

Name:

Enrolment No:



UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, December 2018

Course: Interpretation of Statutes

Course Code: LLBL 511

Semester: VII

Programme: B.B.A., LL.B. (Hons.) Corporate Law/ B.Com., LL.B. (Hons.) Taxation Law

Time: 03 hrs.

Max. Marks: 100

Instructions:

SECTION A

S. No.		Marks	CO
Q 1	Can a taxing statute be given retrospective operation? Discuss	2	CO 1
Q 2	What is an enabling clause? Give examples.	2	CO 1
Q 3	What kind of interpretation applies on interpretation of penal statutes?	2	CO 1
Q 4	Are dictionaries used in interpretation of statutes?	2	CO 1
Q 5	What is the position of explanations as aid to interpretation?	2	CO 1

SECTION B

Attempt any 2

Q 6	What are statutes in 'pari materia'? Discuss, with examples, its role and importance in interpretation.	10	CO 3
Q 7	Discuss the principle of territorial nexus and its importance in interpretation.	10	CO 2
Q 8	Discuss the importance of legislative history in interpretation. Justify your answer by examples and case laws.	10	CO 2

SECTION-C

Attempt any 2

Q 9	Evaluate the role of courts in interpretation of international law. Compare Indian practice with U.S. practice, in this regard; and support your answer by judicial pronouncements.	10	CO 4
Q 10	Discuss the application of mischief rule in India. Justify your answer with relevant case laws and appropriate logic.	10	CO 3
Q 11	What is the effect of repeal of a repealing statute? Discuss with a comparative analysis of the relevant provisions of General Clauses Act, 1897 and the British Interpretation Act, 1889.	10	CO 3

SECTION-D

<p>Q 12</p>	<p>Mr. Shamsheer was arrested for murder of one Mr. Lyaquat. During interrogation, he confessed. He gave complete detail of the offence to the investigating officer. The details included how he followed him for two months, gathered information of Liaquat's daily routine, his abduction during morning walk on a foggy winter morning, his confinement at an abandoned house, the act of killing, burial of the dead body, hiding of the murder weapon and the cloths of the deceased etc.</p> <p>The investigating officer raided all such spots and recovered the body from the grave. The murder weapon and cloths bearing blood stains of the deceased were also recovered.</p> <p>During trial, Shamsheer refused to have confessed. When the prosecution started adducing evidence of his confession, he challenged it by contending that there is no confession recorded by a magistrate. Even if there, a confession made to a police officer cannot be proved by virtue of sections 25 & 26 of the Indian Evidence Act, 1882 (Refer to the annexure). The magistrate allowed evidence to prove such confession to the extent of discovery of information directly and distinctly related to it, under section 27 of the same Act.</p> <p>Shamsheer appealed to the High Court, against this order of the magistrate, contending that section 27(Refer to the annexure) of the Act is invalid because:</p> <ul style="list-style-type: none">a) It contradicts Sections 25 & 26(Refer to the annexure) of the Evidence Act.b) It violates the fundamental principle of voluntary confession, and so affecting the best possible defense of the accused.c) It violates the fundamental rights under article 20 and 21(Refer to the annexure) of the constitution by exposing the accused to torture by the police. <p>Interpret the sections 25, 26 and 27 of Evidence Act in light of the prohibition and protection given under Indian Constitution; and decide the case. Justify your answer with appropriate pronouncements.</p>	<p style="text-align: center;">25</p>	<p style="text-align: center;">CO 4</p>
<p>Q 13</p>	<p>A law was made prohibiting slaughter of cows and all animals of the cow family. This law was in news and in political discussions and it was challenged in the Supreme Court as being unconstitutional. The petitioner contended that this law violates the fundamental right to freedom of conscience and free profession, practice and propagation of religion as provided by Article 25 of the Constitution of India.</p> <p>The state defended the law and contended that it's a law made in furtherance of the Directive contained under Article 47 and 48 of the Constitution. Therefore, it cannot be held unconstitutional.</p>	<p style="text-align: center;">25</p>	<p style="text-align: center;">CO 4</p>

	Interpret the relevant constitutional provisions and evaluate the impugned law for its constitutionality. Justify your answer by logic and judicial pronouncements.		

Annexure:

Relevant Legal Provisions

Constitution of India

Article 12:

In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Article 13: Laws inconsistent with or in derogation of the fundamental rights.-

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,-

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

Article 14: Equality before law:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 20: Protection in respect of conviction for Offences:

- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) No person accused of any offence shall be compelled to be a witness against himself.

Article 21: Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 226: Power of High Courts to issue certain writs

- (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
- (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
- (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—
 - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
 - (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.
- (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Article 227: Power of superintendence over all courts by the High Court:

- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.
- (2) Without prejudice to the generality of the foregoing provision, the High Court may—

- (a) Call for returns from such courts;
 - (b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
 - (c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.
- (3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.
- (4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Indian Evidence Act, 1872

Section 25: Confession to police-officer not to be proved: No confession made to a police-officer shall be proved as against a person accused of any offence.

Section 26: Confession by accused while in custody of police not to be proved against him: No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation: In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure.

