

## Criminal Law

Course Title: Criminal Law

Course No: Law 421

Duration of the Course: One Year (125 hrs)

Year: II

Full Marks: 100

Pass Mark: 35%

Level : LL.B.

Nature: Compulsory

### Course Objective:

The Main Objectives of this course are:

- to enable the students to have the basic and fundamental knowledge of criminal law.
- to teach the general principles of criminal law and criminal liability
- to impart comparative knowledge on relevant provisions of the criminal laws of India, U.K. with special reference to Nepalese laws
- to impart basic knowledge of the international criminal law and jurisdiction of international criminal court.
- to enable the students to have critical appreciation of leading cases decided by the Supreme Court of Nepal.

### Part I

#### Principles of Criminal Law

#### Unit 1: General Introduction to Criminal Law:

- 1.1 Concept, meaning and nature of crime and Criminal law.
- 1.2 Difference between crime, tort and civil wrong
- 1.3 Classification of Crime on the basis of Principles of Criminal liability.  
Crimes of relative liability
  - 1.3.1 Crimes of strict liability
  - 1.3.2 Crimes of vicarious liability.
  - 1.3.3 Crimes of joint liability.
  - 1.3.4 Crimes of inchoate liability
- 1.4 Jurisdiction of criminal law:
  - 1.4.1 Territorial jurisdiction
  - 1.4.2 Extra-territorial jurisdiction
  - 1.5.3 Personal jurisdiction
- 1.5 Extradition

#### Unit -2: Historical Evolution of Criminal Law in Nepal

- 2.1 Criminal Law before codification.
- 2.2 Criminal law after codification
  - 2.2.1 The *Muluki Ain*, 1910 B.S.
  - 2.2.2 The *Muluki Ain*, 1920 B.S
  - 2.2.3 The Draft Nepal Penal Code, 2012 B.S.
  - 2.2.4 The Proposed Draft Criminal Code, 2030 B.S.
  - 2.2.5 The Proposed Draft Criminal Code, 2058 B.S.
  - 2.2.6 The Proposed Draft Criminal Code, 2059 B.S.

#### Unit-3: General Principles of Criminal Law

- 3.1 General Introduction to General Principles of Criminal Law
- 3.2 Main Principles of Criminal Law
- 3.3 *Ingnoratia juris non excusat* (Ignorance of law is no excuse)
- 3.4 *Nullum crimen sine lege* (no crime without the law)
- 3.5 *Nulla poena sine lege* (no punishment without the law)
- 3.6 Principle of *expost facto* law
- 3.7 Principle of double jeopardy
- 3.8 *Actus personalis moritur cum persona*  
(Crime dies with the criminal)

#### Unit-4: Elements of Crime

- 4.1 Meaning of *Actus Reus*, Meaning of Act, Omission State of Affairs and Causation
- 4.2 Meaning of *Mens Rea*,
- 4.3 Categories of *Mens Rea*
- 4.4 Intention, Recklessness and Negligence
- 4.5 Doctrine of transferred malice

#### Unit-5: Stages of Crime and Inchoate Crime

- 5.1. Stages of Crime:
  - 5.1.1 Intention,
  - 5.1.2 Preparation,
  - 5.1.3 Attempt,
  - 5.1.4 Complete Crime
- 5.2. Inchoate crime:
  - 5.2.1 Incitement/Abetment/Instigation
  - 5.2.2 Conspiracy

5.2.3 Attempt

**Unit-6: Parties to the Crime:**

- 6.1 Meaning of Parties to Crime
- 6.2 Classification of Parties to the Crime
  - 6.1.1 Principal Offender
  - 6.1.2 Secondary Offender

**Unit-7: General Defenses:**

- 7.1 Concept and Meaning of General Defenses
- 7.2 Rationale and Justifications behind General Defense
- 7.3 Classification of General Defense
- 7.4 Excusable General Defenses
  - 7.4.1 Infancy
  - 7.4.2 Insanity
  - 7.4.3 Mistake
  - 7.4.4 Intoxication
- 7.5 Justifiable general defenses
  - 7.5.1 Private Defense: Self Defense, Defense of Chastity, Defense of Property
  - 7.5.2 Necessity
  - 7.5.3 Duress
  - 7.5.4 Superior order

**Part- 2  
Specific Offenses**

**Unit-8: Property Offences**

- 8.1 Theft
- 8.2 Cheating
- 8.3 Looting (*Lutpit*)
- 8.4 Arson (*Agjani*)

**Unit- 9: Offense against Person and Human Dignity:**

- 9.1 Homicide
- 9.2 Abortion
- 9.3 Hurt (*Kutpit*)
- 9.4 Assault and Battery
- 9.5 Human Trafficking
- 9.6 False Imprisonment

