

# LL.B. I Term

## Paper - LB – 105 - Family Law - I

[*Hindu Law of Marriage, Adoption and Maintenance, Minority and Guardianship, Muslim Law of Marriage, Divorce and Dower* ]

### Prescribed Legislations:

1. The Hindu Marriage Act, 1955
2. The Hindu Adoptions and Maintenance Act, 1956
3. The Hindu Minority and Guardianship Act, 1956
4. The Dissolution of Muslim Marriages Act, 1939
5. The Muslim Women (Protection of Rights on Divorce) Act, 1986
6. Prohibition of Child Marriages Act, 2006
7. Protection of Women from Domestic Violence Act 2005

### Prescribed Books:

1. Ranganath Misra (Rev.), *Mayne's Treatise on Hindu Law & Usage*
2. Satyajeet A. Desai, *Mulla's Principles of Hindu Law*, Vol. I & II
3. Paras Diwan, *Law of Marriage and Divorce*
4. M. Hidayatulla and Arshad Hidayatulla, *Mulla's Principles of Mahomedan Law*
5. Tahir Mahmood, *Fyzee's Outlines of Muhammedan Law*

## PART I – HINDU LAW

### **A. Law of Marriage and Divorce**

1. Concept of marriage in General
2. The Hindu Marriage Act, 1955
  - (a) Nature of Hindu Marriage
  - (b) Applicability of Legislation (Section 2)
  - (c) Conditions for the validity of marriage (sections 3 and 5)
  - (d) Solemnisation of marriage with special reference to live in relationship (section 7 r/w) Section 114 Indian Evidence Act
  - (e) Registration of Marriage (section 8)
  - (f) Void marriages (sections 11 r/w 17, 18 r/w section 494 and 495 IPC)
  - (g) Voidable marriage

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|----|---|----|
| 01 | <i>Dr. Surajmani Stella Kujur v. Durga Charan Hansdah,</i><br>AIR 2001 SC 938 | 1  |
| 02 | <i>S. Nagalingam v. Sivagami</i> (2001) 7 SCC 487                             | 4  |
| 03 | <i>Bhaurao Shankar Lokhande v. State of Maharashtra,</i> AIR 1965 SC 1564     | 8  |
| 04 | <i>Lily Thomas v. Union of India,</i> AIR 2000 SC 1650                        | 12 |

