



## C. U. SHAH UNIVERSITY Wadhwan City

**FACULTY OF:-** LAW (LL.M.)

**SEMESTER:-** II

**CODE:-** 5LW02JUP1

**NAME:-** JUDICIAL PROCESS

### Teaching and Evaluation Scheme:-

Subject Code	Name of the Subject	Teaching Scheme (Hours)				Credits	Evaluation Scheme							
		Th	Tu	Pr	Total		Theory				Practical (Marks)			Total
							Sessional Exam		University Exam		Internal		University	
							Marks	Hrs	Marks	Hrs	Pr/Viva	TW	Pr	
5LW02JUP1	JUDICIAL PROCESS	6	0	0	6	6	30	1.5	70	3	---	---	---	100

### 03. JUDICIAL PROCESS

#### Objectives of the course

A lawyer, whether academic or professional, is expected to be competent to analyse and evaluate the legal process from a broader juristic perspective. The objective of this paper is to study the nature of judicial process as an instrument of social ordering. It is intended to highlight the role of court as policy maker, participant in the power process and as an instrument of social change. This paper further intends to expose the intricacies of judicial creativity and the judicial tools and techniques employed in the process.

Since the ultimate aim of any legal process or system is pursuit of justice, a systematic study of the concept of justice and its various theoretical foundations is required. This paper, therefore, intends to familiarise the students with various theories, different aspects and alternative ways, of attaining justice.

#### Syllabus

##### 1. Nature of judicial process

- 1.1. Judicial process as an instrument of social ordering
- 1.2. Judicial process and creativity in law – common law model – Legal Reasoning and growth of law – change and stability.

14

- 1.3. The tools and techniques of judicial creativity and precedent.
- 1.4. Legal development and creativity through legal reasoning under statutory and codified systems.

##### 2. Special Dimensions of Judicial Process in Constitutional Adjudications.

- 2.1. Notions of judicial review
- 2.2. 'Role' in constitutional adjudication – various theories of judicial role.
- 2.3. Tools and techniques in policy-making and creativity in constitutional adjudication.
- 2.4. Varieties of judicial and juristic activism
- 2.5. Problems of accountability and judicial law-making.

##### 3. Judicial Process in India

- 3.1. Indian debate on the role of judges and on the notion of judicial review.
- 3.2. The “independence” of judiciary and the “political” nature of judicial process
- 3.3. Judicial activism and creativity of the Supreme Court-the tools and techniques of creativity.
- 3.4. Judicial process in pursuit of constitutional goals and values – new dimensions of judicial activism and structural challenges
- 3.5. Institutional liability of courts and judicial activism – scope and limits.

#### **4. The Concepts of Justice**

- 4.1. The concept of justice or Dharma in Indian thought
- 4.2. Dharma as the foundation of legal ordering in Indian thought.
- 4.3. The concept and various theories of justice in the western thought.
- 4.4. Various theoretical bases of justice: the liberal contractual tradition, the liberal utilitarian tradition and the liberal moral tradition.

#### **5. Relation between Law and Justice**

- 5.1. Equivalence Theories – Justice as nothing more than the positive law of the stronger class.
- 5.2. Dependency theories – For its realization justice depends on law, but justice is not the same as law.
- 5.3. The independence of justice – means to end relationship of law and justice – The relationship in the context of the Indian constitutional ordering.
- 5.4. Analysis of selected cases of the Supreme Court where the judicial process can be seen as influenced by theories of justice.

