



**Name:**  
**Enrolment No:**

**UNIVERSITY OF PETROLEUM AND ENERGY STUDIES**  
**End Semester Examination, December 2019**

**Program:** BA. LL.B. (Hons.) Constitutional Law  
**Subject (Course):** Comparative Constitutionalism  
**Course Code :** LLBL 429  
**No. of page/s:** 3

**Semester:** VII  
**Max. Marks:** 100  
**Duration:** 3 Hrs.

**SECTION A (Objective Type Questions/Definitions)**

10

Q. No.	<i>Attempt all questions</i>	Marks	CO
1	Nepal constitution 2015 is the ___ <sup>th</sup> constitution in the history of the country since 1948	2	CO1
2	A Modern understanding of constitutionalism can be found in Thomas Paine’s political writings. Paine wrote his most celebrated work,----- ---	2	CO1
3	Define ‘Constitutional Moment’	2	CO2
4	Constitutionalism: A Contract or Coordination?	2	CO1
5	Explain the Constitution as a "canonical" text	2	CO2

**SECTION B(Short Answer Questions)**

4x5=20

Q. No.	<i>Attempt any four</i>	Marks	CO
6	Explain constitutional transformation as constitutionalism	5	CO4
7	Distinguish administrative constitutionalism and judicial constitutionalism	5	CO3
8	Describe the working of federalism in Switzerland and USA	5	CO1
9	What are the five stages in world constitutional history (each with its typical mode of constitution-making)	5	CO1
10	Analyse the nature and working of legal transplantation or cross national importation of law	5	CO2
11	Discuss the evolution of Nepal Constitution	5	CO2

**SECTION-C (Descriptive/Analytical Questions)**

2x10=20

Q.No.	<i>Answer any Two</i>	Marks	CO
-------	-----------------------	-------	----

12	What are methodological challenges to analyse the Judicial review and the politics of comparative constitutional theory? Provide examples from India and USA	10	CO4
13	'Nepal has limited or no experience with successful constitutional governance and democracy — where constitutionalism and the rule of law are not well developed', Why measuring constitutionalism and democracy become a challenge?	10	CO3
14	The struggle for constitutionalism and the rule of law became evident by the removal of two Chief Justices, Renato Corona of the Philippines on May 29, 2012 and Shirani Bandaranayake of Sri Lanka on January 13, 2013. On the basis of above development, comment the Asian or South Asian constitutionalism.	10	CO2
<b>SECTION-D</b> (Case Studies/ Application Based Questions)			50
Q.No.	<i>Compulsory Question</i>	<b>Marks</b>	<b>CO</b>
15	<p>To set a stage for a meaningful discussion on constitution and constitutionalism, we need to start with the definitions of them to disentangle the theoretical and philosophical meanings underpinning those concepts. A constitution expresses the reasonable ordering of the polity; it is reason's presence within the internal workings of the state itself. Constitutionalism encompasses the idea that a government should not only be sufficiently limited in a way that protects its citizens from arbitrary rule, but also that such a government should be able to operate efficiently and in a way that effectively compels it to operate within its constitutional limitations. Constitutionalism comes from political philosophy and takes the position that a government, in order to be legitimate must have legal limits on its powers. A government that goes beyond its limits loses its authority and legitimacy. One can make clear distinction between traditional and modern constitutionalism. The cotemporary constitutionalism is more closely to the idea that a political and legal order is a matter of societal self-production and that such a special productive moment is not an existential, romantic fiat, but rather a process of practical deliberation and mutual recognition and learning among citizens. Modern constitutionalism offer a new way for the whole citizenry to act collectively to make its own law. The current analysis states that there is a strong connection between the constitutional moment and the notion of democracy into the modernity of constitutionalism. In constitutional moments the people have a voice—or at least the choices in those moments, whoever makes them, must fit the people's interests in some strong sense of coordinating them if the choices are to be at all binding.</p> <p>It would be too much to say of comparative constitutionalists that their ambition is to find the hidden science of constitutionalism that should unite all liberal constitutions as variations on a common theme. Democratic constitutions are quite different from pre-modern constitutional arrangements. At the same time,</p>		

increasing centrality of democracy to political discourse and practice produced significant efforts towards the antagonism and reconciliation of democracy and constitutionalism. Constitutionalism has certain fundamental values that are well defined, lending mechanisms to hold government accountable. The double relationship with democracy constitutionalism is necessary both to realize democracy and to supplement and perhaps qualify democracy. Another tendency is that to explain the constitutionalism with judicial overreaching. The court opinions have emerged as a novel avenue for cross-national importation of law. In this environment, newly created or emboldened courts can draw inspiration from statutes of other countries and the opinions of foreign judges. Many established studies focus more on constitutionalism's impact on litigation rather than broader social change. There is something of disconnect between our analysis and the prevailing mood in the comparative constitutional literature. Largely, the leading scholars in that field have been quite bullish on the prospects of liberal constitutionalism. Our view is deliberately more cautious. We believe that a misguided confidence in liberal constitutionalism's invulnerability can be dangerous, as it can cause us to underestimate the fragility of liberal constitutionalism. By examining different legal systems, one can deduct that there is a nexus between constitutionalism and trust. It is well established that "trust is a salient preoccupation of many theories of political] legitimacy." Trust also plays a significant role in democracies determination and stabilization. It can be argues that in Britain, unlike the United States, the people neither practice, nor have a prevailing ethos of distrust for their government.

A. *Explain the tenets of constitution and its derivative, constitutionalism.*

**10**

**CO1**

B. *What do you understand from constitutional moment? Discuss the main tenets of traditional and modern constitutionalism.*

**10**

**CO4**

C. *As a comparative constitutional law topic how does the transplantation or cross national importation of law could be explained. Analyse the main drawbacks of this approach.*

**10**

**CO2**

D. *How the constitutionalism and democracy can appear opposed to each other? What is anti-thesis or synthesis to this explanation?*

**10**

**CO3**

E. *Evaluate the trust dimensions of UK and US constitutional law*

**10**

**CO2**