05	<i>Pinninti Venkataramana v. State</i> , AIR 1977 AP 43	23
06	<i>Asha Qureshi v. Afaq Qureshi</i> , AIR 2002 MP 263	33
07	<i>Court On Its Own Motion Lajja ... vs State</i> , 2012 (193) DLT 61	37
08	<i>Suggested Reading: Article by Prof. Usha Tandon UNDER-AGE MARRIAGE IN PLURALIST ASIA</i>	52
09	<i>P. v. K.</i> , AIR 1982 Bom. 400	56
10	<i>Babui Panmato Kuer v. Ram Agya Singh</i> , AIR 1968 Pat. 190	66
11	<i>Seema v. Ashwani Kumar</i> (2006) 2 SCC 578	70
3.	Restitution of Conjugal Rights (Section 9)	
	12. <i>Kailashwati v. Ayudhia Parkash</i> , 1977 C.L.J. 109 (P.& H.)	74
	13. <i>Swaraj Garg v. K.M. Garg</i> , AIR 1978 Del. 296	85
	14. <i>Saroj Rani v. Sudarshan Kumar</i> , AIR 1984 SC 1562	93
4.	Judicial Separation [sections 10 and 13 (IA)]	
5.	Divorce [sections 13(1), (2), 13(1A), 13A, 13B]	
	(a) Theories of Divorce	
	(b) Grounds of Divorce with particular emphasis on Cruelty, Desertion, Option of Puberty, Breakdown of Marriage, Mutual Consent, Irretrievable Breakdown of Marriage (Seventy-first Report of Law Commission of India) Marriage Laws amendment bill 2013.	
	15. <i>N.G. Dastane v. S. Dastane</i> , AIR 1975 SC 1534	100
	16. <i>Samar Ghosh v. Jaya Ghosh</i> , 2007 (3) SCJ 253	120
	17. <i>Bipinchandra Jaisinghbai Shah v. Prabhavati</i> , AIR 1957 SC 176	141
	18. <i>Dharmendra Kumar v. Usha Kumar</i> , AIR 1977 SC 2213	158
	19. <i>T. Srinivasan v. T. Varalakshmi</i> , 1 (1991) DMC 20 (Mad.)	161
	20. <i>Hirachand Srinivas Managaonkar v. Sunanda</i> , AIR 2001 SC 1285	168
	21. <i>Sureshta Devi v. Om Prakash</i> , 1 (1991) DMC 313 (SC)	174
<b>B.</b>	<b>Maintenance</b>	
	The Hindu Marriage Act, 1955, sections 24 and 25	
	The Hindu Adoptions and Maintenance Act, 1956, section 18	
	The Criminal Procedure Code, 1973, section 125	
	Protection of Women from Domestic Violence Act 2005	
	22. <i>Amar Kanta Sen v. Sovana Sen</i> , AIR 1960 Cal. 438	178
	23. <i>D.Velusamy vs D.Patchaiammal</i> on 21 October, (2010) 10 SCC 469	181
	24. <i>Badshah vs Sou. Urmila Badshah Godse &amp; Anr</i> (2014)1SCC188	188
	25. <i>Padmja Sharma v. Ratan Lal Sharma</i> , AIR 2000 SC 1398	
<b>a.</b>	<b>Adoption( Read With CARA Guidelines 2017)</b>	
	The Hindu Adoptions and Maintenance Act, 1956	

26. <i>Brijendra v. State of M.P.</i> , AIR 2008 SC 1058	196
27 <i>In Re: Adoption of Payal at Sharinee Vinay Pathak and his wife Sonika Sahay Pathak</i> , 2010 (1) Bom CR 434	201
<b>b. Minority and Guardianship</b>	
The Hindu Minority and Guardianship Act, 1956	
28. <i>Githa Hariharan v. Reserve Bank of India</i> (1999) 2 SCC 228	211

## **PART II – MUSLIM LAW**

1. Sources and Schools of Muslim Law	
2. Nikah - Solemnisation of Marriage – conditions for validity, classification and types; Dower; Maintenance	
3. Divorce - (a) Extra-judicial - Talaq, Khula, Mubarat (b) Judicial - The Dissolution of Muslim Marriages Act, 1939	
29. <i>Mt. Ghulam Kubra Bibi v. Mohd. Shafi Mohd. Din</i> , AIR 1940 Pesh. 2	223
30. <i>Chand Patel v. Bismillah Begum</i> , 1 (2008) DMC 588 (SC)	225
31. <i>Saiyid Rashid Ahmad v. Mt. Anisa Khatun</i> , AIR 1932 PC 25	233
32. <i>Shamim Ara v. State of U.P.</i> , 2002 Cr LJ 4726 (SC)	237
33. <i>Masroor Ahmed v. Delhi</i> (NCT) 2008 (103) DRJ 137 (Del.)	242
34. <i>Ghulam Sakina v. Falak Sher Allah Baksh</i> , AIR 1950 Lah. 45	255
35. <i>A. Yousuf Rawther v. Sowramma</i> , AIR 1971 Ker. 261	259
36. <i>Itwari v. Asghari</i> , AIR 1960 All. 684	269
37. <i>Danial Latifi v. Union of India</i> (2001) 7 SCC 740	276
38. <i>Noor Saba Khatoon v. Mohd. Quasim</i> , AIR 1997 SC 3280	291

### **Important Note:**

1. The topics, legislations and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/legislations/cases.

2. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.

3. The question paper shall include one compulsory question. The question papers set for the examinations held during 2010-11 and 2011-12 are printed below for the guidance of the students.

