NATIONAL LAW UNIVERSITY, JODHPUR

RE- MID TERM EXAMINATION

Subject: Legal Methods

Semester: UG I Semester

Duration: 90 Min. Max Marks: 40

Please Note:

1. **No use of electronic device is permitted to answer the questions**
2. **All questions are compulsory in nature**

Q.1) Explain various components of legislation with the distinct role played by such components of legislation. (Marks 20)

Q.2) Explain the nature and scope of Per Incuriam Doctrine in India. (Marks 10)

Q.3) With the help of relevant examples explain the main distinction between common law and civil law systems. (Marks 10)

NATIONAL LAW UNIVERSITY, JODHPUR

END TERM EXAMINATION (August-December 2025)

Subject: Legal Methods (Compulsory)

Semester: UG I Semester

Duration: 3 Hours. Max Marks: 100

Instructions:

1. **No use of electronic device is permitted to answer the questions**
2. **Answer any five out of the six questions.**
3. **No use of external reading material is allowed**

Q.1) Explain the role of presumptions in a legal system. Describe its importance in determining matters of fact and differentiating the same from issues of law. (Marks 20)

Q.2) Explain how legislations function as distinct source of law in legal systems? Describe the role of subordinate legislations in formulating various rules in a country. (Marks 20)

Q.3) Explain the importance of precedents in developing legal principles in a country. How is the same recognized in India as a source of law? (Marks 20)

Q.4) Explain the role and importance of equity in common law system. Describe the specific role that the notion of equity plays in contemporary legal systems. (Marks 20)

Q.5) Explain the role of administrative tribunals in civil law countries. Describe the importance and types of tribunals in India. (Marks 20)

Q.6) Given below are the set of facts and an opinion of a judge in State of Andhra Pradesh v. K Satyanarayana. Describe the relevance of underline portion of the judgment in the present matter. (Marks 20)

Justice Hidayatullah- The short question in this case is whether the premises of a club known as the "Crescent Recreation Club" situated in Secunderabad were being used as a common gambling house and whether the several respondents who were present at the time of the raid by the police could be said to be gambling therein. The facts of the case are as follows: On May 4, 1963, the police headed by Circle Inspector Krishnaswami raided the premises of the club. They found Respondents 1-5 playing a card game known as "rummy" for stakes. At the time of the raid, there were some counters on the table as also money and of course the playing-cards with the players. Respondent 6, the Treasurer of the Club, was also present and was holding the stake money which is popularly known as "kitty". The 7th respondent is the Secretary of the Club and he has been joined as an accused, because he was in charge of the management of the club. The kitty which the sixth respondent held was Rs 74.62 n.p. and a further sum of Rs 218 was recovered from the table of the 6th respondent. Counters were on the table and some more money was found with the persons who were indulging in the game. The evidence of the Circle Inspector is that he had received credible

information that the premises of the club were being used as a common gambling house and he raided it and found evidence, because instruments of gambling were found and the persons present were actually gambling. The Magistrate convicted all the seven respondents and sentenced them to various fines, with imprisonment in default. The respondents then filed an application for revision before the Sessions Judge, Secunderabad who made a reference to the High Court under Section 438 of the Code of Criminal Procedure, recommending the quashing of the conviction and the setting aside of the sentences. This recommendation was accepted by the learned Single Judge in the High Court and the present appeal is brought against his judgment by special leave granted by this Court. 4. The Hyderabad Act follows in outline the provisions of the Public Gambling Act, 1867 in force in India. Section 3 of the Act defines a "common gambling house". The translation of the Urdu text placed before us was found to be inaccurate but we have compared the Urdu definition with the definition of "common gaming house" in the Public Gambling Act, and we are of opinion that represents a truer translation than the one included in the official publication. We accordingly quote the definition from the Indian Act, adding thereto the explanation which is not to be found in the Indian Act. "Common gambling-house" according to the definition means: "any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure; room or place, whether by way of charge for the use of the instruments of gaming, or of the house enclosure, room or place, or otherwise howsoever. Explanation.— The word 'house' includes a tent and all enclosed space". The contention in regard to this definition is that the evidence clearly disclosed that the club was being used as a common gambling house and therefore the penal provisions of the Act were clearly attracted. We are concerned additionally with several sections from the Gambling Act which need to be seen. Section 4, which follows in outline the corresponding section in the Public Gambling Act, provides for penalty for an owner, occupier or person using common gambling house and includes within the reach of the section persons who have the care or the management of or in any manner assist in conducting, the business of, any such house, enclosure or open space. The members of the club which is a ("Members'Club") would prima facie be liable but as they are not before us, we need not consider the question whether they should also have been arraigned in the case or not. The Secretary and the Treasurer, who were respectively Accused 7 and 6 were so arraigned as it was thought they came within the reach of Section 4 because they were in the care and management of the club itself. Then there is Section 6 which again is similar but not entirely similar to Section 5 of the Public Gambling Act. This provides for entry for search and entry by police. It lays down as follows: "If the District Magistrate or the Magistrate of the First Class or the District Superintendent of Police or the Inspector of Police in the city and the suburbs of Hyderabad, on credible information and after such enquiries as he may deem necessary, has reason to believe that any house or premises or enclosure or an open space is used as a common gambling house he shall be empowered to enter or authorise any police officer, not below the rank of a Sub-Inspector to enter with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house or premises or enclosure or open space, and it shall be proper to arrest all persons whom the said Magistrate or the Superintendent or Inspector of Police finds therein or to allow the Police Officer so authorised to arrest such persons whether or not they are actually gambling, and Seize or authorise the said Officer to

