

# 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 & Acknowledgment of Paternity, Wakfs and Endowments*]

### 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

### Prescribed Books:

1. Ranganath Misra (Rev.), *Mayne's Treatise on Hindu Law & Usage* (16<sup>th</sup> ed., 2008)
2. Satyajeet A. Desai, *Mulla's Principles of Hindu Law*, Vol. I & II (20<sup>th</sup> ed., 2007)
3. Paras Diwan, *Law of Marriage and Divorce* (5th ed., 2008)
4. M. Hidayatulla and Arshad Hidayatulla, *Mulla's Principles of Mahomedan Law* (19<sup>th</sup> ed., 2006)
5. Tahir Mahmood, *Fyzee's Outlines of Muhammedan Law* (3<sup>rd</sup> ed., 2008)

## PART I – HINDU LAW

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

1. Schools and Sources of Hindu Law
2. The Hindu Marriage Act, 1955
  - (a) Applicability of legislation (section 2)
  - (b) Concept and forms of marriage
  - (c) Conditions for the validity of marriage (sections 3 and 5)
  - (d) Solemnisation of marriage (section 7)
  - (e) Registration of Marriage (section 8)
  - (f) Void and Voidable marriages (sections 11 and 12)

1. *Dr. Surajmani Stella Kujur v. Durga Charan Hansdah*, AIR 2001 SC 938 1
2. *S. Nagalingam v. Sivagami* (2001) 7 SCC 487 4
3. *Bhaurao Shankar Lokhande v. State of Maharashtra*, AIR 1965 SC 1564 8
4. *Lily Thomas v. Union of India*, AIR 2000 SC 1650 12
5. *Pinninti Venkataramana v. State*, AIR 1977 AP 43 23
6. *Asha Qureshi v. Afaq Qureshi*, AIR 2002 MP 263 33

7.	<i>P. v. K.</i> , AIR 1982 Bom. 400	37
8.	<i>Babui Panmato Kuer v. Ram Agya Singh</i> , AIR 1968 Pat. 190	47
9.	<i>Seema v. Ashwani Kumar</i> (2006) 2 SCC 578	51
3.	Restitution of Conjugal Rights (Section 9)	
	10. <i>Kailashwati v. Ayudhia Parkash</i> , 1977 C.L.J. 109 (P.& H.)	55
	11. <i>Swaraj Garg v. K.M. Garg</i> , AIR 1978 Del. 296	66
	12. <i>Saroj Rani v. Sudarshan Kumar</i> , AIR 1984 SC 1562	74
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)	
	13. <i>N.G. Dastane v. S. Dastane</i> , AIR 1975 SC 1534	81
	14. <i>Samar Ghosh v. Jaya Ghosh</i> , 2007 (3) SCJ 253	101
	15. <i>Bipinchandra Jaisinghbai Shah v. Prabhavati</i> , AIR 1957 SC 176	122
	16. <i>Dharmendra Kumar v. Usha Kumar</i> , AIR 1977 SC 2213	139
	17. <i>T. Srinivasan v. T. Varalakshmi</i> , 1 (1991) DMC 20 (Mad.)	142
	18. <i>Hirachand Srinivas Managaonkar v. Sunanda</i> , AIR 2001 SC 1285	149
	19. <i>Sureshta Devi v. Om Prakash</i> , 1 (1991) DMC 313 (SC)	155
<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	
	20. <i>Amar Kanta Sen v. Sovana Sen</i> , AIR 1960 Cal. 438	159
	21. <i>Padmja Sharma v. Ratan Lal Sharma</i> , AIR 2000 SC 1398	162
<b>C.</b>	<b>Adoption</b>	
	The Hindu Adoptions and Maintenance Act, 1956	
	22. <i>Brijendra v. State of M.P.</i> , AIR 2008 SC 1058	164
<b>D.</b>	<b>Minority and Guardianship</b>	
	The Hindu Minority and Guardianship Act, 1956	
	23. <i>Githa Hariharan v. Reserve Bank of India</i> (1999) 2 SCC 228	169

