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UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
End Semester Examination, December 2018

Course: Administrative Law

Semester: IX

Programme: B Tech. LL.B Cyber Law / IPR

Time: 03 hrs.

Max. Marks: 100

Instructions:

SECTION A
Answer all questions

S. No.		Marks	CO
Q 1	Doctrine of Ultra Vires	2	1
Q2.	Quo Warranto	2	1
Q3.	Administrative Discretion	2	1
Q4.	Doctrine of Legitimate Expectation	2	1
Q5	Right to notice	2	1
Q6	Ombudsman		

SECTION B
Answer all questions

Q 6	a. Explain the difference between the writ of prohibition and the writ of certiorari. b. What are the essential conditions for the issue of the writ of mandamus?	5+5	1, 2, 3, 4, 5
Q7	If right to rebut adverse evidence be regarded as a whole right, what are the classifications of the aforementioned right? Answer with the help of decided cases.	10	1,2,3,4, 5

SECTION-C
Answer all questions

Q 8	From a functional point of view, an administrative tribunal is neither exclusively a judicial body nor exclusively an administrative body. Explain the statement by delineating the characteristics of a administrative tribunal	10	1,2,3,4, 5
Q9	Explain the doctrine of proportionality. How does the doctrine imbibe the notion of rule of law and separation of powers? Justify your answer with the help of decided cases.	10	1,2,3,4, 5

SECTION-D
Answer all questions

Q 10

Gangubhai Ltd (“Respondent”) is a leading gourmet supermarket chain in Cilantro. Jhola Bhai Foodworks (“Claimant”) is a medium sized manufacturer of fine bakery products registered in Margina.

The business philosophy and business position of Respondent entails that:

1. It insists its corporation value that its products are part of a healthy, natural world, as it stated in their nationwide advertising campaign.
2. It provides products that are generally source locally which are from organic farms or plantation.

The Respondent is a Global Impact member since 2002 and intends to become a Global Impact LEAD company by 2018.

In the past experience of Respondent, its suppliers or someone higher up in the production and supply chain has not complied with the principles of Respondent’s Code of Conduct, and thus, Respondent has suffered the disaster in a negative press campaign, which was a great reputational lost and resulted in a long term loss. The Respondent had to re-establish its corporation reputation in the leading business world. Since then, Respondent had been even more careful when it was choosing its business partner.

In order to broaden its cake offering in the market and search for its best business partner who also insist in producing food that are healthy, natural and environmental friendly, the Respondent went to the yearly Golivian Food fair, Golivia, on March 2014. And that was how Claimant and Respondent (“the parties”) met.

Haribhai Radhabhai Patel, the Respondent’s Head of Purchasing, and Kapurthala Gope, Claimant’s Head of Production discussed about the possibility of their business cooperation. Claimant claimed that it was a social enterprise and committed to produce sustainably and ethically. This has almost determined the possibility of cooperation in the future.

On 10 March 2014, the Respondent published a tender in the pertinent industry newsletters and sent to five of the businesses Respondent had met at the food fair including Claimant. In the Tender Document sent by Respondent, it was clarified that it would only accept offers which complied with the Tender Document, and that included the contract would be governed by Respondent’s General Conditions Of Contract and its Code of Conduct for Suppliers, as was attached to the Tender Documents.

Respondent received six offers including Claimant. On 17 March 2014, Claimant first submitted the requested Letter of Acknowledgement and with that Letter, it confirmed its intention to submit a tender in accordance with the Tender Documents. However, Claimant made an offer which was obviously deviated from the Tender documents.

Considering all kinds of facts, Respondent decided to accept Claimant’s offer for its business reputation and its commitment to ethical production. The Respondent awarded Claimant the contract and Claimant made the first delivery on 1 May 2014.

Not until 19 January 2017, the Respondent heard about the scandal of irregularities in certification practice with regard to sustainable farming from a documentary and it was