9.7 Abduction/Kidnapping

**Unit-10: Sexual offenses and Offenses relating to Marriage**

- 10.1 Rape
- 10.2 Incest
- 10.3 Sexual Harassment/Indecent Assault
- 10.4 Unnatural Offences
- 10.5 Bigamy: Polygamy (Polygamy and Polyandry)

**Unit-11: Socio-economic Offences**

- 11.1 Bribery and Corruption
- 11.2 Banking Crime
- 11.3 Money Laundering
- 11.4 Crime Relating to Narcotic Drugs
- 11.5 Cyber Crime

**Unit-12: Offences Related to Documents and Official Secrets**

- 12.1 Forgery
- 12.2 Coercion (*Karkap*)
- 12.3 Crime Relating to Official Secret

**Part- 3  
International Criminal Law**

**Unit 13: International Crime and Criminal Law**

- 13.1 Concept and meaning of International Criminal Law
- 13.2 Classification of International Crimes
  - 13.2.1 The crime of Genocide
  - 13.2.2 Crimes against Humanity
  - 13.2.3 War Crimes
  - 13.2.4 Crime of Aggression
- 13.3 Development of International Criminal Law
- 13.4 Jurisdiction of International Criminal Court

**Unit 14: Leading cases:**

- 1) Bhuwane Basnet Kshetry Vs. HMG *NKP* 2031, D. No. 812
- 2) Janak Tripathi Vs. HMG *NKP* 2062, No. 3, D. No. 7507, p. 269
- 3) HMG Vs. Kanaiya Raya Kumri and others, *NKP*, 2064, No. 5, D. No. 7844, p. 549

- 4) HMG Vs. Abdul Fatte Musalman, *NKP*, 2044, No. 8, D: No. 3178p. 840
- 5) HMG Vs. Shova Bai Patel, *NKP*, 2045, No. 3, D. No. 3387, p. 222
- 6) HMG Vs. Bhasanta Kumar Yadav and others, *NKP*, 2064, No. 4, D. No. 7834 p. 426
- 7) Mahendra Raj Bam Vs. HMG, *NKP*, 2051, No. 4, D. No. 4890, p. 226
- 8) HMG Vs. Rameshwor Raut Barai and others, *NKP*, 2041, No. 12, D. No. 1970, p. 360
- 9) Sharmila Para4juli and others Vs. Council of Ministers and Others *NKP*, 2061, No. 10, D. No. 7449, p.1312
- 10) Government of Nepal Vs. Sanjeeb Kumar Singh yadav and others, *NKP*, 2064, No. 10, D. No. 7888, p.1312

Note: Students are required to study the latest decisions affecting the decisions in above stated cases.

#### Reading Materials

##### Prescribed

1. Acharya, Madhav Prasad and Bhandari Badri, *Faujdari Kanoon*, Kathmandu; Ratna Pustak Bhandar (2063)
2. Acharya, Madhav Prasad and Pradhananga Rajit Bhakta, *Jiu Jyan Sambandi Aparadka Parichaya*, Kathmandu; Ratna Pustak Bhandar (2053)
3. Gaur, K.D. *Law of Crimes* (latest ed.). New Delhi: Oxford and IBH, Connaught Circus,
4. Kittichaisaree, Kriangsak. *International Criminal Law*. New York: Oxford University Press.
5. Pillai, P.S.A. *Criminal Law*. Bombay: N.M. Tripathi Limited
6. Pradhananga, Dr. Rajit Bhakta *Homicide Law in Nepal*. Kathmandu: Ratna Pustak Bhandar, (2001)
7. Pradhananga, Rajit Bhakta, Prof. Dr., Pokharel, Megharaj and Pandey Yubaraj, *Nepali Faujdari Kanoonko Parichaya*, Kathmandu; Vrikuti Academy Publication (2063)
8. Subedi, Yubaraj; Karki, Prem Raj, *Law Relating to Abuse of Power* (in Nepali), Lawyer's Club (2065)