seize all instruments of gambling and all moneys and securities for money and valuable articles, reasonably suspected to have been used or intended to be used for the purpose of gambling and which are found therein, and search or authorise such Police Officers to search all parts of the house or premises or enclosure or open space, which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gambling are concealed therein and also the persons whom he or such officer had so arrested and seize and keep in his possession all such instruments of gambling as are found in the search. Here the Circle Inspector was an officer authorised to enter upon and search the premises of the club and therefore his action was fully covered by the section. He effected the arrest of all the persons who were present (Respondents 1-6) and added to the number the Secretary who although not present on the premises at the time was, according to him, responsible for the offence under Section 4 of the Act. Section 7 of the Act then provides for a presumption which the law allows to be drawn from the finding of cards etc. in a house in which a search according to the terms of Section 6 of the Act as taken place. That section reads as follows: "When any cards or dice or table or other instruments or means of gambling have been found in any house or premises or enclosure or open space entered or searched, in accordance with the provision of Section 6 or have been found with any of the persons therein, it shall be evidence, until the contrary is proved, that such house, premises or enclosure or open space is used as a common gambling house and the persons found therein were present for the purpose of gambling although no play was actually witnessed by the Magistrate or the police officer or any of his assistants." This section gives rise to a presumption from the fact of a search under Section 6 after credible information that persons present in the house are there for the purpose of gambling even though no play may be actually witnessed by the raiding party. In the present case on the appearance of the police, it is admitted, the players stopped their play and the arrests were promptly made of all the persons present round the table who had cards, counters and the money with them. The learned Magistrate who tried the case was of the opinion that the offence was proved, because of the presumption since it was not successfully repelled on behalf of the present respondents. In the order making the reference the learned Sessions Judge made two points: He first referred to Section 14 of the Act which provides that nothing done under the Act shall apply to any game of mere skill wherever played and he was of opinion on the authority of two cases decided by the Madras High Court and one of the Andhra High Court that the game of rummy was a game of skill and therefore the Act did not apply to the case. He also held that there was no profit made by the members of the club from the charge for the use of cards and the furniture and the room in the club by the players and therefore the definition of "common gambling house" did not apply to the case. In accepting the reference, the learned Single Judge in the High Court did not express any opinion upon the question whether the game of rummy can be described as a game of skill. He relied upon the second part of the proposition which the Sessions Judge had suggested as the ground for acquitting the accused namely, that the club was not making a profit but was only charging something as a service charge and to this we shall now refer. Mr Ram Reddy relies, firstly, upon the definition of 'common gambling house' in the Hyderabad Act and contends that in this case there is ample evidence to prove that the club was making a profit or gain from the persons who play Rummy on its premises, pointing out at the same time that the charge was put upon strangers to the club as well as members. He also submits that the presumption which arises under Section 7 of the