	<p>reported that a major police investigation into a scheme with falsified certificates for environmental production.</p> <p>And further, on 23 January 2017, in an article published by Mriganka Matthew, the leading business newspaper, further details of that assumed fraud were disclosed. The Respondent worried and started its own investigation. On 27 January 2017, Respondent learned that it had bought chocolate cakes made from chocolate beans grown under circumstances which are contrary to Respondent's most basic business values.</p> <p>Respondent sent a letter to Claimant and demanded Claimant to confirm its suppliers all adhere to Global Compact, if not, Respondent would terminate the contract. And before the result to come out, there shall be no further payment or deliveries.</p> <p>Claimant investigated and found that one of its suppliers was involved in the scandal on 10 February 2017. In order to minimize the effects of this issue, Respondent immediately terminated the contract with Claimant on 10 February 2017.</p> <p>Claimant initiated arbitration proceedings on 31 May 2017, and appointed Mr. R Prasad as the arbitrator. Mr. Prasad made a Declaration of Impartiality and Independence and Availability (“Declaration”) on 31 May 2017. However, he did not fulfill his obligation, that is, to make sure whether there was any potential conflict of interests with the Claimant, especially when there was a third party funding which is prevailing in these years.</p> <p>On 1 September 2017, the presiding arbitrator Mr. C Rudrappa ordered Claimant to disclose the information of the third-party funder. And finally, on 7 September, Claimant made the disclosure that its third-party funder, Funding 12 Ltd, as well as Funding 12 Ltd’s main stakeholder, Findfunds LP.</p> <p>In the light of the information provided by Claimant upon the request of the Arbitral Tribunal in its letter on 7 September 2017, Mr. Prasad made further disclosure based on his relationship between him and other subsidiaries of Findfund LP that he had acted as an arbitrator in two cases which were funded by other subsidiaries.</p> <p>Respondent challenged Mr. Prasad to be the arbitrator on 14 September 2017. Mr. Prasad and the Claimant replied to Respondent’s challenge respectively on 21 September and 29 September, 2017.</p> <p>In the light of the above facts, answer the following questions:</p>		
a.	Whether the Arbitral Tribunal should decide on the challenge of Mr. Prasad, and whether the decision should be made with Mr. Prasad’s Participation	20	1,2,3,4,5
b.	In case the Arbitral Tribunal has authority to decide on the challenge, should Mr. Prasad be a part of the decision adjudicating process?	20	1,2,3,4,5
c.	Does the breach of contract by delivery of non- conforming goods vitiate the principles of natural justice? Discuss.	10	1,2,3,4,5

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SECTION A
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S. No.		Marks	CO
Q 1	Audi Alteram Partem	2	1
Q2.	Writ of Habeas Corpus	2	1
Q3.	Personal Bias	2	1
Q4.	Doctrine of Proportionality	2	1
Q5	Ombudsman	2	1

SECTION B
Answer all questions

Q 6	What is 'nemo judex in causa sua'? Explain its classification and the evolution with the help of decided cases.	5+5	12345
Q7	Can the doctrine of practical reasonableness be weaved into the principles of natural justice? Explain with the help of decided cases	10	12345

SECTION-C
Answer all questions

Q 8	The Supreme Court had made valuable recommendations for better working of the administrative tribunals and regulatory agencies. Explain the case along with the provisions of the relevant constitutional article.	10	12345
Q9	Explain the doctrine of legitimate expectation. How does the doctrine imbibe the notion of rule of law and separation of powers? Justify your answer with the help of decided cases.	10	12345

SECTION-D
Answer all questions

Q10	In 1979, Deputy Sheriff DL of the Drug Enforcement Unit of the Kolkata Municipal District		
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	<p>Sheriff’s Office was in charge of investigating the alleged drug dealing activities of Kalu Bhai at his residence in River Side Cottage, Kolkata. Deputy DL was informed by the River Side Department of Public Works that garbage at the Kalubhai’s residence was normally picked up every second Friday morning.</p> <p>The Deputy then met with the garbage collector and told him to go about his normal routine of picking up garbage at the Kalubhai’ house. After he picked up Kalubhai s’ garbage, he was to turn it over to DL. When the garbage collector arrived at Kalubhai s’ house he found that the garbage had not been put outside of the garage where it was normally collected.</p> <p>The garage door was locked. The collector then went to the door of the house, and knocked. When Kalubhai came to the door, the collector asked if he could get the garbage. Kalubhai then opened the garage door, allowing the collector access to the garbage. Kalubhai testified that he opened the garage door so the collector could do “what he wanted to do.” The garbage collector picked up four plastic garbage bags and loaded them into the truck. After leaving Kalubhai s’ property, the collector gave the garbage to DL who searched the bags.</p> <p>The same procedure was repeated two weeks later during the next regularly scheduled pickup.</p> <p>Later that same day, the Metropolitan Magistrate issued a search warrant for the search of Kalubhai s’ River Side residence based in part on the evidence turned up in the garbage bags. The next day, when Kalubhai was not home, his house was searched. This search resulted in the seizure of cocaine, marijuana, drug paraphernalia, money, and other miscellaneous objects.</p> <p>Based upon the search of his home, Kalubhai was charged with possession of cocaine with intent to deliver and possession of marijuana with intent to deliver. He claimed that the warrantless search of his garbage was unlawful, and therefore, the warrant should not have been issued. The trial court denied the motion, holding that he did not have a reasonable expectation of privacy in his garbage.</p> <p>He was sentenced to imprisonment, but he has filed an appeal in the High Court.</p>		
a.	Discuss the notion of reasonable expectation of privacy of the accused in this case. Does it violate the principles of natural justice?	20	12345
b.	Elaborate on the nature of administrative discretion guaranteed to the sheriff of Kolkata Municipal Corporation.	10	12345
c.	Write a judgement taking into consideration, the essential elements of rule of law	20	12345