#### References/Recommended

1. Acharya, Madhav Prasad and Pradhananga Rajit Bhakta, *Faujdari Kanoon ra Faujdari Naya*, Kathmandu; Ratna Pustak Bhandar (2049)
2. Ashworth, Andrew *Principles of Criminal Law* London: Oxford University Press. (3<sup>rd</sup> ed.) (1999).
3. INSEC (Informal Translation), *Aanatarastriya Faujdari Aadalatko Rom Bidhan* Vrikuti Academic Publication (2064)
4. Osti, Prakash (edi). *Kanoon Sambandi Kehi Aaitihasik Avilekharu*, Kathmandu; Lawyer's Club
5. *Proposed Draft Criminal Codes, 2058 & 2059*
6. *Rome Statute of International Criminal Court, 1998*
7. Smith, J.C. and Hogan B. *Criminal Law* London: Butterworth Lexis NexisT<sup>m</sup>. (10<sup>th</sup> ed.) (2002).
8. The Banking Kasur tatha Sajaya Ain, 2064
9. The Commission for the Invest gation of Abuse of Authority Act, 2059
10. The Crime and Punishment Against State Act, 2046
11. The Drug Control Act, 2033
12. The Electronic Transaction Act, 2063
13. The Extradition Act, 2045
14. The Gender Equaility Act, 2063
15. The Interim Constitution of Nepal, 2063
16. The Jasusi Act, 2019
17. The Manav Bech Bikhan Tatha Osar Pasar (Niyantran) Ain, 2064
18. The Muluki Ain, 2020
19. The Prevention of Corruption Act, 2059
20. The Prevention of Money Laundering Act, 2064
21. Turner JW CECIL, *Kenny's Outline of Criminal Law* (19<sup>th</sup> ed.). Delhi: Universal Law Publishing Co. Pvt. Ltd. (Third Indian Reprint 2006).
22. Vaidya, Tulasi Ram, Manandhar Tri Ratna *Crime and Punishment in Nepal: A Historical Prospective* Kathmandu: Bini Vaidya and Purna Devi Manandhar. (1<sup>st</sup> ed.) (1985).
23. Williams, Gianville, *Text Book of Criminal Law* Delhi: Universal Publishing Co. Pvt. Ltd. (2<sup>nd</sup> ed.) (First India Reprint 1999).

## Public International Law

Course Title: Public International Law

Course No: Law 422

Duration of the Course: One Year (125 hrs)

Year: II

Full Marks: 100

Pass Mark: 35%

Level : LL.B.

Nature: Compulsory

### Objectives

The main objectives of this course are:

- to impart an understanding of public International Law and its meaning, basis, historical background and general principles of law to the students.
- to enable the students to make critical appraisal of the contemporary International issues at the backdrop of International law vis-a- vis municipal law, case law and practices including that of Nepal.

### I. Introduction:

- Definition
- Origin and importance
- Nature and basis of International Law
- General Principles and rules of Public International Law
- The relation between International Law and Municipal Law shall be appraised at the backdrop of Nepal Treaty Act, 2046.

### II. Sources of International Law and Codification:

- Treaties
- Custom
- General principles of law ( including Ex aequo et bono)
- Judicial reason
- Writings of the publicists
- Resolution of the General Assembly and Security Council.
- Draft Conventions of International Law Commission.
- Modern trends ( including consideration of humanity)
- State practice.

### III. Subject of International Law:

- State
- Concept of state and sovereignty
- Modes of acquiring an losing state territory

- International Institutions
- Individuals (position individual in International Law: this includes, inter alia, Migration, displaced person, refugees and Human rights))
- Private Corporations/MNCs/MNEs

### IV. Recognition:

- Nature of recognition
- Recognition of government and state
- Effect of recognition and non-recognition
- De facto and de jure recognition

### V. Nationality:

- Importance and function
- Modes of acquiring and losing nationality: Migration, Internal displacement, refugees
- Statelessness/ Migration/ IDPs/ Refugees
- Double nationality ( issue raised by Non-resident Nepali National shall be discussed under this unit)

### Asylum

- Meaning and function
- Types of Asylum
- Right of asylum
- Obligation of asylum
- State of refugees extradition

### Extradition

- Meaning and function
- Basis of extradition as developed by International law vis-à-vis Nepal Extradition Act, 2045
- Political offense and International criminal offense
- Mutual legal assistance

### State Responsibility

- Treatment of aliens
- Nationality of aliens

### Transnational Business Law and Contractual liability

- New International Economic Order

- General Agreement on Tariff and Trade and World Trade Organisation
- Nepal's Accession to the WTO and harmonization of laws of Nepal in tune with the WTO norms.
- Organs and functioning of WTO
- Exhaustion of local remedial rule and Settlement of Disputes under global settings (including WTO disputes settlement mechanisms).

#### VI. Jurisdiction and Immunities

- Territorial Jurisdiction
- Personal Jurisdiction
- Maritime Jurisdiction
- Jurisdiction in aero-space.

#### VII. Immunities and Privilege

- Diplomatic immunities
- Consular immunities
- Immunities of special missions
- Immunity of foreign states
- Immunity of privileges of International organization
- Laminations of immunities.

#### VIII. State Succession

- Theory of state succession
- Succession of state
- Succession of government
- Succession of International organization

#### IX. Treaties

- Meaning and importance of treaties
- Types of treaties
- Ratification of treaties
- Reservation of treaties
- Condition of treaties
- Pacta Sunt Servanda
- Rebus Sic Stantibus
- Interpretation of treaties
- Termination of treaties
- Effects of war on treaties

#### Treaty making power under the Interim Constitution of Nepal and Nepal Treaty Act, 2047.

#### X. Neutrality

- Meaning of Neutrality
- Neutrality and non alignment
- Neutrality under the UN charter
- Rights and Duties of a neutral country
- Concept of peace zone.