#### **Select Bibliography**

- Julius Stone, *The Province and Function of Law*, Part II, 1.8-16 (2000), New Delhi.
- Cardozo, *The Nature of Judicial Process* (1995) Universal, New Delhi.
- Henry J. Abraham, *The Judicial Process* (1998), Oxford.
- W. Friedmann, *Legal Theory* (1960), Stevens, London.
- Bodenheimer, *Jurisprudence – the Philosophy and Method of the Law* (1997), Universal, Delhi
- J. Stone, *Legal System and Lawyers’ Reasonings* (1999), Universal, Delhi
- U. Baxi, *The Indian Supreme Court and Politics* (1980), Eastern, Lucknow.
- 15
- Rajeev Dhavan, *The Supreme Court of India – A Socio-Legal Critique of its Juristic Techniques* (1977), Tripathi, Bombay.
- John Rawls, *A Theory of Justice* (2000), Universal, Delhi
- Edward H. Levi, *An introduction to Legal Reasoning* (1970), University of Chicago.



## C. U. SHAH UNIVERSITY Wadhwan City

**FACULTY OF:- LAW (LL.M.)**

**SEMESTER: -II**

**CODE: - 5LW02LER1**

**NAME: – LEGAL EDUCATION AND RESEARCH METHODOLOGY**

### Teaching and Evaluation Scheme:-

Subject Code	Name of the Subject	Teaching Scheme (Hours)				Credits	Evaluation Scheme								
		Th	Tu	Pr	Total		Theory				Practical (Marks)				Total
							Sessional Exam		University Exam		Internal		University		
							Marks	Hrs	Marks	Hrs	Pr/Viva	TW	Pr		
5LW02LER1	LEGAL EDUCATION AND RESEARCH METHODOLOGY	6	0	0	6	6	30	1.5	70	3	---	---	---	100	

### LEGAL EDUCATION AND RESEARCH METHODOLOGY

#### Objectives of the course

A post-graduate student of law should get an insight into the objectives of legal education. He should have an exposure to programmes like organization of seminars, publication of law journals and holding of legal aid clinics.

Law is taught in different ways in different countries. The LL.M. course, being intended also to produce lawyers with better competence and expertise, it is imperative that the student should familiarise himself with the different systems of legal education. The lecture method both at LL.B. level and LL.M. level has many demerits. The existing lacunae can be eliminated by following other methods of learning such as case methods, problem method, discussion method, seminar method and a combination of all these methods. The student has to be exposed to these methods so as to develop his skills.

Growth of legal science in India depends on the nature and career of legal research. The syllabus is designed to develop also skills in research and writing in a systematic manner.

#### Syllabus

1. Objectives of Legal Education
2. Lecture Method of Teaching – Merits and demerits
3. The Problem Method
4. Discussion method and its suitability at postgraduate legal teaching
5. The Seminar Method of teaching
6. Examination system and problems in evaluation – external and internal assessment.
7. Student participation in law school programmes – Organisation of Seminars, publication of journal and assessment of teachers.
8. Clinical legal education – legal aid, legal literacy, legal survey and law reform.
9. **Research Methods**

- 9.1. Social Legal Research
- 9.2. Doctrinal and non-doctrinal
- 9.3. Relevance of empirical research
- 9.4. induction and deduction

#### **Identification of Problem of research**

- 9.5. What is a research problem?
- 9.6. Survey of available literature and bibliographical research.
  - 9.6.1. Legislative materials including subordinate legislation, notification and policy statements.
  - 9.6.2. Decisional materials including foreign decisions; methods of discovering the “rule of the case” tracing the history of important cases and ensuring that these have not been over-ruled; discovering judicial conflict in the area pertaining to the research problem and the reasons thereof.
- 16
- 9.6.3. Juristic Writings – a survey of juristic literature relevant to select problems in India and foreign periodicals.
- 9.6.4. Compilation of list of reports or special studies conducted relevant to the problem.

