

Reg. No. : .....

Name : .....

**Second Semester LL.M. Degree Examination, February 2023**

**Paper V : JUDICIAL PROCESS**

**(Prior to 2021 Admission)**

Time : 3 Hours

Max. Marks : 75

Answer **all** questions. All questions carry equal marks.

1. (A) "We are reminded by William James in a telling page of his lectures on pragmatism that every one of us has in truth an underlying philosophy of life, even those of us to whom the names and the notions of philosophy are unknown or anathema. There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals." Elaborate on the extent of philosophical content in the judicial process.

OR

- (B) Examine in detail the role of judges as adjudicators, reconciliators and problem solvers of the community.
2. (A) "In a highly developed system, precedents have so covered the ground that they fix the point of departure from which the labour of the judge begins. Almost invariably, his first step is to examine and compare them. If they are plain and to the point, there may be in need of nothing more. *Stare decisis* is at least the everyday working rule of our law." Elaborate on the importance of the doctrine of *stare decisis* in judicial process.

OR

- (B) "Two aspects need a re-look into: firstly the inefficacy of our theories of judicial reasoning due to the inadequacy of the modalities of explanation that underlie them. Second, it is necessary and feasible to free ourselves from these modalities, as a major step toward more adequate theories of judicial reasoning." Elaborate on the categories of illusory references associated with judicial reasoning.
3. (A) Elaborate on the conscious and sub-conscious elements in the judicial process that plays a very pivotal role in the process.

OR

- (B) What effect/impact does the social philosophy of judges have on their judicial adjudications? Discuss in detail.
4. (A) The article by Harvard Law Professor James Bradley Thayer in 1893 argued that a statute should be invalidated only if its unconstitutionality is "so clear that it is not open to rational question". He seems not to have been concerned with judicial review of executive action; the executive branch was of course much smaller and weaker when he wrote than it is today. Elaborate on the relevance of judicial self-restraint in light of the ever-evolving activist judiciary of the modern era.

OR

- (B) Legal philosophers have been divided on this notion that judges have been given the function of interpreting law and while some judicial creativity can be exercised, the same must be restricted and not give the judge a free hand to do as he pleases. Discuss.
5. (A) "The primary obligation of a judge, at once conservative and creative, is to keep the inevitable evolution of the law on a rational course. He must always be at guard not to over-do things" Discuss.

OR

- (B) Elaborate on the limitations on judicial decision making process which at times bind the judges and render them helpless.

**(5 × 15 = 75 Marks)**