#### Intervention

- Definition of intervention
- Humanitarian intervention
- Intervention by invasion

#### Blockade

- Meaning of Blockade
- Characteristics and validity of blockade
- Breach of blockade

#### Contraband

- Meaning
- Forms

#### XI. Settlement of International disputes

- Peaceful means
- Inquiry and Negotiations
- Mediation and good offices
- Conciliation and UN efforts
- Arbitration (ICA, ICSID and other bodies)
- Judicial settlement
- Compulsive means
- Relation and reprisal
- Embargo and pacific blockade

#### XII. Use of force and war

- Definition of war
- Attempts for an outlawry of war
- Principles of prohibition of use of Force under the UN Charter
- Definition of aggression

- Self-defense and collective self defense
- Collective security

### XIII. International Humanitarian Law and Laws of warfare:

- A. International Humanitarian Law:
- Meaning, nature, principles, scope and sources of IHL
  - Conventions of 1899 and 1907; Geneva Conventions (including Four Geneva Convention of 1948 and their Protocols) and other subsequent Conventions to regulate the area.
  - Geneva Protocol (1925)
  - Legality of war
  - Prisoners of war
  - Right of Angary
  - War crimes including the provisions of the Rome Statute on International Criminal Court and provisions of prominent Tribunals to try war crimes.

#### Prescribed Materials

1. Brownlie, Ian. *Principles of Public International Law* 4<sup>th</sup> Editions Oxford University (1990)
2. Hingorani, R.C. *Modern International Law*, Oxford and IBH publishing company, New Delhi (1982)
3. Starke, J.G. *An Introduction of Public International Law*, Butterworths London (1997)

#### References Materials:

1. Poudel, Madhav. *Public International Law*, Konoon Kitab Pvt. Ltd., Nepal (1989)
2. Sharma, Gopal Dr. *International Law in Nutshell*, Pathya Samagri Prakashan, Kathmandu (1990)
3. Sharma, Gopal Dr. *Public International Law*, Ratna Pustak Bhandar, Kathmandu (1990)
4. Upadhyaya, Lakshman. *An Introduction to Background and Meaning of International Law* (Antarastriya Kanoon Paribhasha Yebam Prista Bhumigat Chinari in Nepali), Nepal Law Review, Vol. 3, Jan. (1980)
5. Upadhyaya, Lakshman Prof. Dr. *Teacher's Guide on Teaching of Public International Law*, Tribhuvan University Curriculum Development Centre, Kirtipur, Kathmandu, (2000)

## Property Law

Course Title: Property Law

Course No: Law 423

Duration of the Course: One Year (125 hrs)

Year: II

Full Marks: 100

Pass Mark: 35%

Level : LL.B.

Nature: Compulsory

#### Course Objectives:

The Main Objectives of this course are:

- 1. to give general and theoretical knowledge of the law of property with special reference to Nepalese laws.
- 2. to impart a comparative and critical knowledge of the law of property of Nepal as compared to the laws of India and U.K.
- 3. to impart critical knowledge of the nature and development of land law in Nepal.
- 4. to enable the students to have critical appreciation of leading cases relating to property law decided by supreme court of Nepal.

#### 1. Introduction of the law of Property:

- 1.1 Meaning of the term property
- 1.2 Theories of property
- 1.3 Kinds of property
- 1.4 Concept of Ownership

#### 2. Modes of Acquisition and Transfer of Property.

#### 3. Constitutional Position of Property Rights in Nepal

#### 4. Property Law in Nepal (Critical Study of Relevant Provisions of the Following Chapters of Mu'uki Ain):

- 4.1 Kalyandhan (Hidden Treasure)
- 4.2 Guthiko (Legal provisions on Trust).
- 4.3 Jagga Aawad Garneko (Legal Provisions on Land Cultivation)
- 4.4 Jagga Pajaniko (Legal Provisions on Land Arrangement)
- 4.5 Jagga Michneko (Legal Provisions on Land Encroachment)
- 4.6 Ohar Banauneko (Legal Provision on House Construction)

