

VEER NARMAD SOUTH GUJARAT UNIVERSITY, SURAT.

S.Y. LL.B.

SEMESTER – III

PAPER-10 FAMILY LAW - I

Law relating to marriage & kinship;
customary practices and State Regulation;
conversion and its effect on Family;
Matrimonial remedies;
Alimony and Maintenance;
Family and its changing patterns;
Settlement of spousal property;
Uniform Civil Code

85 Marks

Prescribed Cases

15 Marks

(1) Marriage and kinship :

1. Evolution of the institution of marriage and family
2. Role of religious rituals and practices in moulding the regulating to marital relations.
3. Types of Family based upon.
4. Lineage - patrilineal matrilineal.
5. Authority structure - patriarchal and matriarchal
6. Location - patrilocal and matrilocal
7. Number of conjugal units - nuclear, extended, joint and composite.
8. Emerging concepts : maitri sambandh and divided home.

(2) Customary practices and state regulation :

- (1) Polygamy (2) Concubinage (3) Child Marriage
(4) Sati (5) Dowry

(3) Conversion and its effect on family :

- (1) Marriage (2) Adoption (3) Guardianship (4) Succession

(4) Matrimonial Remedies :

1. Non-Judicial resolution
2. Customary desolution of marriage, unnatural divorce, divorce by mutual consent and other modes of dissolution.
3. Divorce under Muslim Personal Law - talaq and talaq-c-tafweez.
4. Judicial resolution of marital conflicts : the family court.
5. Nullity of marriage

6. Option of puberty.
7. Restitution of Conjugal rights
8. Judicial separation
9. Desertion : a ground for matrimonial relief.
10. Cruelty : a ground for matrimonial relief.
11. Adultery : a ground for matrimonial relief.
12. Others : ground for matrimonial relief
13. Divorce by mutual consent under : Special Marriage Act, 1954: Hindu Marriage Act, 1955; Muslim Law (Khula and Mubaraat)
14. Bar to matrimonial relief
15. Doctrine of strict proof.
16. Taking advantage of one's own wrong of disability
17. Accessory
18. Connivance
19. Collusion
20. Condonation
21. Improper or unnecessary delay.
22. Residuary clause - no other legal ground exists for refusing the matrimonial relief.

(5) Alimony and Maintenance :

1. Maintenance of neglected wives, divorced wives, minor children, disabled children and parents.
2. who are unable to support themselves : provisions under the Code of Criminal Procedure, 1973.
3. Alimony and maintenance as in dependent remedy : a review under different personal law - need for reforming the law.
4. Alimony and maintenance as a relief
5. maintenance of divorced muslim women under the Muslim Women (Protection of Rights on Divorce) Act, 1986 a critical review.

(6) Family and its changing patterns :

1. New emerging trends
2. Attenuation of family ties
3. Working women and their impact on spousal relationship : Composition of family, status and role of women.
4. New property concepts, such as skill and job as new forms of property.
5. Factors affecting the family : demographic environmental, religious and legislative.
6. Processes of social change in India : Sanskritization, Westernization, secularization, universalization, parochialization, modernization, industrialization and urbanization.

(7) Settlement of spousal property :

1. Need for development of law

(8) Uniform Civil Code - need for :

1. Religious pluralism and its implications.
2. Connotations of the directive contained in Article 44 of the Constitution.
3. Impediments to the formulation of the Uniform Civil Code
4. The idea of optional Uniform Civil Code.

Cash Law :

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|---|--|
| (1) Smt. Sarojrani Vs. Sudarshankumar Chadha | AIR 1984 SC 1759 (Restitution of Conjugal Rights) |
| (2) Kalpana Shrivastave Vs. Surendranath Shivastava | (Cruelty)AIR 1985 All 253 |
| (3) Bhagat Vs. Bhagat | AIR 1994 SC 121 |
| (4) Dastane Vs. Dastane | AIR 1975 SC 1534 |
| (5) Hamirabibi Vs. Zubedabibi | (Mahr) AIR 1916 43 IA 294 |
| (6) Modh. Ahmedkhan Vs. Shahuabanu Begum | AIR 1985 SC 556 (Maintenance) |
| (7) Smt. Sarla Mudgal Vs. Union of India | (UCC) AIR 1995 SC 1931 |
| (8) Bai Taahira Vs. Ali Hussain Fissali | AIR 1979 SC 362 |
| (9) Smt. Mohinidevi Vs. Virendrakumar | AIR 1975 SC 1539 |