#### **10. Preparation of the Research Design**

- 10.1. Formulation of the Research problem
- 10.2. Devising tools and techniques for collection of data: Methodology
  - 10.2.1. Methods for the collection of statutory and case materials and juristic literature
  - 10.2.2. Use of historical and comparative research materials
  - 10.2.3. Use of observation studies
  - 10.2.4. Use of questionnaires/interview
  - 10.2.5. Use of case studies
  - 10.2.6. Sampling procedures – design of sample, types of sampling to be adopted.’
  - 10.2.7. Use of scaling techniques
  - 10.2.8. Jurimetrics
- 10.3. Computerized Research – A study of legal research programmes such as Lexis and West law coding
- 10.4. Classification and tabulation of data – use of cards for data collection – Rules for tabulation. Explanation of tabulated data.
- 10.5. Analysis of data

#### **Bibliography**

- High Brayal, Nigel Dunean and Richard Crimes, Clinical Legal Education: Active Learning in your Law School, (1998) Blackstone Press Limited, London.
- S.K.Agrawal (Ed.), Legal Education in India (1973), Tripathi, Bombay.
- N.R.Madhava Menon, (ed) A Handbook of Clinical Legal Education, (1998) Eastern Book Company, Lucknow.
- M.O.Price, H.Bitner and Bysiewiez, Effective Legal Research (1978)
- Pauline V. Young Scientific Social Survey and Research , (1962)
- William J. Grade and Paul K.Hatt, Methods in Social Research, Mc Graw-Hill Book Company, London
- H.M.Hyman, Interviewing in Social Research (1965)
- Payne, The Art of Asking Questions (1965)
- Erwin C.Surrency, B.Fielf and J.Crea, A Guide to Legal Research (1959)
- Morris L.Cohan, Legal Research in Nutshell, (1996), West Publishing Co.
- Havard Law Review Association, Uniform System of Citations.
- ILI Publication, Legal Research and Methodology.



## C. U. SHAH UNIVERSITY Wadhwan City

**FACULTY OF:- LAW (LL.M.)**

**SEMESTER: -II**

**CODE: - 5LW02IPR1**

**NAME: – Law of Industrial and Intellectual Property**

### Teaching and Evaluation Scheme:-

Subject Code	Name of the Subject	Teaching Scheme (Hours)				Credits	Evaluation Scheme							
		Th	Tu	Pr	Total		Theory				Practical (Marks)			Total
							Sessional Exam		University Exam		Internal		University	
							Marks	Hrs	Marks	Hrs	Pr/Viva	TW	Pr	
5LW02IPR1	Law of Industrial and Intellectual Property	6	0	0	6	6	30	1.5	70	3	---	---	---	100

### Law of Industrial and Intellectual Property

#### Objectives of the course

The concept of intellectual property rights as developed in India cannot be divorced from the developments in the international arena as well as in the nation-to-nation relations. The impact of IPR regime on the economic front is emphasised in this paper. In particular, greater attention would be given here to the law relating to unfair and restrictive trade practices as affecting the regime of intellectual property rights. New areas of development, especially plant patenting and patenting of new forms of life (biotechnology) should receive special attention. Evidentiary aspects of infringement, and human right dimensions of the regime of intellectual property law will also be addressed. The following syllabus prepared with this perspective will be spread over a period of one semester.

#### Syllabus

##### 1. IPR and International Perspectives

##### 2. Trademarks and Consumer Protection (Study of UNCTAD report on the subject)

##### 3. The Legal Regime of Unfair Trade Practices and of Intellectual Industrial Property

3.1. United Nations approaches (UNCTAD, UNCITRAL)

3.2. EEC approaches

3.3. Position in U.S.

3.4. The Indian situation.

##### 4. Special Problems of the Status of Computer Software in Copyright and Patent Law: A Comparative Study.

##### 5. Biotechnology Patents:

5.1. Nature and types of biotechnology patents

5.2. Patent over new forms of life : TRIPS obligations

5.3. Plant patenting

- 5.4. Sui generis protection for plant varieties
- 5.5. Multinational ownership
- 5.6. Regulation of environment and health hazards in biotechnology patents
- 5.7. Indian policy and position.