- 4.7 Lognae Swasniko (Legal Provisions on Husband and Wife)
  - 4.8 Aamsa Bandako (Legal Provisions on Partition)
  - 4.9 Striaams Dhanko (Legal Provisions on Women's Property)
  - 4.10 Dharma Putra, Dharma Putriko (Legal Provisions on Adoption)
  - 4.11 Apputaliko (Legal Provisions on Succession)
  - 4.12 Lenden Byabaharko (Legal Provisions on Money Lending Transactions)
  - 4.13 Registrasanko (Legal Provisions on Registration of Deeds)
  - 4.14 Dan Bakasko (Legal Provisions on Charity and Gift)
- 5. Traditional Land Tenure System in Nepal:**
- 5.1 Birta (Privileged Land Ownership)
  - 5.2 Guthi (Institutional Land Ownership)
  - 5.3 Jagir (Land assignment System)
  - 5.4 Kipat (Communal Land Ownership)
  - 5.5 Jamindari and Talukdari (Feudalistic Land Ownership)
  - 5.6 Rakam (Labour Land Ownership)
  - 5.7 Ukhada (Tenancy of Jamendary Land in Palpa Majhkhand)
  - 5.8 Mahajani (A system of Tenancy at will).
  - 5.9 Rajya Rajauta (Abolished Feudatory States within the State of Nepal).
  - 5.10 Raikar (Revenue payable Registered Land).
  - 5.11 Khaokar (A land tenure system for occupying land zamindari)
  - 5.12 Jhora (Reclaimed land in Eastern Terai).
  - 5.13 Kharka (Pasture Land).
- 6. Existing Laws on Land Redistribution and Land use:**
- 6.1 Lands Act, 2021 and Rules
  - 6.2 Guthi Corporation Act, 2033
  - 6.3 Birta Eradication Act, 2016
  - 6.4 Ukhada Act, 2021
  - 6.5 Nepal Trust Act, 2064

7. **Existing Laws on Land Administration and Measurement**
  - 7.1 Land Measurement Act, 2019 and Rules
  - 7.2 Land Revenue Act, 2034

8. **Land Acquisition Law:**
  - 8.1 Land Acquisition Act, 2034
  - 8.2 Land Acquisition Rules, 2026

9. **Intellectual Property Law in Nepal:**
  - 9.1 Meaning
  - 9.2 Kinds
  - 9.3 Rights and Obligations
  - 9.4 Remedies

#### 10. Examination of Constitutional and Legal Rights of Property in Nepal

##### 11. Leading Cases:

1. Baburam Kurmi vs Kallu Kurmi, *NKP* 2046/96.
2. Kancha Ratna Tuladhar et.al. vs. Mayadevi Tuladhar, *NKP* 2043/915.
3. Kiran Mainali vs Mahamad Taukir Miya, *NKP* 2043/968.
4. Kuldip pd. Dhungel vs Hari Pd. Upadhyaya et.al., *NKP* 2045/17.
5. Loknatha Upadhyaya vs Devimaya Bhattarai et.al., *NKP* 2062/670.
6. Mithilesh Kumar Singh vs The Rt. Hon'ble Prime Minister et.al., *NKP* 2056/478.
7. Mouje Lal Yadav vs Rambaran Yadav, *NKP* 2046/1081.
8. Mrs. Ratna Keshari Udas vs. Land Revenue Dept. et. al., *NKP* 2043/1041.
9. Narayan Dutta Baral vs Chief Land Measurement Office, *NKP* 2045/590.
10. Narendra Bikram Thapa vs Guthi Corporation, Head Office, *NKP* 2045/590.
11. Padam Bahadur Bhandari et.al. vs Nepal Govt. et.al., *NKP* 2063/1021.
12. Padam Bahadur Karki vs Mankumari Basnet et.al., *NKP* 2061/212.

13. Padma Laxmi Rajbhandari vs. Krishna Chandra Devi Rana, *NKP* 2045/1225.
14. Pitambar Bhusal vs Krishna Raj Upadhyaya, (*NKP* 2038/No.3/1).
15. Punya Maya Bhattarai vs Land Revenue Office, Jhapa et.al., *NKP* 2041/1090.
16. Ram Krishna Pandit vs Nani Maiya Pandit, *NKP* 2047/258.
17. Sam Tuliya Devi et.al. vs. Maheshwor Shahu Kannu, *NKP* 2046/631.
18. Shatidevi Thapa vs Jagat Kumari Shah et.al., *NKP* 2035/133.
19. Suryaman Shrestha vs Amardevi Shrestha, *NKP* 2045/361.
20. Tirthaman Shakya vs Jamuna Devi Shakya, *NKP* 2044/556.

#### Reading Materials:

1. **Legal Texts (as amended)**
  1. Birta Eradication Act, 2016
  2. Copyrights Act, 2059
  3. Guthi Corporation Act, 2033
  4. Land (Measurement) Act, 2019 and Rules
  5. Land Acquisition Act, 2034 and Rules
  6. Land Revenue Act, 2034
  7. Lands Act, 2021 and Rules
  8. Muluki Ain, 2020
  9. Nepal Trust Act, 2064
  10. Patent, Design and Trademark Act, 2022
  11. The Interim Constitution, 2063.
  12. Ukhada Act, 2021
2. **Text Books:**
  1. Neupane, Gunanidhi *Property Law in Nepal*, Lumbini Prakashan, Kathmandu, (2064)
  2. Shrestha, G.B. *Law of Property*, Pairavi, Kathmandu, (2050)
  3. Shrestha, G.B. *Muluki Ain: A Commentary*, Pairavi, Kathmandu, (2064)
3. **Reference Books:**
  1. Basnyat, Surendra Bir Singh, *House Land Related Law Precedents Principles (in Nepali)*, Renu Prakashan (2058)
  2. Dr. Shanta Thapalia, *Family Law*, Kathmandu.
  3. Fitzgerald, *Salmond on Jurisprudence*, (Latest Edition).