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SEMESTER – III

PAPER-11 FAMILY LAW - II

Law relating to joint family; inheritance;
child and the family; family courts;

85 Marks

Prescribed Cases

15 Marks

(1) Joint Family :

1. Mitakshara joint family
2. 'Mitakshara coparcenary' - formation and incidents.
3. Property under Mitakshara law - separate property and coparcenaries property.
4. Dayabhaga coparcenary - formation and incident.
5. Property under Dayabhaga law.
6. Karta of the joint family - his position, powers, privileges and obligations.
7. Alienation of property - separate and coparcenary.
8. Debts - doctrines of pious obligations and antecedent debt.
9. Partition and re-union.
10. Joint Hindu family as a social security institution and impact of Hindu Gains of Learning Act and various tax laws on it.
11. Matrilineal joint family

(2) Inheritance :

1. Hindus
2. Historical perspective of traditional Hindu law as a background to the study of Hindu Succession Act, 1956.
3. Succession to property of a Hindu male dying intestate under the provisions of Hindu Succession Act, 1956.
4. Devolution of interest in Mitakshara coparcenary with reference to the provision of Hindu Succession Act, 1956.
5. Succession property of a Hindu female dying the testate under the provision of Hindu Succession Act, 1956.
6. Disqualification relating to succession.
7. General rules of succession.
8. Marum akkatayam and Aliyasantana laws governing people living in Travancore-Cochin and the districts of Malabar and South Kanara.
9. Muslims

10. General rules of Succession and exclusion from succession.
11. Classification of heirs under Hanafi and Ashira schools and their shares and distribution of property.
12. Christians, Parsis and Jews.
13. Heirs and their shares and distribution of property under the Indian Succession Act, 1925.

(3) Child and Family :

- (1) Legitimacy (2) Adoption (3) Custody, maintenance and education.
- (4) Guardianship and parental rights - welfare of the child - Principle.

(4) Establishment of Family Courts :

1. Constitution, power and functions.
2. Administration of gender justice

Cash Law :

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| (1) Arunachala Mudliar Vs. Mruganatha | AIR 1954 SCR 243 |
| (2) Raman Nadar Vs. Snehapoo | AIR 1970 SC 1759 |
| (3) M. Shanmugha Udayar Vs. Sivanandam | AIR 1994 Mad. 123 |
| (4) Smt. Kasturidevi Vs. Dy. Director of Consolidation | AIR 1976 SCC 674 |
| (5) Ddhanraj Vs. Smt. Surajbai | AIR 1975 SC 1103 |
| (6) Hunooman Persoud Vs. Musummat Babooee | 1856 6 MIA 393 |
| (7) Nawab Alikhan Vs. Mohamada Begum | 1867 75 IA 62 |
| (8) Sardar Nawazish Alikhan Vs. Sardar Ali Razakhan | 1948 75 IA 62, 77, 79 |
| (9) Seethalakshmi Ammal Vs. Ponnuswamy Nadar | ILR 1966 Mad. 373 |
| (10) Bhagirathibai Vs. Advocate General | 39 (1937) Bom. LR 497 |
| (11) Chunilal Vs. Bai Samarath | 16 Bom. LR 366 PC 380 |

Select Bibliography (For Family Law - I & II)

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- Paras Diwan : Family Laaw : Law of Marriage and Divorce in India (1985)
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- P.V. Kane, History of Dhamastra Vol. pt.1 at 624-632 (1974)
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- A.M. Bhattachargee, Muslim Law and the Constitution (1994) Eastern Law House, Calcutta.
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SEMESTER – III

PAPER-12 JURISPRUDENCE (LEGAL THEORY)

Jurisprudence

100 Marks

The Paper includes the following UGC Model Curriculum Details :

