

ONE-YEAR LL.M. DEGREE COURSE FIRST SEMESTER EXAMINATION DECEMBER 2018

COMPARATIVE SYSTEM OF GOVERNANCE

Time: 3 Hours

Maximum Marks: 50

Answer ANY FIVE of the following. Each question carries TEN marks

(5 x 10 = 50)

- I. Define federalism and examine how far federalism as a structure of government enhances virtues of good governance
- II. "The pure doctrine of the separation of powers implied that the functions of government could be uniquely divided up between the branches of government. In such a way that no branch need ever exercise the function of another. In practice such a division of function has never been achieved.... A Judge when dealing with a case, at any rate in a common-law country, in applying the law to a particular instance, is "judging" or determining the nature of the rule to be applied, and is at the same time creating a precedent to be followed by other courts He, therefore, *of necessity*, exercises all three functions, and cannot be prevented from doing so." - M.J.C. Vile. Discuss
- III. "...the present doctrine of precedent was probably not finally crystallized until as late as the nineteenth century. Its earlier analogues, though traceable to the very beginnings of English law, did not distinguish the merest *dicta* from what we would now call the *ratio*, and amounted to little more than "evidencing" or even just illustrating what was the law." - Julius Stone. Elucidate
- IV. "There has been much debate among foreign jurists whether the norms of right and useful conduct, the patterns of social welfare are to be found by the judge in conformity with an objective or subjective standard." - Cardozo. Examine
- V. "The method of philosophy comes in competition however with other tendencies which find their outlets in other methods." Comment.
- VI. Discuss judicial law making and the application of the doctrine of prospective over ruling in the Indian context.
- VII. Examine the complexities of the notion of *ratio decidendi* and discuss the methods of identifying the *ratio* of a case.
- VIII. It has been observed that by extending the applicability of the doctrine of basic structure to the laws included in the Ninth Schedule the Supreme Court has reopened the debates on Article 31B and the amendability of fundamental rights. Discuss