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### **LL.B. I Term - Family Law-1 - 2014**

1. Discuss the validity of the following marriages under the Hindu Marriage Act, 1955 and also under Muslim Law :

- (a) H marries W who is his son's divorced wife.
- (b) H marries W who is his elder brother's pregnant widow.

- (c) H marries W who is his paternal grand father's brother's daughter's daughter.
- (d) H marries W within one month of the death of W's first husband.

2. Anuj, aged 20 years, was married to Manju, aged 17 years in 2008, in 2010, Anuj changed his religion to Islam and gets married to a Muslim Girl as per Muslim Law. Manju initiated prosecution proceedings against Anuj for the offence of bigamy. Anuj pleaded he cannot be prosecuted for bigamy as:

- (i) his marriage to Manju was in violation of Prohibition of Child Marriage Act, 2006
- (ii) at the time of second marriage he was a Muslim which permits bigamy, and
- (iii) the second marriage was not solemnized as per Section 7 of the Hindu Marriage Act.

Decide to reference of statutory provisions and case law, if any.

3. Amit married Sunita according to Hindu rites. They were introduced to each other by a common friend. Amit visited Sunita's house several times before marriage and was greeted with respect and honour. A year later he discovered that Sunita had given birth to a child before marriage as a result of an illicit relations with her former boyfriend. The child was later given in adoption to a family friend. Amit feels cheated. What legal remedies was available to him?

4. Explain the essentials for the remedy of 'restitution of conjugal rights' and discuss:

- (i) Whether gainful employment of the wife at a place different from the place of residence of the husband would amount to a reasonable excuse under Section 9 of the Hindu Marriage Act for her to withdraw from his society?
- (ii) Would the second marriage of a Muslim husband be a reasonable excuse for the first wife to withdraw from his society?

5. (a) Manoj and Sarita married in 2005. However, two years later Manoj developed intimacy with Sudha and started living with her. Sarita applied for judicial separation which was granted in her favour. After one year Manoj files a petition for divorce on the ground that since the grant of decree of judicial separation one year has passed and there has not been resumption of cohabitation. He also pleaded that since he is planning to marry Sudha with whom he is living, there is no point in protecting a dead relationship with Sarita and he be allowed divorce on ground of irretrievable breakdown of marriage. Decide.

(b) Rohit and Rita were living separately for two years owing to in compatibility of their temperament. They filed a petition for divorce under Section 13B of the Hindu Marriage Act, 1955. However, after six months Rita refused to go to the court again with Rohit. Rohit prays to the court that divorce be granted to him on the basis of first petition. Decide.

6.(a) Discuss the right of a person to take a child in adoption under the Provisions of Hindu Adoption and Maintenance Act, 1956 and also under the Juvenile Justice (Care and Protection) Act, 2000.

(b) Define natural guardian and discuss whether the mother can act as the natural guardian of a legitimate minor child during the life time of father.

7.(a) Discuss the right of a divorced Muslim women to claim maintenance from her former husband as per the codified and uncodified Muslim law.

(b) In a fit of extreme anger, Shoaib pronounced talaq thrice to his wife. Later, he repented and wanted to resume cohabitation with her. Give legal advice to Shoaib for resuming lawful cohabitation with her.

### **LL.B. I Term - Family Law-1 - 2015**

1. Attempt briefly any four of the following:

(a) State the grounds of voidable marriage under Hindu Marriage Act, 1955.

(b) Explain the significance of 'Dower' under Muslim Law.

(c) State the Validity of Child Marriage Under Prohibition of Child Marriage Act, 2006.

(d) Distinguish between 'Khula' and 'Mubaraat' under Muslim Law.

(e) Explain the concept of Irregular Marriages under Muslim Law.

2. (a) The Marriage between Malti and Mohan was solemnized according to Hindu rites. After a few years Mohan Contemplated to divorce Malti and marry Vanita. As there was no strong reason available to Mohan against Malti, he persuaded Malti to give consent for Divorce under S. 13 B of Hindu Marriage Act. When she refused on the advice of his friends, he and Vanita converted to Islam and married under Muslim Law. Malti initiated criminal case against Mohan under S. 494 IPC. Discuss briefly whether Mohan would be guilty of Bigamy in the light of decided cases.