(1) Introduction

- 1.1 Meaning of the terms Jurisprudence
- 1.2 Norms and normative system
 - 1.2.1 Different types of normative systems, such as of games, languages, religious orders, unions, clubs and customary practice.
 - 1.2.2 Legal system as a normative order : similarities and differences of the legal system with other normative systems.
- 1.3 Nature of definition of law

(2) Schools of Jurisprudence

- 2.1 Analytical positivism
- 2.2 Natural Law
- 2.3 Historical school
- 2.4 Sociological school
- 2.5 Economic interpretation of law
- 2.6 The Bharat jurisprudence
 - 2.6.1 The Ancient : the concept of 'Dharma'
 - 2.6.2 The Modern : PIL, social justice, compensatory jurisprudence

(3) Purpose of Law

- 3.1 Justice
 - 3.1.1 Meaning and kinds
 - 3.1.2 Justice and law : approaches of different schools
 - 3.1.3 Power of the Supreme Court of India to do complete justice in a case : Article 42
 - 3.1.4 Critical studies
 - 3.1.5 Feminist jurisprudence

(4) Sources of Law

- 4.1 Legislation
- 4.2 Precedents : concept of stare decisis

- 4.3 Customs
- 4.4 Juristic writings
- (5) Legal Rights : the Concept**
 - 5.1 Rights : kinds
 - 5.2 Right duty correlation
- (6) Persons**
 - 6.1 Nature of personality
 - 6.2 Status of the unborn, minor, lunatic, drunken and dead persons
 - 6.3 Corporate personality
 - 6.4 Dimensions of the modern legal personality : Legal personality of non-human beings
- (7) Possession : the Concept**
 - 7.1 Kinds of possession
- (8) Ownership : the Concept**
 - 8.1 Kinds of ownership
 - 8.2 Difference between possession and ownership
- (9) Title**
- (10) Property : the concept**
 - 10.1 Kinds of property
- (11) Liability**
 - 11.1 Conditions for imposing liability
 - 11.1.1 Wrongful act
 - 11.1.2 Damnum sine injuria
 - 11.1.3 Causation
 - 11.1.4 Means rea
 - 11.1.5 Intention
 - 11.1.6 Malice
 - 11.1.7 Negligence and recklessness
 - 11.1.8 Strict liability
 - 11.1.9 Vicarious liability
- (12) Obligation : Nature and kinds**
 - 12.1 Sources of obligation
- (13) Procedure**
 - 13.1 Substantive and procedural laws : difference
 - 13.2 Evidence : Nature and kinds

Select Bibliography

Bodenheimer Jurisprudence - The Philosophy and Method of Law (1996), Universal, Delhi

Fitzgerald, (ed.) Salmond on Jurisprudence (1999) Tripathi, Bombay

W. Friedmann, Legal Theory (1999) Universal, Delhi

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Paton G.W., Jurisprudence (1972) Oxford, ELBS

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SEMESTER – III

PAPER-13 INTERPRETATION OF STATUTES

Interpretation of Statutes

100 Marks

- (1) Introduction
- (2) General Rules of Construction
- (3) Presumptions
- (4) Internal Aids
- (5) External Aids
- (6) Retro spective effect of Statutes
- (7) Repleas & Temparary Statutes
- (8) Taking Statutes
- (9) Penal & Remedial Statutes
- (10) Subordinate and Conditional Legislation in Re Delhi Laws
- (11) Interpretation of the Constitution
- (12) Miscellaneous
- (13) Legislative Drafting
(General Clauses Act, 1897)

The Paper includes the following UGC Model Curriculum Details :

1. Principles of Legislation

- 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

- 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 material
 - 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 generic
 - 4.2.3 Reddendo singular singulis

5. Presumptions in statutory interpretation

- 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 form one's own wrong.
- 5.7 Prospective operation of statutes

6. Maxims of Statutory Interpretation

- 6.1 Delegatus non potest delegare
- 6.2 Expressio unius exclusion 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

- 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

- 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

Select Bibliography

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- M.P. Tandon : Interpretation of Statutes
- Relevant issue of the Journal of Indian Law Institute.