



**MOHANLAL SUKHADIA UNIVERSITY, UDAIPUR**

**FACULTY OF LAW**

**SECOND SEMESTER MASTER OF LAWS**

(Session 2018-19)

PAPER – I (PAPER CODE - **42901**) : (PAPER NAME – **JUDICIAL PROCESS**)

**Max. Marks: 100 (80 External + 20 Internal)**

**Min. Marks: 40**

**Unit – I Nature of Judicial Process**

- i) Nature of Judicial Process.
- ii) Judicial Process as an instrument of Social Change.
- iii) Judicial Process and Creativity in Law – Common Law Model – Legal Reasoning and Growth of Law – Change and Stability.
- iv) The tools and techniques of Judicial Creativity and Precedent - Doctrine of Precedent-Ratio decidendi and Obiter Dictum-Methods of determining Ratio- Stare decisis and its exceptions.

**Unit – II Judicial Process in India**

- i) Judicial Process and Criminal Procedure.
- ii) Judicial Process and Civil Procedure.
- iii) Judicial process in pursuit of constitutional goals and values.
- iv) Institutional liability of Courts and Judicial Activism.
- v) Principles of Constitutional Interpretation

**Unit – III The Concept of Justice**

- i) Concept of Rights and Justice
- ii) The concept of justice or Dharma in Indian thought
- iii) Dharma as the foundation of legal ordering in Indian thought
- iv) The concept and various theories of justice in the western thought
- v) Various theoretical bases of justice : The liberal contractual tradition, the liberal utilitarian tradition and the liberal moral tradition

**Unit – IV Relation between Law and Justice**

- i) Equivalence Theories-Justice as nothing more than the positive law of the stronger class
- ii) Dependency theories
- iii) The independence of justice theories mean's to an end, relationship of law and justice - The relationship in the context of the Indian Constitutional ordering
- iv) Analysis of selected cases of Supreme Court where the judicial process can be seen as influenced by theories of justice

**SELECT BIBLIOGRAPHY**

1. Julius Store : The Province and Function of Law, Part II, Chs. 1-8-16 (2000), Universal, New Delhi
2. Cardozo : The Nature of Judicial Process (1995), Universal, New Delhi
3. Henry J. Abraham : The Judicial Process (1998), Oxford
4. J.Stone : Precedent and the Law : Dynamics of Common Law Growth (1985), Butterworths
5. W. Friedmann : Legal Theory (1960), Stevens, London
6. Bodenheimer : Jurisprudence - The Philosophy and Method of the Law (1997), Universal, Delhi
7. J. Stone : Legal System and Lawyer's Reasoning (1999), Universal, Delhi
8. U. Baxi : The Indian Supreme Court and Politics (1980), Eastern, Lucknow

9. Rajeev Dhavan : The Supreme Court of India - A Socio-Legal Critique of its Juristic Techniques (1977), Tripathi, Bombay
10. John Rawls : A Theory of Justice (2000), Universal, Delhi
11. Edward, H. Levi : An Introduction to Legal Reasoning (1970), University of Chicago

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PAPER – II (PAPER CODE - **42902**) : (PAPER NAME – **LAW OF CONTRACTUAL TRANSACTIONS**)

**Max. Marks: 100 (80 External + 20 Internal)**

**Min. Marks: 40**

**Unit – I :**

1. Genesis and Philosophy of Contracts and its importance in a commercial developing society.
2. Freedom of Contract, Nature and basis of Contractual obligation.
3. Formation of Contract – Agreement and Contract, Intention to create legal obligation, Requirements of valid contract.
4. Proposal and Acceptance – Essential elements, communication and revocation, proposal and invitation for proposal, Standing order, Tenders and Auction sale.
5. Standards Forms of Contract – Exclusion clauses and their effects.
6. Unilateral and bilateral contracts.
7. Capacity to Contract – Meaning and Scope, Contractual Capacity of minor, corporation, Government, consequences of Minor's Agreement and Estoppel, Ratification.
8. Contract by a person of unsound mind – Legal effects.
9. Other Legal disabilities
10. Free consent – Meaning and Scope ; Vitiating elements – Coercion, Fraud, misrepresentation, undue influence and Mistake, Distinction between Fraud and innocent misrepresentation, Coercion and Duress, Mistake of Law and Mistake of Fact, Common, Mutual and Unilateral Mistake, Remedies available when agreement is vitiated by mistake.