4. Karki, Bharat Bahadur Prof. Dr., *Teacher's Guide on Property Law*, CDC, T.U., (2000)
5. Menon, Krishna *The Law of Property*.
6. Regmi, M.C. *Land Ownership in Nepal*, Kathmandu, (1976)
7. Regmi, M.C. *Land Tenure and Taxation in Nepal*, Kathmandu, Ratna Pustak Bhandar, (1978)
8. Shah, S.M. *Lectures on Transfer of Property*.



## Methods of Legal Research and Writing

Course Title: **Methods of Legal Research and Writing** Full Marks: 50  
Course No: Law 424 Pass Mark: 35%  
Duration of the Course: One Year (62 hrs) Level : LL.B.  
Year: II Nature: Compulsory

### Course Objectives:

The objectives of this course are:

- to acquaint the students with the philosophy of legal research
- to familiarize the students with the general concept and methods of legal writing
- to provide knowledge about the technique of collection, analysis and interpretation of data in research.
- to depart know how about Idea and layout of research report.

### Unit 1 Introduction

1. Meaning and types of research
2. Objectives of research
3. Meaning, nature and types of legal research
4. Importance of legal research
5. Forms and styles of legal writing

### Unit 2 Approaches to Legal Research

1. Historical research approach
2. Comparative research approach
3. Analytical research approach
4. Doctrinal and Non-doctrinal research approach

### Unit 3 Formulation of research problem and Research Proposal

1. Factors affecting problem selection
2. Criteria of a research problem
3. The Research Design
4. Formulating a research proposal

### Unit 4 Tools of Research

1. The surveys
2. The questionnaire and Schedules
3. The interview

### 4. Observation

### Unit 5 Data Collection and Treatment

1. Primary and Secondary Data
2. Processing and Analysis of Data
3. Interpretation and Presentation of data
4. Measurement and Scaling techniques

### Unit 6 The Research Report

1. Idea of research report
2. Layout of the research report
3. Rules of Foot-notes and Bibliography

### Prescribed Materials

1. Bhandari, Surendra, *Legal Research*, Kathmandu: Aath Rai Publication, (2050)
2. Belbase, Krishna, *Legal Research and Writing*, Kathmandu: Lumbini Publication, (2065)
3. Pradhananga, Rajit Bhakta, *An introduction to Legal Research and Methodology*, Kathmandu: Bhrikuti Academy, (2064)

### Reference Materials:

1. Bailey, Kenneth D., *Methods of Social Research*, New York: The Free Press, (1978)
2. Goode William J. and Hatt, Paul K., *Methods in Social Research*, Mc Graw Hall, (1985)
3. Kothari, C.R., *Research Methodology; Methods and Techniques*, New Delhi: Wishwa Prakashan, (1995)
4. Verma S.K. and Wani M. Afzal (ed.), *Legal Research and Methodology*, Delhi: ILI, (2006)
5. Wolf and Pant, *A Handbook for Social Science Research and Thesis writing*, Second Edition, Kathmandu: P.R. Pant, (1999)

## Moot Court, Pre-Trial Preparations and Participation in Trial

Course Title: Moot Court, Pre-Trial Preparations and Participation in Trial  
Course No: Law 425  
Duration of the Course: One Year (62 hrs)  
Year: II

Full Marks: 50  
Pass Mark: 35%  
Level : LL.B.  
Nature: Compulsory

### Course Objectives

The main objectives of this course are:

- to give practical skills to students for preparing a case file containing all legal documents in the case assigned by campus.
- to give a practical knowledge of oral argument or advocacy
- to familiarize the students with the various steps of the trial and hearing proceedings
- to provide the knowledge of interviewing techniques and pre-trial / hearing preparations (interviewing to clients)

### Course Description and Evaluation

The course contains three main components namely moot court, pre-trial / hearing preparations (interviewing to clients), and participation in trial proceedings. All these components are designed to provide practical knowledge to the students. At the completion of the session, students will have to submit a moot court file assigned by the campus along with examination form for the external evaluation. The full marks for the external and internal examination will be 35 and 15 marks respectively. The internal evaluation will be done through viva-voce and the pass marks in both the external and internal examinations will be 35 percent of the full marks. The campus shall constitute a three member committee having at least 7 years of experience in teaching or practicing law for conducting the viva-voce examination.

## Evidence Law

Course Title: Evidence Law  
Course No: Law 426  
Duration of the Course: One Year (62 hrs)  
Year: II

Full Marks: 50  
Pass Mark: 35%  
Level : LL.B.  
Nature: Compulsory

### Course Objectives

The main objectives of this course are:

- to provide the basic knowledge of law of evidence
- to acquaint the students with the practical knowledge of collection and evaluation of evidences

### Unit-1 Introduction

- 1.1. Meaning, nature, kinds, scope and importance of Evidence and the law of evidence.
- 1.2. Historical Development of the Law of evidence in Nepal.