Section 27: How much of information received from accused may be proved: Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

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Instructions:

SECTION A

S. No.		Marks	CO
Q 1	What kind of interpretation applies in interpretation of taxing statutes?	2	CO 1
Q 2	What is a non-obstante clause? Give examples.	2	CO 1
Q 3	What do you understand by 'generalia specialibus non derogant'?	2	CO 1
Q 4	When is the principle of harmonious construction applied?	2	CO 2
Q 5	What is a marginal note? How far does it help in interpretation?	2	CO 1

SECTION B

Attempt any 2

Q 6	Discuss the difference between 'ejusdem generis' and 'noscitur-a-socis'. Elucidate with examples.	10	CO 2
Q 7	Discuss the applicability of res judicata over fundamental rights. How it contributes in interpretation?	10	CO 2
Q 8	What is colourable legislation? Discuss with judicial pronouncements.	10	CO 3

SECTION-C

Attempt any 2

Q 9	What is meant by revival of a statute? Discuss with a comparative analysis of the relevant provisions of General Clauses Act, 1897 and the British Interpretation Act, 1889.	10	CO 2
Q 10	How has the process of interpretation been useful in furthering judicial activism? Explain with specific reference to the judicial activism towards conservation of environment, in India.	10	CO 4
Q 11	What is an ex post facto law? Discuss the permissibility of ex post fact laws with suitable provisions and cases.		CO 2

SECTION-D

Q 12 The State of Uttarakhand passed a law establishing educational tribunals to decide the cases related to educational institutions. These tribunals, at district and state levels, were held competent to adjudicate all matters related to or pertaining educational institutions. It covered disputes related to admission, fixation of fees, reservation of seats in admission, recruitment of teachers and staff, disciplinary or departmental proceedings etc. The Act also had a provision that the order of the tribunal shall be binding and final. No further appeal from the order of the tribunal could be filed.

Mr. Prabh applied for admission to BALLB program in the Himalayan University, Dehradun. His name appeared in the list of qualified candidates but he was not admitted. On repeated requests, he was informed simply that he had not qualified the cut off. Mr. Prabh sought his marks and the cut off marks under RTI Act. Having received the response, he observed that his marks were equal to the cut off score. He challenged his denial of admission as an irregularity in the admission procedure. The case was filed in the state educational tribunal. The tribunal observed that the University had laid down proper guidelines for admissions. These guidelines had clear mention of who to be admitted on the last seat, in case of many candidates on the same score. It was also observed that these rules were not violated in the present case. So the petition was disposed of without giving any remedy to the petitioner.

Then Mr. Prabh filed a writ petition in the Nainital High Court challenging the entire proceedings on the ground of natural justice.

The Respondent contended that the petition is not worthy of being entertained because:

- i) The Act had declared the decision of the Tribunal as final and no further appeals were allowed.
- ii) The Petition was filed under article 227(Refer to the annexure), which is an original jurisdiction and the petitioner was trying to use it as appellate jurisdiction
- iii) That right to appeal is a statutory right and not an inherent right. So appeal can be filed only when provided by a law.

The petitioner contended that the jurisdiction under article 226, 227(Refer to the annexure) and 136 could not be excluded or restricted by the said Act. Therefore, the jurisdiction was available and the petition stands.

Interpret the given provisions of the imaginary act as mentioned and also interpret articles 226 & 227 to decide whether the petition should be entertained or not.

25

CO 4

<p>Q 13</p>	<p>The state assembly of Uttar Pradesh makes a law providing reservation to the religious minorities. The proportion of this reservation is over and above the fifty percent ceiling as imposed by the Supreme Court in Indira Sawhney’s case. This policy of reservation is challenged by an NGO in the High Court on the following grounds:</p> <ul style="list-style-type: none"> i) No more than 50 percent of the total seats can be reserved. ii) There is no permissibility of reservation on the basis of religion <p>The state not only defended the said policy but also contended that law making is a democratic exercise and judiciary does not have any jurisdiction to review the law made by the parliament. The state advocate cited the authoritative statement of Thomas Jefferson opposing the court’s power to judicially review the legislative action. Jefferson writes:</p> <p>“You seem to think it devolved on the judges to decide on the validity of the sedition law. But nothing in the Constitution has given them a right to decide for the executive, more than the executive to decide for them....That instrument (the Constitution) meant that its coordinate branches should have checks on each other. But the opinion which gives to the judges the right to decide what laws are constitutional, and what not, not only for themselves in their spheres of action, but for the legislature and executive, in their own spheres, would make the judiciary a despotic branch.”</p> <p>The High Court rejected the contention and sought authority in the U.S. judgment of Marbury Vs. Madison, wherein Marshal, C.J. wrote-</p> <p>“Supposed to have been long and well established... that the people have an original right to establish, through courts, for their future government, such principles as, in their opinion, shall most conduce to their happiness, is the basis on which the whole fabric has been erected..”</p> <p>The state filed an appeal in the Supreme Court.</p> <p>In light of the above facts, decide:</p> <ul style="list-style-type: none"> i) Whether the power of judicial review is detrimental to the democratic ideals of the Constitution. Justify your answer by appropriate case laws. ii) Whether the impugned policy of reservation can be allowed to stand. Justify your answer by appropriate authority. iii) Enlist and weigh the different aids to construction in the present case. 	<p>25</p>	<p>CO 4</p>

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(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

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(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

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(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

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(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

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(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

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