## **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
  4. Acknowledgement of Paternity, Wakfs and Endowments
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| 24. <i>Mt. Ghulam Kubra Bibi v. Mohd. Shafi Mohd. Din</i> , AIR 1940 Pesh. 2 | 181 |
| 25. <i>Chand Patel v. Bismillah Begum</i> , 1 (2008) DMC 588 (SC)            | 183 |
| 26. <i>Saiyid Rashid Ahmad v. Mt. Anisa Khatun</i> , AIR 1932 PC 25          | 191 |
| 27. <i>Shamim Ara v. State of U.P.</i> , 2002 Cr LJ 4726 (SC)                | 195 |
| 28. <i>Masroor Ahmed v. Delhi</i> (NCT) 2008 (103) DRJ 137 (Del.)            | 200 |
| 29. <i>Ghulam Sakina v. Falak Sher Allah Baksh</i> , AIR 1950 Lah. 45        | 213 |
| 30. <i>A. Yousuf Rawther v. Sowramma</i> , AIR 1971 Ker. 261                 | 217 |
| 31. <i>Itwari v. Asghari</i> , AIR 1960 All. 684                             | 227 |
| 32. <i>Danial Latifi v. Union of India</i> (2001) 7 SCC 740                  | 234 |
| 33. <i>Noor Saba Khatoon v. Mohd. Quasim</i> , AIR 1997 SC 3280              | 249 |

### **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.

### **LL.B. I Term Examinations, December, 2010**

**Note:** Attempt *five* questions including Question No. 1 which is compulsory.  
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
  - (a) Mother as a guardian to her child in the presence of father under Hindu Adoption and Maintenance Act, 1956.
  - (b) Concept of Khula and Mubarat under Muslim Law.
  - (c) Difference between void, voidable and invalid marriage under Hindu Marriage Act, 1955.
  - (d) Effect of conversion on the continuity of marriage under Hindu Law and Muslim Law.
  - (e) Difference between status of Child Marriage under Hindu Marriage Act, 1955 and under Prohibition of Child Marriage Act, 2006.

2. Discuss the validity of the following marriages under Hindu law and also under Muslim law:
  - (a) A marries his deceased wife's sister.
  - (b) A marries his son's son's widow.
  - (c) A gives his daughter aged 16 years in marriage to B, without her consent;
  - (d) Other and acceptance of marriage proposal on telephone by A and B.
3. Before marriage, Krishna was working as a lecturer in an established law college in Delhi, while Roshan, her husband, was a doctor in Bangalore. At the time of marriage parties didn't discuss about the location of matrimonial home. After marriage Roshan wanted Krishna to resign her job and join him in Bangalore. On her refusal to do so, she files a petition for restitution of conjugal rights. Decide.
4. Sagar aged 17 years and Preeti aged 15 years were married in 2000. In 2007, Sagar married his girl friend. Buksana and happily lived with her. Preeti prosecuted him for bigamy. Sagar took the defence that he had converted to Islamic faith and even changed his name to Salim. He pleaded that since second marriage under Muslim law is not bigamous, he could not be prosecuted for bigamy. Decide.
5. Sohan and his wife Sunaina were staying in a joint family consisting of Sohan's parents and his two unmarried sisters. Sunaina was made to work throughout the day and was constantly abused for bringing insufficient dowry. Unable to bear the torture any more, she left the matrimonial home and went to her natal home. When her parents visited Sohan's house, they were also abused by him and turned out of the house. After three years, Sohan files a petition for divorce on the ground of Sunaina's desertion under Hindu Marriage Act, 1955. Decide.
6. (a) Shabana's father contracted her marriage when she was aged 8 years. She lived with the husband for two months after the marriage. And later on, she came back to her parental house, as she did not want to live in the matrimony. What are the remedies available to Shabana under Muslim law?
  - (b) After his second marriage with Rehana, Shoaib's first wife Zarine left the matrimonial home. Thereupon, Shoaib tried his best to bring Zarine back but she refused to do that. Ultimately Shoaib filed a petition against Zarine for Restitution of conjugal rights. Zarine contested it, alleging that Shoaib second marriage amounted to insult and cruelty to her. Shoaib, on the other hand maintained that under Muslim Personal law, he has a right to have four wives at a time Decide.
7. Examine the validity of the following adoption under Hindu Adoption and Maintenance Act, 1956:
  - (a) A, a Hindu married woman aged 26 years adopted a boy aged 5 years.
  - (b) A, a Hindu Bachelor, adopted a boy B. Later when A got married, he at the instance of his wife gave away B in adoption to D.
  - (c) A, the mother of an illegitimate son B, gives him in adoption to her brother.
  - (d) A, a Hindu adopts a boy aged 17 years.