### Unit-2 Basic Principles of Law of Evidence in Nepal

- 2.1 Evidence must be confined to the matters in issue.
- 2.2 Best evidence must be produced.
- 2.3 Hearsay evidence is no evidence.
- 2.4 He who asserts must prove.
- 2.5 Principle of Estoppel

### Unit-3 Facts which need or need not be proved

- 3.1. Meaning and concept of facts, facts in issue, and relevant facts.
- 3.2 Facts which need to be proved.
  - 3.2.1 Facts in Issue
  - 3.2.2 Relevant Issue
- 3.3 Facts which need not be proved
  - 3.3.1 Formal admission
  - 3.3.2 Judicial Notice
  - 3.3.3 Presumption

### Unit-4 Evidences when admissible and inadmissible

- 4.1 Admissible Evidence
  - 4.1.1 Admission and Confession
  - 4.1.2 Statement on the Spot
  - 4.1.3 Dying Declaration

- 4.1.4. Statement by persons of special conditions
- 4.1.5 Facts recorded in Public documents
- 4.1.6 Facts recorded in Books of Account
- 4.1.7 Facts published in Books or Articles
- 4.1.8. Matters recorded in regular Statistics, Lists, Statements, etc.
- 4.1.9. Statement of witness in other cases.
- 4.1.10 Investigation document
- 4.1.11 Certificate, Report, other document; and any matter or material evidence (dashi) attested by witness.
- 4.1.12 Expert's opinion
- 4.1.13 Statement of witness

#### 4.2 Inadmissible Evidence

- 4.2.1 Confession under threat, inducement etc
- 4.2.2 Statement expressed for the purpose of compromise
- 4.2.3 Statement not recorded as witness at court.
- 4.2.4 Character
- 4.2.5 Privileges.

#### Unit-5 Classification of Evidence

1. On the basis of Relevancy: Direct and Circumstantial
2. On the basis of Physical Structure: Documentary, Oral and Material
3. On the basis of Probative Value: Primary and Secondary

#### Unit-6 Burden of Proof in Nepal

- 6.1 General Concepts
- 6.2 Rules of Burden of Proof under:
  - Evidence law
  - Corruption law
  - Drugs law
  - Woman's trafficking
  - Other laws.

#### Unit-7 Prescribed Leading Cases

- 7.1. Baldev Upadhyaya vs. Gita Bhattarai & others (Division Bench), *NKP* 2049 no. 6 p. 538
- 7.2. Devendra Shamshere J. B. R. vs. Late Lila Shamshere J.B.R. & others (Five Judges Full Bench) *NKP* 2045 no. 8 p. 743
- 7.3. HMG vs. Devi Maya Ranabhat (Division Bench) *NKP* 2057 no. 8 / 9 p. 685

- 7.4. HMG vs. Diwakar Pandit, (Division Bench), *NKP* 2060 nos. 1 / 2 p. 64
- 7.5. HMG vs. Kailash Mahato & others (Three Judges Full Bench), *NKP* 2057 no. 4 p. 268
- 7.6. HMG vs. Sahadev Singh Sikh & others (Division Bench) *NKP* 2032 no. 7 p. 175
- 7.7. Keshav Prasad Ghimire vs. HMG (Division Bench), *NKP* 2036 no. 4 p. 108
- 7.8. Megh Raj Raut vs. HMG (Five Judges Full Bench), *NKP* 2057 no. 2 p. 92
- 7.9. Miss Marshakal Kaski vs. Chief Custom Officer Shree Tribhuvan Airport Custom Office and others, (Division Bench), *NKP* 2034 no. 5 p. 134
- 7.10. Mona Sir Rain Kachary vs. Jeun Khatun (Division Bench), *NKP* 2048 no. 1 p. 8

#### Reading Materials

##### Prescribed

1. Osti, Prakash, *Evidence Law* (Praman Kanoon), Pairavi (2053)
2. Pradhanang, R.B, *A General Introduction to the Nepalese Law of Evidence*, Bhrikuti Academic Pub. (2061)
3. Shrestha, G.B., *Evidence Law*, Pairavi (2049)

##### Reference

1. Elliott, D.W. (ed) *Phipson and Elliott Manual of the Law of Evidence*, Universal Law publishing (1<sup>st</sup> Indian Reprint 2001)
2. Hon'ble Mr. Justice Chandrachud, Y.V. et.al(ed.), Ratanlal and Dhirajlal, *The Law of Evidence*, (21<sup>st</sup> ed. 2004)
3. Justice Nandan, D; (Rev), Chief Justice *M. Monir Principles and Digest of the Law of Evidence*, Universal Law Publishing (2004)
4. Ursekar, H.S. (Rev.), *M. Monir Law of Evidence*, The Universal Book Agency, Allahabad (2002)