Gambling Act has not been successfully repelled and on the other hand it has been confirmed by the making of this charge by the club. In support of his case that the club was making a profit or gain from the game of rummy he draws attention to four matters which in his opinion bring this club within the said definition. The first was a charge of 5 points per game which according to him was being levied on each game of rummy. He next points out that playing cards were supplied to the players by the club at an extra charge of Rs 3 and there was a sitting fee of Re 1 per person from those who joined the game. He points out further that if the game continued beyond a certain time in the night, a late fee was also levied. In addition, he says, that non members were also required to pay and, therefore, this club must fall within the definition of a common gambling house. In support he relies upon a decision of the Madras High Court In re Somasundaram Chettiar. In our opinion the points made by Mr Ram Reddy do not prove this club to be a common gambling house. **The presumption under Section 7, even if it arises in this case, is successfully repelled by the evidence which has been led, even on the side of the prosecution.** To begin with, there is nothing to show that a fee of 5 points per game was being charged. Only the Sub-Inspector (PW 6) deposes to it but there is nothing to show what his source of information was. At the time the game was going on, he was not present and when he arrived on the scene, the game had stopped. The account-books of the club do not show any such levy from the persons and in the absence of any entry, we cannot hold this fact to be sufficiently proved. As regards the extra charge for playing cards we may say that clubs usually make an extra charge for anything they supply to their members because it is with the extra payments that the management of the club is carried on and other amenities are provided. It is commonly known that accounts have to be kept, stocks have to be purchased and maintained for the use of the members and service is given. Money is thus collected and there is expenditure for running of each section of the establishment. Just as some fee is charged for the games of billiards, ping-pong, tennis etc an extra charge for playing cards (unless it is extravagant) would not show that the club was making a profit or gain so as to render the club into a common gambling house. Similarly, a late fee is generally charged from members who use the club premises beyond the scheduled time. This is necessary, because the servants of the club who attend on the members have to be paid extra remuneration by way of overtime and expenditure on light and other amenities has to be incurred beyond the club hours. Such a charge is usual in most of the clubs and we can take judicial notice of the fact. This leaves over for consideration only the sitting fee as it is called. In this connection, the account books of the club have been produced before us and they show that a fee of 50 paise is charged per person playing in the card room. This to our opinion is not such a heavy charge in a Members' Club as to be described as an attempt to make a profit or gain for the club. Of course, if it had been proved that 5 points per game were charged, that might have been considered as an illegal charge sufficient to bring the club within the definition. As we have already pointed out, the levy of that charge has not been proved. The other charges which the club made do not establish that this was a common gambling house within the definition. It is submitted by Mr Ram Reddy that non-members also play and further that the club provides no other amenities besides making it possible for members and non-members to play the game of rummy on the premises. We think that the evidence on this part is not quite satisfactory. No doubt one witness has stated that chess is also played, but that does not prove that amenities other than card games are catered for by the club. But on the other side also there is no definite evidence that there is no other

amenity in this club but the playing of card games. In these circumstances, to hold that the club does not provide other amenities is tantamount to making a conjecture which is not permissible in a criminal case. We are also not satisfied that the protection of Section 14 is not available in this case. **The game of rummy is not a game entirely of chance like the "three-card" game mentioned in the Madras case to which we were referred. The "three card" game which goes under different names such as "flush", "brag" etc. is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards.** We cannot, therefore, say that the game of rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. **In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it.** Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of rummy or any other game played for stakes, the offence may be brought home. In this case, these elements are missing and therefore we think that the High Court was right in accepting the reference it did. The appeal fails and is dismissed.

27 SEP 2023

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Q.1) Find the ratio and differentiate it from obiter (if any) in the following judgement. Also explain the method employed to determine the ratio and obiter of the present case.

Facts- The plaintiff sued the defendant (her husband) for money which she claimed to be due in respect of an agreed allowance of 30 a month. The alleged agreement was entered into under the following circumstances. The parties were married in August, 1900. The husband, a civil engineer, had a post under the Government of Ceylon as Director of Irrigation, and after the marriage he and his wife went to Ceylon, and lived there together until the year 1915, except that in 1906 they paid a short visit to this country, and in 1908 the wife came to England in order to undergo an operation, after which she returned to Ceylon. In November, 1915, she came to this country with her husband, who was on leave. They remained in England until August, 1916, when the husband's leave was up and he had to return. The wife however on the doctor's advice remained in England. On August 8, 1916, the husband being about to sail, the alleged parol agreement sued upon was made. The plaintiff, as appeared from the judge's note, gave the following evidence of what took place: "In August, 1916, defendant's leave was up. I was suffering from rheumatic arthritis. The doctor advised my staying in England for some months, not to go out till November 4. On August 8 my husband sailed. He gave me a cheque from 8th to 31st for 24 and promised to give me 30 per month till I returned." Later on she said: "My husband and I wrote the figures together on August 8. In cross-examination she said that they had not agreed to live apart until subsequent differences arose between them, and that the agreement of August, 1916, was one which might be made by a couple in amity. Her husband in consultation with her assessed her needs, and said he would send 30 per month for her maintenance. She further said that she then understood that the defendant would be returning to England in a few months but that he afterwards wrote to her suggesting that they had better remain apart. In March, 1918, she commenced proceedings for restitution of conjugal rights, and on July 30 she obtained a decree nisi. On December 16, 1918, she obtained an order for alimony.