**Unit – II :**

1. Consideration - Nudum Pactum – Its need, meaning and essential ; Adequacy of Consideration, Privity of Contract and Consideration – its exceptions; past, Executed and Executory consideration, Doctrine of Consideration and Promissory Estoppel; Essentiality of consideration with exceptions.
2. Legality of Objects and Consideration – Unlawful consideration and objects; Void, Voidable and unlawful Agreements and their effects, Concept of immoral and Public Policy, Heads against public policy.
3. Void Agreements, Agreement in restraint of Marriage, Agreement in restraint of Trade, Agreement in restraint of Legal Proceedings, Uncertain Agreement and Wagering Agreements.
4. Contingent Contract – Meaning and scope, Reciprocal promises.
5. Discharge of Contract – Meaning and modes of discharge; performance and Tender – Place and Time of performance, Time as essence of contract, performance of joint promises.
6. Discharge by Agreement – Novation, Remission of Performance, Accord and Satisfaction.
7. Discharge by Impossibility of Performance and Frustration – Nature and scope of the doctrine of Frustration, Specific ground of Frustration.

**Unit – III :**

1. Restitution.
2. Quasi – Contracts or certain Relation resembling those created by contract.
3. Breach of contract and remedies. Meaning of breach and Anticipatory breach; Damages – Meaning and Nature, Kinds, Rule in Hadly V. Baxendable – Remoteness of Damage.
4. Contract of Indemnity – Definition and Nature, Distinction between Indemnity and Guarantee, Rights of the Indemnity Holder.
5. Contract of Guarantee – Definition and Scope, specific and Continuing Guarantee, Creditors Right against Principal Debtor and Surety, discharge of Surety, Surety's Rights against the principal debtor and Co-surety. Principal of Contribution by co-surety.

**Unit – IV :**

1. Bailment – Definition and Essential Features, Bailment for Reqard and Gratuitous Bailment, Right and duties of Bailor and Bailee.
2. Finder of lost goods – Rights and Duties of Finder; Rights and Liabilities of owner.
3. Pledge – Definition, Nature and Scope; Who can pledge, Rights and duties of pawnor and pawnee.
4. Kinds of Agents – Factory, Brokers, Auctioneers, Del-Credere agents, etc.
5. Agency – Nature, Distinction from other transactions; Contractual basis of Agency.
6. Modes of Creation of Agency – Express, implied, Ratification by operation of Law.
7. Scope of Agent's Authority, Rights and Liabilities of the Agent as against principal and third party; Rights and Liabilities of principal and third party as against each other and as against Agent.
8. Delegation by Agent – Sub Agent and Substituted Agent – Distinction and Legal Effects.
9. Termination of Agency, Modes of termination, Agency coupled with Interest.

**Books Recommended :**

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|----|---------------------|---|
| 1. | Chaturvedi, A.N.    | Lectures on Indian Contract Act.              |
| 2. | Cheshire and Fifoot | The Law of Contract                           |
| 3. | Anson               | Principles of the English Law and of Contract |
| 4. | Chitty              | On Contracts Vol.I (General Principles).      |
| 5. | Pollock and Mulla   | Indian Contract and Specific Relief           |



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PAPER – III (PAPER CODE - **42903**) : (PAPER NAME – **DISSERTATION**)

**Max. Marks: 100**

**Min. Marks: 40**

Dissertation carrying 100 marks shall be evaluated internally and externally with 80 marks for the written work and with 20 marks for Power Point Presentation and viva-voce before the group of faculty members.

The written work shall be held at the end of the Second semester. There shall be 40 marks each for doctrinal research and for non-doctrinal research. However, for making the dissertation practical examination objective and meaningful, the following guidelines shall be adhered to.

**1. Research Methodology**

**(i) Doctrinal Research (40 marks)**

Each student is assigned in advance a separate topic and asked to collect materials. A period of 05-07 days can be set apart for carrying out this assignment in the library. The materials indicated or collected during the assignment shall be evaluated by a group of faculty members.

**(ii) Non-doctrinal Research (40 marks)**

Here the student are asked to go out of the class room and library and make an empirical study of a problem which has social, economic, moral or political dimension. Field data can be collected through any model of data collection. The results are to be assessed by a team of faculty members.

**2. Power Point Presentation and Viva-Voce (20 marks)**

A power point presentation of dissertation consisting Introduction, Objectives, Research Gap, Hypothesis, Research Tools & Techniques, Findings, Conclusion and Suggestions is compulsory for each student before the group of faculty members.