

BCI C 17 ARBITRATION, CONCILIATION AND ALTERNATE DISPUTE RESOLUTION SYSTEM

Objectives of the course

The major concern of law is conflict resolution. Familiarization with the modalities and techniques of resolution of conflict is a necessary component in the endeavours of developing expertise in juridical exercise. The traditional justice delivery system through adjudication by courts had already given way to a large extent to many an alternative mode of dispute resolution in the common law countries. The advent of globalisation has enthused this transformation everywhere. The study of ADR is highly significant in moulding the students of law to act as soldiers of justice in the ever-changing socio-economic scenario. The course aims to give the students an insight into the processes of arbitration, conciliation and mediation in areas where the traditional judicial system had its sway in the past and in the new areas of conflicts that demand resolution by alternative methods. No doubt, the course has to be taught with comparative and international perspectives with a view to bringing out the essential awareness of the national and international systems emerging at the present context.

This paper with the above-mentioned perspectives comprises about 84 units of one hour duration.

Syllabus

1. Arbitration : meaning, scope and types

~~units - 15~~

1.1. Distinctions

1.1.1. 1940 law and 1996 law: UNCITRAL model law

1.1.2. Arbitration and conciliation

1.1.3. Arbitration and expert determination

1.2. Extent of judicial intervention

1.3. International commercial arbitration

Law

~~units 15~~

2. Arbitration agreement

- 2.1. Essentials
- 2.2. Kinds
- 2.3. Who can enter into arbitration agreement
- 2.4. Validity
- 2.5. Reference to arbitration
- 2.6. Interim measures by court

3. Arbitration Tribunal

~~units 10~~

- 3.1. Appointment
- 3.2. Challenge
- 3.3. Jurisdiction of arbitral tribunal
 - 3.3.1. Powers
 - 3.3.2. Grounds of challenge
- 3.4. Procedure
- 3.5. Court assistance

4. Award

~~units 10~~

- 4.1. Rules of guidance
- 4.2. Form and content
- 4.3. Correction and interpretation
- 4.4. Grounds of setting aside an award
 - 4.4.1. Can misconduct be a ground?
 - 4.4.2. Incapacity of a party, invalidity of arbitration agreement
 - 4.4.3. Want of proper notice and hearing
 - 4.4.4. Beyond the scope of reference

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- 4.4.5. Contravention of composition and procedure
- 4.4.6. Breach of confidentiality
- 4.4.7. Impartiality of the arbitrator
- 4.4.8. Bar of limitation, res judicata
- 4.4.9. Consent of parties
- 4.5. Enforcement

5. Appeal and revision

~~units 7~~

6. Enforcement of foreign awards

~~units 7~~

- 6.1. New York convention awards
- 6.2. Geneva convention awards

7. Conciliation

~~units 10~~

- 7.1. Distinction between "Conciliation", "negotiation", "mediation", and "arbitration".
- 7.2. Appointment
- 7.3. Statements to conciliator
- 7.4. Interaction between conciliator and parties
 - 7.4.1. Communication
 - 7.4.2. Duty of the parties to co-operate
 - 7.4.3. Suggestions by parties
 - 7.4.4. Confidentiality
- 7.5. Resort to judicial proceedings
- 7.6. Costs

8. Rule -making power

~~units 5~~

- 8.1. High Court
- 8.2. Central Government

Law

9. Legal Services Authorities Act : Scope

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mits-5

Select Bibliography

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- 1 Law of Arbitration and Conciliation, 1996-
Dr. Avtar Singh (C.L.A.)
- 2 मध्यस्थता एवं सुलह अधिनियम, 1996

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The paper consists of water (Prevention and Control of Pollution) Act, 1974. Air (Prevention and Control of Pollution) Act, 1981 and Environment Protection Act, 1986.

BCI C 18 ENVIRONMENTAL LAW

Objectives of the course

The Environmental law programme, in contrast to other law curricula, has certain characteristics which make it unique and is one of the best instruments for breaking the ice of colonial legal education. Its uniqueness lies in the fact that the problems it raises do not relate merely to specific individuals but about such matters as national development, industrial policy, policies concerning natural resources, injustice to communities, inter generational equity and prevention of pollution. All these issues relate to problematic about construction of a just, humane and healthy society. Secondly, environmental law necessarily demands an inter-disciplinary approach. Thirdly, uniqueness of the subject is borne out by the new epistemological outlook which ecology-related knowledge has brought about in recent times. The development of ecological knowledge has necessitated an overall change not only in managerial studies but also in socio-legal explorations. This approach to the growing dimensions of environmental law is essential.

This paper with the above-mentioned perspectives comprises of about 84 units of one-hour duration.