8. Decide the discuss the following:
- (a) In a fit of extreme anger, Faraz pronounced Talaq thrice in the presence of his sister, brother and two other male witnesses. Later he repented and wanted to resume cohabitation with Zohra, Give legal advice to Faraz for resuming lawful cohabitation with Zohra.
  - (b) Ramesh and Kiran were living separately for nearly six years owing to incompatibility of their temperament. On Ramesh's suggestion, Kiran agreed to seek divorce by mutual consent and they filed a petition for divorce under Section 13B of the Hindi Marriage Act, 1955. However after six months, Kiran refused to go to the court again with Ramesh, saying that she had changed her mind as she did not wish to lead the life of a divorce. Ramesh prays to the court that divorce be granted to him on the basis of first petition. Decide.

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**LL.B. I Term (Supplementary) Examinations, June-July, 2011**

**Note:** Attempt *five* questions including Question No. 1 which is compulsory.  
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
  - (i) Discuss the concept of option of puberty under Hindu and Muslim law.
  - (ii) Discuss the essentials of a Muta marriage.
  - (iii) Explain maintenances pendente lite or interim maintenances under Hindu Marriage Act, 1955.
  - (iv) Discuss the capacity of a female Hindu to take a child in adoption under Hindu Adoption and Maintenance Act, 1956.
  - (v) State the essentials of divorce by mutual consent under HMA.
2. Decide the validity of a following marriage under Hindu Marriage Act, 1955:
  - (a) Marriage of a 16 years old girl with a 17 years old boy solemnized with consent of their parents.
  - (b) Marriage of a maternal uncle with his niece.
  - (c) Marriage with exchange of garlands and rings with an express pronouncement by parties of taking each other as their spouse in presence of two witnesses.
  - (d) Marriage of a girl with a boy who is her paternal grandfather's sister's daughter's daughter's son.
3. Explain the essential for the relief of "restitution of conjugal rights" under HMA. Would consideration of employment of the wife amount to a reasonable excuse for her to withdraw from the society of her husband against his wishes more specifically in a situation when he in the first place encouraged her to take up an avocation but later due to a disagreement over control of her salary wanted her to resign from her job and give him conjugal company?
4. Pooja married Sambhav in 2006. Born and brought up in an affluent family Pooja was uncomfortable in a middle class family set up of Sambhav and wanted him to established

a separate home with her, to be funded by her father. Sambhav agreed to her proposal but wanted to move in the new home with his parents and a younger sister to which she disagreed. She proposed that another home in the vicinity with monthly finances may be provided for the parents and the sister but in the new home she wanted exclusivity and privacy so that a healthy balance is maintained. Sambhav goes to the court and seeks divorce on ground of Pooja's cruelty claiming that she wanted to separate him from his relations. Would he succeed. Discuss with the help of precedents.

5. Kartik and Seema married in 2005. Soon thereafter a son Manuj was born to them. However, two years later Kartik developed intimacy with an office colleague to his, Sudha and started living with her. A distraught Seema applied for judicial separation that was granted in her favor. A year later Kartik files a petition for divorce on the ground that since the grant of a decree of judicial separation, one year has passed and there has not been a resumption of cohabitation. Additionally since he was planning to marry Sudha and had already fathered two children of hers there was no point in protecting a dead relationship with Seema and he be allowed divorce also on grounds of irretrievable breakdown of marriage. Discuss.
6. Discuss the validity of the following marriages under Shia and Sunni law.
  - (i) a 16 years old girl is given in marriage by her father to a 18 years old man.
  - (ii) Slaim, marries Julie, a Roman Catholic Christian.
  - (iii) Salman marries Rubena, who is his mother's Sister's daughter.
  - (iv) Yusuf Khan, married Gulbadan, despite protests from his first four wives.
  - (v) Rehman married the pregnant widow of his friend Samir two weeks post the death of Samir.
7. Explain the concept of extra judicial divorce under Muslim Law.