**6. Patent Search, Examination and Records:**

- 6.1. International and global patent information retrieval systems (European Patent Treaty).
- 6.2. Patent Co-operation Treaty( PCT )
- 6.3. Differences in resources for patent examination between developed and developing societies
- 6.4. The Indian situation

**7. Special Problems of Proof of Infringement:**

- 7.1. Status of intellectual property in transit - TRIPS obligation - Indian position.
- 7.2. The evidentiary problems in action of passing off.

42

- 7.3. The proof of non-anticipation, novelty of inventions protected by patent law
- 7.4. Evidentiary problems in piracy : TRIPS obligation - reversal of burden of proof in process patent
- 7.5. Need and Scope of Law Reforms.

**8. Intellectual Property and Human Right**

- 8.1. Freedom of speech and expression as the basis of the regime of intellectual property right - copyright protection on internet - WCT (WIPO Copyright Treaty, 1996).
- 8.2. Legal status of hazardous research protected by the regime of intellectual property law.
- 8.3. Human right of the impoverished masses intellectual property protection of new products for healthcare and food security
- 8.4. Traditional knowledge - protection- biodiversity convention- right of indigenous people.

**Select bibliography**

- Special attention should be given to literature of the U.N. System, WIPO and the UNESCO.
- Dr. Ellizebeth Verkey, Law of Patents, EBC, 2012 Prabuddha Ganguly, Intellectual Property Rights, Unleashing the Knowledge Economy, Tata McGraw Hill, 2008
- Vijay Malik, Law relating to Drugs and Cosmetics, EBC, 2013 (to be added)
- Terenee P. Stewart (ed.), The GATT Uruguay Round: A Negotiating History (1986-1994) the End Game (Part - 1)(1999), Kluwer
- Iver P. Cooper, Biotechnology and Law (1998), Clerk Boardman Callaghan, New York. David Bainbridge, Software Copyright Law (1999), Butterworths
- Sookman, Computer Law (1998), Carswell
- Carlos M. Correa(ed.), Intellectual Property and International Trade (1998), Kluwer
- Patent Co-operation Treaty Hand Book (1998), Sweet and Maxwell
- Christopher Wadlow, The Law Of Passing-Off (1998), Sweet and Maxwell
- W.R.Cornish, Intellectual Property Law (1999), Sweet and Maxwell



## C. U. SHAH UNIVERSITY Wadhwan City

**FACULTY OF:- LAW (LL.M.)**

**SEMESTER: -II**

**CODE: - 5LW01LE11**

**NAME: – Law of Export Import Regulation**

### Teaching and Evaluation Scheme:-

Subject Code	Name of the Subject	Teaching Scheme (Hours)				Credits	Evaluation Scheme							
		Th	Tu	Pr	Total		Theory				Practical (Marks)			Total
							Sessional Exam		University Exam		Internal		University	
							Marks	Hrs	Marks	Hrs	Pr/Viva	TW	Pr	
5LW01LE11	Law of Export Import Regulation	6	0	0	6	6	30	1.5	70	3	---	---	---	100

### Law of Export Import Regulation

#### Objectives of the course

After independence India has embarked upon all round efforts to modernise her economy through developmental ventures. Greater and greater emphasis is placed on increase of production in both industrial and agricultural sectors. Besides, there was the ever-pressing need for raising capital for investment in certain basic and key industries. All these required a considerably high rate of investment of capital. The process of modernisation necessitated the adoption of newer technologies for industry and agriculture. These technologies had to be borrowed from other developed countries. This, in turn, needed foreign exchange which could be earned by the increased exports of goods and raw materials from India. The need for accelerating the export trade of India's developing economy can hardly be over emphasised. Export earnings enable a developing country to finance its massive requirements of growth, to maintain its essential imports and thereby stimulate the process of its economic developments. In the words of Prof. V.K. R.V. Rao: "In fact, expansion of exports may well be described as an integral part of the development process, neglect of which can only be at the peril of development itself". Increasing exports have been necessitated to meet the growing needs of defence. India is a country rich in natural resources. One of the approaches to combat its economic backwardness could be in large-scale production and in maximization of its exports. Import and export of goods and raw materials is a complex, complicated and intricate activity. It involves elaborate economic, fiscal, budgetary and monetary policy considerations. Export and Import control