1. Concept of environment and Pollution

~~units-4~~

- 1.1. Environment
 - 1.1.1. Meaning and contents
- 1.2. Pollution
 - 1.2.1. Meaning
 - 1.2.2. Kinds of pollution
 - 1.2.3. Effects of pollution

2. Legal control: historical perspectives

~~units-4~~

- 2.1. Indian tradition : dharma of environment
- 2.2. British Raj - industrial development and exploitation of nature
 - 2.2.1. Nuisance: penal code and procedural codes

Law

- 2.3. Free India - continuance of British influence
- 2.3.1. Old laws and new interpretations

3. Constitutional Perspectives

units=15

- 3.1. Constitution making - development and property oriented approach
- 3.2. Directive principles
 - 3.2.1. Status, role and interrelationship with fundamental rights and fundamental duties.
- 3.3. Fundamental Duty
 - 3.3.1. contents
 - 3.3.2. judicial approach
- 3.4. Fundamental Rights
 - 3.4.1. Rights to clean and healthy environment
 - 3.4.2. Right to education
 - 3.4.3. Right to information
 - 3.4.4. Environment v. Development
- 3.5. Enforcing agencies and remedies
 - 3.5.1. Courts
 - 3.5.2. Tribunal
 - 3.5.3. Constitutional, statutory and judicial remedies
- 3.6. Emerging principles
 - 3.6.1. Polluter pays: public liability insurance
 - 3.6.2. Precautionary principle
 - 3.6.3. Public trust doctrine
 - 3.6.4. Sustainable development

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4. Water and Air Pollution

~~Units 4~~

- 4.1. Meaning and standards
- 4.2. Culprits and victims
- 4.3. Offences and penalties
- 4.4. Judicial approach

5. Noise Pollution

~~Units 4~~

- 5.1. Legal control
- 5.6. Court's of balancing : permissible and impermissible noise

6. Environment Protection

~~units 15~~

- 6.1. Protection agencies: power and functions
- 6.2. Protection : means and sanctions
- 6.3. Emerging protection through delegated legislation
 - 6.3.1. Hazardous waste,
 - 6.3.2. Bio-medical waste
 - 6.3.3. Genetic engineering
 - 6.3.4. Disaster emergency preparedness
 - 6.3.5. Environment impact assessment.
 - 6.3.6. Coastal zone management
 - 6.3.7. Environmental audit and eco mark
- 6.4. Judiciary : complex problems in administration of environmental justice

7. Town and country planning

~~units 4~~

- 7.1. Law : enforcement and constrain
- 7.3. Planning - management policies

Law

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8. Forest and greenery

~~units 10~~

- 8.1. Greenery conservation laws
 - 8.1.1. Forest conservation
 - 8.1.2. Conservation agencies
 - 8.1.3. Prior approval and non-forest purpose
 - 8.1.4. Symbiotic relationship and tribal people
 - 8.1.5. Denudation of forest : judicial approach
- 8.2. Wild life
 - 8.2.1. Sanctuaries and national parks.
 - 8.2.2. Licensing of zoos and parks
 - 8.2.3. State monopoly in the sale of wild life and wild life articles
 - 8.2.4. Offences against wild life.

9. Bio-diversity

~~units 4~~

- 9.1 Legal control
- 9.2 Control of eco-unfriendly experimentation on animals, plants, seeds and micro organism.

10. International regime

~~units 15~~

- 10.1. Stockholm conference
- 10.2. Green house effect and ozone depletion
- 10.3. Rio conference
- 10.4. Bio-diversity
- 10.5. U.N. declaration on right to development.
- 10.6. Wetlands

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Select bibliography

Aarmin Rosencranz, et al., (eds.), *Environmental Law and Policy in India*, (2000), Oxford

R.B.Singh & Suresh Misra, *Environmental Law in India* (1996), Concept Publishing Co., New Delhi.

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- 1 Environment Law in India—Nagendra Singh,
- 2 Environment Law—Dr. I. A. Khan (C. L. A.)
- 3 Environment Law in India—R. B. Singh
- 4 पर्यावरण विधि—डॉ. जे. जे. आर उपाध्याय
- 5 पर्यावरण प्रदूषण—एन. एन. गिरी
- 6 पर्यावरण विधि—(सी. एल. पी.)—ए. के. दुवे

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Paper 8—Interpretation of Statutes.

**The paper consists of Interpretation of Statutes.
Topics prescribed :**

UGC Model Curriculum

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BCI C 20 INTERPRETATION OF STATUTES

General principles of Interpretation, Literal Interpretation, Internal Aids External Aids, Golden Rule. Mischievous Rule, Interpretation of Penal Laws, Interpretation of Taxing statutes. Interpretations of Constitution, Mandator or Directory Provisions, Restrospective operation of Statute Repeal of Statutes.