(b) "It is essential for a conviction for Bigamy under S. 494 IPC, the second marriage should be a validly performed marriage". Explain this statement with the help of any two cases known to you.

3. Explain the concept of 'cruelty' as a matrimonial guilt and what are the various factors to be taken into consideration while deciding a petition for divorce on the ground of cruelty under Hindu Marriage Act, 1955. Mention a few cases to substantiate your answer.

4. Kanchana and Kamallesh were happily married in Feb, 2005. Due to third party's intervention, matrimonial discord arose and Kanchana left the Matrimonial home in Aug 2010. In August 2011. Kamallesh extended invitation to her to come and join him. But Kanchana declined saying that she had made up her mind not to return to matrimonial home. In April 2013, Kanchana expressed her intention to come back. But Kamlesh did not respond to it. In Aug. 2013 Kamlesh filed a petition for divorce under S. 13(1)(ib). Discuss whether Kamlesh is entitled to a decree of divorce. Explain the ingredients of desertion in the light of decided cases.

5.(a) Sunita and Surender got married according to Hindu rites. After Two years, on the allegations of ill-treatment by the in-laws, Suma left the matrimonial home. After two years of separate living. Suma filed a petition for Restitution of conjugal rights. Surender gave consent to it and the court passed a decree for restitution of conjugal rights. But Surender did not

comply with the decree and after waiting for one year filed a petition for divorce under S. 13(1A)(ii). Suma opposed the petition on the ground that it was hit by S. 23(1)(a). Examine the legal position in the light of decided cases.

(b) Lata and Ramesh jointly moved a petition for divorce by mutual consent under S.13 B of Hindu Marriage Act. After three months Ramesh withdrew his consent and prayed the court to pass a decree on the basis of the original petition. Discuss the maintainability of the petition.

6. (a) Distinguish between Talaq Ahasan, Talaq Hasan and Talaq-ul-Biddat.

(b) Shamim and Allah Baksh were married according to Muslim Law. Wife filed a petition for maintenance under S.125 of Criminal Procedure Code. Husband took the plea in his written statement that he had pronounced Triple talaq a year back and hence not obliged to maintain a divorced wife. On the questions whether it was pronounced in her presence or whether the same was communicated to her later, he argued that Muslim law does not prescribe any norm within which the husband can pronounce talaq. Discuss the validity of unilateral, un-communicated triple talaq in the light of any decided case and whether Shamim is entitled to maintenance.

7.(a) Zaheer filed a suit for Restitution of Conjugal Rights against his wife Rukia who refused to return to him after he married Shamim, which according to Rukia is an act of cruelty. Zaheer argued that Muslim law permits him to marry upto four wives and it is the matrimonial obligation of Rukia to offer conjugal society to him. Discuss whether Zaheer is entitled to a decree.

(b) Fatima aged 14 years was married to Rafi aged 28 years in Delhi. But soon after the marriage, Rafi left for Bangalore to continue his business. After one month, Fatima went back to her parent's house in Meerut. After two years of separation Fatima sought dissolution of the marriage under S.2C1(ii) of Dissolution of Muslim Marriage Act, 1939, Rafi contended that Fatima had wrongfully left the matrimonial home and he was not obliged to maintain her. Discuss whether Fatima is entitled to divorce, in the light of decided cases.

8. Answer any two of the following

(i) Essentials of a valid adoption under Hindu Adoptions and Maintenance Act, 1956

(ii) Mother as a guardian in the presence of father under Hindu Minority and Guardianship Act, 1956

(iii) Legal provisions relating to maintenance to a Hindu wife.

(iv) Essentials of Muta Marriage



**LL.B. I Term**

**Family Law -I**

**Cases Selected and Edited by**

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