancelled, the action of Election Officer was not proper. Decide on the basis of essentials of custom and legislation so as to be treated as sources of law.
4. Discuss the concept of 'Rules of Law' give by Dicey and Friedman. How do their approaches supplement each other? What had been the judicial approach to 'Rule of Law' in India?
5. Briefly outline the evolution of Lok Adalats in India. What is their jurisdiction under Legal Services Authorities Act, 1986? How Permanent Lok Adalats are different from ordinary and adhoc Lok Adalats?
6. How did the executive judiciary nexus pose a threat to the common man of India when Supreme Court started its functioning in 1774? Illustrate with the help of decided cases.
7. "Even if there was no provision in the High Courts Act, 1861 about writ jurisdiction, the High Court established on the basis of the Act claimed writ jurisdiction." Comment. Do you think that the writ jurisdiction of High Courts in India has been expanded after independence?
8. What is the composition of Bar Council of India and State Bar Councils under Advocates Act, 1961 ? Discuss the functions and powers of these councils.

The Bar Council of India decides to enroll a citizen of India as an Advocate who has obtained a degree in law (LL.B.) and who is not above the age of fifty years to improve the quality of the bar and to reduce unnecessary incentive to practice after retirement. Do you think that such measure violates the powers granted under the Advocates Act to the Bar Council of India?

LL.B. I Term Examinations, December 2010

Note: Attempt *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:-
 - (a) Roscoe Pound and meaning of Law;
 - (b) Lok Adalats;
 - (c) Cossijura case;
 - (d) Legislation as a Source of Law;
 - (e) Gram Nyayalaya Act, 2008.
2. “Law is a rule laid down for the guidance of an intelligent being by an intelligent being having power over him.” Discuss the statement in the light of the positivist school and examine its relevance in a modern welfare state.
3. “The legal system of a country reflects social, political, economic and cultural characteristics of society.” Explain the statement by highlighting the major legal systems operating in the world and in particular Indian Legal System.
4. “Rule of Law is an expression to give reality to something which is not readily expressible but which postulates the pervasiveness of the spirit of law throughout the whole range of governmental action.” Elucidate, citing relevant case law.
5. “The great importance attached to judicial precedents is a distinguishing feature of Indian Legal System”. Explain the statement and discuss the operation of the doctrine of precedent in the following situations:
 - (a) How far the decisions of the High Court are binding on Lower Courts?
 - (b) How far a High Court is bound by its own decision?
 - (c) What is the authority of one High Court decision in another High Court?
 - (d) How far is the Supreme Court bound by its own decision?
6. The legal profession offers one of the most honoured and profitable work that can be attained in India.
Discuss the historical development of legal profession in India from 1774 onwards till present with special emphasis on the Advocates Act, 1961.
7. Discuss the powers, functions and jurisdiction of the Supreme Court of judicature at Calcutta in 1774 with special reference to Raja Nand Kumar and Patna Cases.
8. Explain the judicial reforms introduced by Warren Hastings and Lord Cornwallis which are considered of great historical importance in Indian Legal History.

LL.B. I Term (Supplementary) Examinations, June-July 2011

Note: Attempt *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:-
 - (a) Precedent as a source of law
 - (b) The Legal Services Authorities Act, 1987.
 - (c) Mayor's Courts
 - (d) Warren Hastings Adalat System
 - (e) Cornwallis' Reforms
2. Critically analyse Austin's concept of law with respect to what is law in India under our rules of reorganization of law the purposes it seeks to achieve in the Indian welfare state.
3. Discuss (a) the elements that constitute a custom into law and (b) the circumstances in which a court will refuse to apply even a proven customary law.
4. The concept of Rule of Law is different for every circumstance, every society and, for the same society, it changes from time to time. Formulate a concept of Rule of Law for our country which is striving to become a true democracy.
5. Discuss whether the Gram Nyayalayas Act, 2008 has taken care of all the advantages and disadvantages evidenced by the working of Nyaya Panchayats in India.
6. Analyse the important legal issues in the Patna and *Cossijurah* cases. How did the Act of Settlement 1781 seek to resolve them?
7. Discuss with reference to decided cases the scope of the power of the High Courts, established under the Indian High Courts Act, 1861, to issue writs within and outside the territorial limits of the Presidency towns, which reference to decided cases.
8. Elucidate the historical conditions and reasons which necessitated the enactment of the Advocate Act, 1961, by Parliament.

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LL.B I Term

Elements of Indian Legal System

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