Objectives of the course

Legislation is the major source of law of the modern era. Legislatures enact laws after much deliberation. No doubt in this process they have to take into account the present and future needs of the people. What are the matters to be reckoned with by legislature while enacting laws? With the emergence of legislation, interpretation of statutes became a method by which judiciary explores the intention behind the statutes. Judicial interpretation involves construction of words, phrases and expressions. In their attempt to make the old and existing statutes contextually relevant, courts used to develop certain rules, doctrines and principles of interpretation. Judiciary plays a highly creative role in this respect. What are the techniques adopted by courts in construing statutes? How far are they successful in their strategy?

With the above problems and perspectives in view, this paper comprises of about 84 units of one hour duration.

Syllabus

1. Principles of Legislation ~~units 19~~
 - 1.1. Law-making - the legislature, executive and the judiciary
 - 1.2. Principle of utility
 - 1.3. Relevance of John Rawls and Robert Nozick - individual interest to community interest
 - 1.4. Operation of these principles upon legislation
 - 1.5. Distinction between morals and legislation

2. Interpretation of Statutes ~~units 8~~
 - 2.1. Meaning of the term 'statutes'
 - 2.2. Commencement, operation and repeal of statutes
 - 2.3. Purpose of interpretation of statutes.

3. Aids to Interpretation

- 3.1. Internal aids
 - 3.1.1. Title
 - 3.1.2. Preamble
 - 3.1.3. Headings and marginal notes.
 - 3.1.4. Sections and sub-sections
 - 3.1.5. Punctuation marks.
 - 3.1.6. Illustrations, exceptions, provisos and saving clauses
 - 3.1.7. Schedules
 - 3.1.8. Non-obstante clause.
- 3.2. External aids
 - 3.2.1. Dictionaries
 - 3.2.2. Translations
 - 3.2.3. Travaux Preparatoires
 - 3.2.4. Statutes in pari materia
 - 3.2.5. Contemporanea Exposito
 - 3.2.6. Debates, inquiry commission reports and Law Commission reports

4. Rules of Statutory Interpretation

- 4.1 Primary Rules
 - 4.1.1. Literal rule
 - 4.1.2. Golden rule
 - 4.1.3. Mischief rule (rule in the Heydon's case)
 - 4.1.4. Rule of harmonious construction
- 4.2 Secondary Rules
 - 4.2.1. Noscitur a sociis

- 4.2.2. Eiusdem generis
- 4.2.3. Reddendo singula singulis

5. Presumptions In statutory interpretation

~~units 7~~

- 5.1. Statutes are valid
- 5.2. Statutes are territorial in operation
- 5.3. Presumption as to jurisdiction
- 5.4. Presumption against what is inconvenient or absurd
- 5.5. Presumption against intending injustice
- 5.6. Presumption against impairing obligations or permitting advantage from one's own wrong
- 5.7. Prospective operation of statutes

6. Maxims of Statutory Interpretation

~~units 13~~

- 6.1. Delegatus non potest delegare
- 6.2. Expressio unius exclusio alterius
- 6.3. Generalia specialibus non derogant
- 6.4. In pari delicto potior est conditio possidentis
- 6.5. Utres valet potior quam pareat
- 6.6. Expressum facit cessare tacitum
- 6.7. In bonam partem

7. Interpretation with reference to the subject matter and purpose

~~units 10~~

- 7.1. Restrictive and beneficial construction
 - 7.1.1. Taxing statutes
 - 7.1.2. Penal statutes
 - 7.1.3. Welfare legislation

- 7.2. Interpretation of substantive and adjunctival statutes
- 7.3. Interpretation of directory and mandatory provisions
- 7.4. Interpretation of enabling statutes
- 7.5. Interpretation of codifying and consolidating statutes
- 7.6. Interpretation of statutes conferring rights
- 7.7. Interpretation of statutes conferring powers.

8. Principles of Constitutional Interpretation

units 10

- 8.1. Harmonious construction
- 8.2. Doctrine of pith and substance
- 8.3. Colourable legislation
- 8.4. Ancillary powers
- 8.5. "Occupied field"
- 8.6. Residuary power
- 8.7. Doctrine of repugnancy

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V.Sarathi, *Interpretation of Statutes*, (1984) Eastern, Lucknow

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- Lucknow
- 1 Interpretation of Statutes—Maxwell.
 - 2 General Clauses Act and Interpretation of Statutes—N. S. Bindra.
 - 3 Interpretation of Statutes—G. P. Singh
 - 4 कानूनों का निर्वचन— दानसिंह चौधरी
 - 5 सविधियों की व्याख्या—एम पी. टण्डन
 - 6 कानूनों का निर्वचन—डॉ. भट्टाचार्य ।

General English.