43

policy is also closely connected with country's balance of payment position. The detailed procedures for imports and exports are provided in the Hand Book. The Union Government used to declare its import and export policy for a three-year period. At present they declare the policy for five years. The controls on exports and imports are closely connected with the Foreign Trade Regulation Act 1992. This course is designed to acquaint the students about the parameters of legal controls on imports and

exports. The following syllabus prepared with these objectives will comprise about 42 units of onehour

duration each spread over a period of one semester.

### **Syllabus**

#### **1. Introduction**

1.1. State control over import and export of goods - from rigidity to liberalisation.

1.2. Impact of regulation on economy.

#### **2. The Basic Needs of Export and Import Trade**

2.1. Goods

2.2. Services

2.3. Transportation

#### **3. International Regime**

3.1. WTO agreement

3.2. WTO and tariff restrictions

3.3. WTO and non-tariff restrictions

3.4. Investment and transfer of technology

3.5. Quota restriction and anti-dumping

3.6. Permissible regulations

3.7. Quarantine regulation

3.8. Dumping of discarded technology and goods in international market

3.9. Reduction of subsidies and counter measures.

#### **4. General Law on Control of Imports and Exports**

4.1. General scheme

4.2. Legislative control

4.2.1. Power of control : Central government and RBI

4.2.2. Foreign Trade Development and Regulation Act 1992

4.2.3. Restrictions under customs law

4.2.3.1. Prohibition and penalties

4.3. Export-Import formulation : guiding features

4.3.1. Control under FEMA

4.3.2. Foreign exchange and currency

4.3.2.1. Import of goods

4.3.2.2. Export promotion councils

4.3.2.3. Export oriented units and export processing zones

#### **5. Control of Exports**

5.1. Quality control

44

5.2. Regulation on goods

5.3. Conservation of foreign exchange

5.3.1. Foreign exchange management

5.3.2. Currency transfer

5.3.3. Investment in foreign countries

#### **6. Exim Policy : Changing Dimensions**

6.1. Investment policy : NRIs, FIIs (foreign institutional investors), FDIs

6.2. Joint venture

6.3. Promotion of foreign trade

6.4. Agricultural products

6.5. Textile and cloths

6.6. Jewellery

6.7. Service sector

#### **7. Law Relating to Customs**

7.1. Prohibition on importation and exportation of goods

7.2. Control of smuggling activities in export-import trade

7.3. Levy of, and exemption from, customs duties

7.4. Clearance of imported goods and export goods



7.5. Conveyance and warehousing of goods

**8. Regulation on Investment**

8.1. Borrowing and lending of money and foreign currency

8.2. Securities abroad - issue of

8.3. Immovable property - purchase abroad

8.4. Establishment of business outside

8.5. Issue of derivatives and foreign securities – GDR (global depositories receipts), ADR (American depository receipts) and Uro

8.6. Investment in Indian banks

8.7. Repatriation and surrender of foreign securities

**9. Technology transfer**

9.1. Restrictive terms in technology transfer agreements

9.2. Automatic approval schemes

**Select bibliography**

Government of India, Handbook of Import Export Procedures, (Refer to the latest edition)

Government of India Import and Export Policy (1997 -2002)

The Students should consult the relevant volumes of the Annual Survey of Indian Law, published by the Indian law Institute, New Delhi.

Foreign Trade Development and Regulation Act 1992 and Rules

Foreign Exchange Management Act 1999

Marine Products Export Development Authority Act 1972

45

Customs Manual (Latest edition)

Final Treaty of GATT, 1994.

How to Export?- Nabhi Board of Exports , New Delhi Nabhi Publications