The present suit arises in the form of an appeal against the decision of the lower court. The lower court had given the decision in favor of plaintiff and ordered the husband to maintain her in accordance with the amount agreed upon.

Justice Duke- This is in some respects an important case, and as we differ from the judgment of the Court below I propose to state concisely my views and the grounds which have led me to the conclusion at which I have arrived. Substantially the question is whether the promise of the husband to the wife that, while she is living absent from him, he will make her a periodical allowance involves in law a consideration on the part of the wife sufficient to convert that promise into a binding agreement. In my opinion it does not. I do not dissent, as at present advised, from the proposition that the spouses in this case might have made an agreement which would have given the plaintiff a cause and I am inclined to think that the promise of the wife in respect of her separate estate could have founded an action in contract within the principles of the Married Women's Property Act, 1882. But we have to see whether there is evidence of any such exchange of promises as would make the promise of the husband the basis of an agreement. It was strongly urged by Mr. Hawke that the promise being absolute in form ought to be construed as one of the mutual promises which make an agreement. It was said that a promise and an implied undertaking between strangers, such as the promise and implied undertaking alleged in this case would have founded an action on contract. That may be so, but it is impossible to disregard in this case what was the basis of the whole communications between the parties under which the alleged contract is said to have been formed. The basis of their communications was their relationship of husband and wife, a relationship which creates certain obligations, but not that which is here put in suit. There was a discussion between the parties while they were absent from one another, whether they should agree upon a separation. In the Court below the plaintiff conceded that down to the time of her suing in the Divorce Division there was no separation, and that the period of absence was a period of absence as between husband and wife living in amity. An agreement for separation when it is established does involve mutual considerations. That was why in Eastland v. Burchell the agreement for separation was found by the learned judge to have been of decisive consequence. But in this case there was no separation agreement at all. The parties were husband and wife, and subject to all the conditions, in point of law, involved in that relationship. It is impossible to say that where the relationship of husband and wife exists, and promises are exchanged, they must be deemed to be promises of a contractual nature. In order to establish a contract there ought to be something more than mere mutual promises having regard to the domestic relations of the parties. It is required that the obligations arising out of that relationship shall be displaced before either of the parties can found a contract upon such promises. The formula which was stated in this case to support the claim of the lady was this: In consideration that you will agree to give me 30 a month I will agree to forego my right to pledge your credit. In the judgment of the majority of the Court of Common Pleas in Jolly v. Rees which was affirmed in the decision of Debenham v. Mellon., Erle C.J. states this proposition: "But taking the law to be, that the power of the wife to charge her husband is in the capacity of his agent, it is a solecism in reasoning to say that she derives

her authority from his will, and at the same time to say that the relation of wife creates the authority against his will, by a presumptio juris et de jure from marriage." What is said on the part of the wife in this case is that her arrangement with her husband that she should assent to that which was in his discretion to do or not to do was the consideration moving from her to her husband. The giving up of that which was not a right was not a consideration. The proposition that the mutual promises made in the ordinary domestic relationship of husband and wife of necessity give cause for action on a contract seems to me to go to the very root of the relationship, and to be a possible fruitful source of dissension and quarrelling. I cannot see that any benefit would result from it to either of the parties, but on the other hand it would lead to unlimited litigation in a relationship which should be obviously as far as possible protected from possibilities of that kind. I think, therefore, that in point of principle there is no foundation for the claim which is made here, and I am satisfied that there was no consideration moving from the wife to the husband or promise by the husband to the wife which was sufficient to sustain this action founded on contract. I think, therefore, that the appeal must be allowed. (Marks 20)

Q.2) With the help of case laws explain the scope of precedential value of a Supreme Court decision in India?

(Marks 10)

Q.3) Explain the role of a preamble in a legislation. Explain the same with the help of relevant case laws.

(Marks 10)