The paper consists of Essays in English Language on legal subject, Legal terms from English to Hindi and Vice-Versa.

- 1 Essays in English Language on a Legal subject.
- 2 Translation from Hindi to English
- 3 Translation from English to Hindi
- 4 Hindi meaning of Legal Words

The following topics are prescribed for Essays written

- 1 Essential of a valid Contract.
- 2 Master's Liability under Law of Torts.
- 3 Salient Features of the Indian Constitution.
- 4 Emergency Provisions in the Indian Constitution.
- 5 Distribution of Legislative Powers.
- 6 Marriage Under Hindu Law.
- 7 Right of Private Defence.
- 8 Offences relating to Property.

Command of language is an essential quality of a lawyer for presentation of not only pleadings but also arguments before a court of law. Efficiency of advocacy depends upon communication skill to a substantial extent. No doubt, he should be conversant with the legal terminology. Precision, clarity and cogence are governing principles of legal writing and dialogue. A student of law should get an opportunity to be familiar with the writings of eminent jurists of the past. This exposition will stand him in good stead in understanding the intricate problems of law and will equip him with the faculty of articulation and sound writing.

This paper with the above perspectives in view comprises about 84 units of one hour duration.

Syllabus

1. Introduction to Legal Language ~~units 10~~
 - 1.1. Characteristics of Legal Language
 - 1.2. History of Legal Language
 - 1.3. Legal Language in India
 - 1.4. English as a medium of communication for legal transaction in India
2. Introduction to oral communication skills ~~units 6~~
 - 2.1. Passive and active listening - questioning - non-verbal communication
 - 2.2. Listening comprehension
 - 2.3. Passive and active listening - questioning - non-verbal communication
3. Vocabulary ~~units 8~~
 - 3.1. Consulting a dictionary - consulting a thesaurus
 - 3.2. Synonyms and antonyms - related words - regular vocabulary exercises

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~~77~~~~units-8~~4. **Phonetics theory and practice**

- 4.1. The phonetic script
- 4.2. Consulting a dictionary for pronunciation - exercise with audio aids
- 4.3. Reading exercises - stress, accent and intonation suitable for Indian speaker with emphasis on clarity of speech and felicity of expression
 - 4.3.1. Reading comprehension of principles and practice

~~units-10~~5. **Legal terminology**

- 5.1. Terms used in civil law and criminal law
- 5.2. Latin words and expressions - law register

6. **Fundamental principles of Legal Writing**

- 6.1. Concision - clarity - cogency - simplicity of structure
- 6.2. Attention and awareness of practical legal import of sentences
- 6.3. Brief writing and drafting of law reports
- 6.4. Writing of case comments
- 6.5. Essay writing on topics of legal interest

~~units-10~~7. **General Juristic writings in English**~~units-20~~8. **Proficiency in regional language**

(Every student should acquire skills of understanding, analysis, writing and communication in the regional language which he has to use in the interaction with the potential clientele. Necessarily, the proficiency in the language will contribute in a substantial measure to a successful practice in law. The university academic bodies are given the discretion to evolve 20 units for this purpose)

Selected bibliography

- Abbet Parry, Seven Lamps of Advocacy
- Mogha's, Conveyancing

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Trayner's Latin Magazines, (1997) University, New Delhi.

1 Squires and Rembaur legal writing in a nut shell (1982)
N.M. Tripathi, Bombay.

2 Proficiency in Legal English—Jain.

P.T.O.

Paper 10—Moot Court, Pre-Trial preparations and Participation in Trial-proceedings. (Internal Assessment)

The paper consists of Moot Court, Observance of Trial, Interviewing techniques and pre-trial preparations.

- (a) Moot Court (40 Marks) Every Candidate will do Moot Court. The Moot Court work will be on assigned problems and it will be evaluated for 20 marks for written submissions and 20 marks for oral advocacy.
- (b) Observance of Trial in Two Cases, One civil and one Criminal (30 Marks) Students will attend two trials and maintain a record and enter the various steps observed during their attendance on different days in the Court assignment.
- (c) Interviewing techniques and Pre-trial preparations (30 Marks). Each Student will observe Two interviewing sessions of clients at the Lawyers, Office/Legal Aid Office and record the proceedings in a Diary which carry 15 Marks. Each student will further observe the preparation of documents and court papers by the Advocate and the procedure for the filing of the suit/petition. This will be recorded in the Diary which will carry 15 Marks.

The performance of the candidates will be assessed through the practical performance by process of Internal assessment.