Zubeda and Aslam married in 2003 at Delhi. Zubeda left Aslam a month after and went to her parents place and despite Aslam's best efforts did not agree to reconciliation. Two years later she filed a petition under dissolution of Muslim Marriage Act 1939, seeking divorce on the ground of non payment of maintenance by Aslam. Would she succeed? Discuss.

8. Avinash married Sunita according to Hindu rites. They were introduced to each other through a leading newspaper. Avinash visited Sunita's home 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 connection with a former tutor of hers. The child was later given in adoption to a family friends. Avinash feels cheated. What legal remedies are available to Avinash?

**LL.B. I Term Examinations December, 2011**

**Note:** Attempt all *five* questions. All questions carry *equal* marks.

1. Discuss the validity of the following marriages in Hindu Law
  - (a) A, a Hindu male gets married to B, a Christian girl.
  - (b) A gets married to his elder brother's widow.
  - (c) A gets married to his paternal grand father's sister's son's daughter B.
  - (d) A and B get married by exchanging garlands and rings.
  
2. Ramesh, aged 20 years, was married to Rashmi, aged 17 years in 2006. In 2010, Ramesh changed his religion to Islam and gets married to Rahima as per Muslim law. When Rashmi came to know about his marriage, she initiated prosecution proceedings against Ramesh for the offence of bigamy. Ramesh pleaded as:
  - (i) his marriage to Rashmi was not valid under Prohibition of Child Marriages Act 2006, and
  - (ii) at the time of second marriage he was a Muslim which permits bigamy. so he cannot be prosecuted for bigamy.
  
3. Explain the concept of restitution of conjugal rights and discuss:
  - a) 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 Hindu Marriage Act, 1955 for her to withdrawn from his society?
  - b) Would due second marriage of a Muslim husband be a reasonable excuse for first wife to withdraw from his society?
  
4. a) Anil and Maya were living separately for two years. On the basis of a settlement reached between them, Anil transferred valuable immovable property in favour of Maya. They filed a petition for divorce under section 13-B of the Hindu Marriage Act, 1955. However, after six months, Maya refused to go to the court with Anil, saying that she had changed her mind. She was enjoying the property transferred in her name by Anil. She was also adamant that she will not live with Anil. Anil prays to the court that the divorce be granted to him on the basis of first petition. Decide.  
(b) Sonali was granted a decree for restitution of conjugal rights. However, her husband's attempts to resume cohabitation with her were unsuccessful as she refused to join him now. After the expiry of one year, she filed a petition for divorce under Section 13(1-A) of the Hindu Marriage Act. Will she be successful? Decide.
  
5. Kirti who was a widow had an affair with Kapil who was working in her office. After having a courtship for five years they decided to get married. After few month Kapil approaches the court and files a petition claiming annulment of their marriage on the ground of consent obtained by fraud as Kirti had concealed the fact that she was widow. Decide the case.

6. (a) Discuss the right of a female to take a child in adoption under the provisions of Hindu Adoption and Maintenance Act and also under Juvenile Justice (Care and Protection) Act.  
(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. Write short notes on any two of the following:
  - (a) Maintenance 'Pendente lite' and permanent maintenance under Hindu Marriage Act 1955;
  - (b) Irregular marriage under Muslim Law;
  - (c) Effect of conversion by Husband or wife on Hindu marriage and Muslim marriage.
8. Describe the dissolution of Muslim marriage by Talaq. Can triple Talaq be effective, if pronounced in the absence of wife and not communicated to her?

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## **LL.B. I Term**

## **Family Law -I**

**Cases Selected and Edited by**

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