

**GUJARAT NATIONAL LAW UNIVERSITY**  
**GANDHINAGAR**  
 Course: **Comparative Public Law/Systems of Governance**  
**Semester-I (Batch: 2018-19)**

LL.M. End Semester Examination: Oct-Nov. 2018

Date: 28<sup>th</sup> October, 2018

Duration: 3 hours

Max. Marks: 70

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Bare Act is not allowed.

	Part-A (Answer any five questions)	Marks
Q.1	To appreciate the significance of the study of comparative public law, it is perhaps useful to distinguish between the purposes pursued by those who use foreign patterns of law in the process of law making. Foreign legal systems may be considered first, with the object of preparing the international unification of the law; secondly, with the object of giving adequate legal effect to as social change shared by the foreign country with one's own country; and thirdly, with the object of promoting at home a social change which foreign law is designed either to express or to produce. Elucidate this observation, and substantiate your answer.	(12)
Q.2	'In the British Constitution there is no such thing as the absolute separation of legislative, executive, and judicial powers; in practice it is inevitable that they should overlap. In such constitutions as those of France and the United States of America, attempts to keep them rigidly apart have been made, but have proved unsuccessful. The distinction is nonetheless real and ... important. One of the main problems of a modern democratic state is how to preserve the distinction, whilst avoiding too rigid an insistence on it, in the wide borderland where it is convenient to entrust minor legislative and judicial functions to executive authorities.'  In view of the afore-stated statement, discuss the application of the doctrine of the separation of powers in the constitutions of India, the UK and the USA.	(12)
Q.3	Notwithstanding the nature of a legal system, for a cohesive social order and healthy political edifice, one of the most important prerequisites is the existence of an independent, impartial and robust judiciary.  In consideration of the afore-stated observation, critically analyse the 12 January 2018 Press Conference by four senior judges of the Supreme Court of India whereby they attempted to bring to the fore the serious issue of allocation of cases (particularly in sensitive matters) and constitution of benches.	(12)

- Q.4 'Under our Constitution, Parliament has the power to alter the boundaries of the States, or to distribute the territories of a State among other States, as happened with the State of Hyderabad. And, this power can be exercised without the consent of the States concerned. As a matter of law, this is a serious departure from the federal principle. But in practice, it is not the Union which has re-drawn the map of India; on the contrary, the hands of a reluctant Union have been forced by extra-constitutional agitation in the States, since most of them wanted to be regrouped on a linguistic basis.' (12)

Do you agree with the aforementioned statement? Discuss this statement in relation to the provisions of the Constitution of India and compare them with the Constitutions of Germany, Australia and the United States of America.

- Q.5 Structure of the judiciary and the judicial authority is a very important criterion in determining the federal character of a constitution. Explain these yardsticks as explained in the Constitution of the United States of America, and compare them with the Constitutions of India, Germany and Canada. (12)

- Q.6 'The classification of the administrative function often carries with it serious consequences affecting the rights of individuals coming into contact with the administration. The classification of a function as primarily of a decision making or judicial character brings into operation the rules of natural justice and the procedural safeguards. However, persons finding themselves the objects of an inquiry before an investigatory tribunal often have a need for the aforementioned safeguards. The House of Lords, reversing a particular decision of the Court of Appeal, held that all the administrative action should follow the principle of fair hearing and that the power of dismissal of an employee cannot be exercised without giving reasonable opportunity of being heard and without observing the principle of natural justice. According to the Lordships, the duty to act judicially need not necessarily be a prerequisite for issuance of a Writ of Certiorari. The House of Lords decided that there is no point in labelling functions as quasi-judicial and administrative because even the administrative or executive are subject to the rules of natural justice.' (12)

Explain this statement of the House of Lords with relevant case laws and their interrelation with the legal position of India and England.

**Part-B**  
**(Compulsory)**

- Q.7 (a) Write a short note on the Rule of Law. (5+5=10)
- (b) Judicial approach is unanimous and decisive on the point that any financial interest, howsoever, small it may be, would vitiate administrative action. The disqualification will not be avoided by non-participation of the biased member in the proceeding if he was present when the decision was reached. However, the rule against bias will not be applied where the judge though having a financial interest, has no financial interest in the outcome of the case. Analyse this statement in the context of judicial decisions of the House of Lords and the Supreme Court of India.

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