## Labour Law

Course Title: Labour Law  
Course No: Law 427  
Duration of the Course: One Year (62 hrs)  
Year: II

Full Marks: 50  
Pass Mark: 35%  
Level : LL.B.  
Nature: Optional

### Course Objectives:

The Main Objectives of this course are:

- to introduce before the student basic concept of Labour law and Labour Jurisprudence and other related Acts.
- to impart knowledge to the students about International Labour Organization (ILO) and its Core Labour Standards
- to inculcate in then knowledge about fundamental elements of labour law like concept of industrial relations, labour employment laws; labour welfare and social security; occupational safety and health care; disciplinary action etc.
- to give knowledge to them about Trade Unions and its activities.
- to impart knowledge to the students about labour disputes with reference to Labour Court and Central Level Labour Advisory Committee

### 1. Introduction

- i) Meaning and scope of labour law
- ii) ILO, its origin and its Core labour standards.
- iii) Industrial jurisprudence and fundamental rights of the workers
- iv) History of Labour legislation in Nepal.

### 2. Labour Employment Laws

- i) Appointment of workers
- ii) Wages
- iii) Hours of work
- iv) Child workers and women workers

### 3. Law of labour Welfare and Social Security.

- i) Meaning of Labour welfare, Need of labour welfare, welfare fund, Child care centre, Leave.

- ii) Meaning of social security, provident fund, Gratuuity, workemen's compensation, and employee's motivation.

### 4. Occupational safety and Health care.

### 5. Concept of Industrial disputes and Collective bargaining

- i) Individual grievances, collective grievances.
- ii) Collective bargaining
- iii) Strikes and Lock-out

### 6. Disciplinary Action

- i. Misconduct
- ii) Kinds of punishments  
(Suspension, domestic inquiry, right of representation i.e. explanation and Appeal before Labour Court.)

### 7. Trade Union

Meaning, Registration, Authority and Function of Trade Union, Hierarchy of Trade Unions.

### 8. Others:

Labour Office, Labour courts and its jurisdiction, Central Level Labour Advisory Committee.

### 9. Prescribed Cases:

1. Casino Royal vs. Labour Court, *NKP* 2064, vol.5. p. 625
2. Dr. Rupjyoti vs. Labour Court, *NKP* 2063 No. 4, p 407.
3. International Center for Integrated Mountain Development vs. Labour Court, Writ No3125 (2062), (Decision date 2064/12/5).
4. Mukunda Bahadur Bista vs. Labour Court, *NKP* 2063 No. 8 p. 1099.
5. Nepal Battery Company Balaju Industrial Estate Pvt. Ltd vs. Ministry of Labour, *NKP* 2059, No. 11/12, p726, Decision No. 7150
6. Nepal Insurance vs. Labour Court, Writ No 3625, Year 2061.
7. Olampia Textile vs. Labour Court, *NKP* 2064/ 371.
8. Prop-Public vs. Ministry of Women, Children and Social welfare, *NKP* 2060, No. 9/10, p 726, Decision No. 7268
9. Pro-public Vs. Nepal Independent Trade Union of Hotel, Writ No 0602 (2063)

10. Purushottam Bhandari vs. Ministry of transport and Labour Management 2058, Writ No 3232, (Important Decisions related to Labour Law, part II p.379).

### Reading Materials

#### 1. Legal Texts:

1. Bonus Act, 2030.
2. Interim Constitution, 2063
3. Labour Act, 2048 and Rules
4. Trade Union Act, 20249 and Rules

#### 2. Text Books

1. Dahal, Kasi Raj, *Industrial Jurisprudence*, Pairavi Publication, Kathmandu, (2050)
2. ILO, *Labour Administration: Profile on Nepal*, Kathmandu, (1998)
3. Ojha, Pawan Kumar, *Industrial Jurisprudence*, Atharai Publication, Putalisadak.
4. Ojha, Pawan Kumar, *Labour Law*, Part I and II.
5. Thapa, Sita Maiya Singh, *An Introduction of Labour law of Nepal*, Nepal, Law Society, (1991)

#### 3. Reference (Latest editions)

1. Giri, V.V., *Labour Problem in India*
2. ILO, *International Labour Standards*
3. Malhotra O.P., - *Law of Industrial Disputes*.
4. *Taxman's Industrial Law of India*.

## Election Law

Course Title: Election Law

Course No: Law 428

Duration of the Course: One Year (62 hrs)

Year: II

Full Marks: 50

Pass Mark: 35%

Level : LL.B.

Nature: Optional

### Course Objectives:

The objectives of this course are:

- to give knowledge to students about general principle of the law of election and related provisions of the constitution.
- to acquaint students with various forms of election i.e. Majority, Proportional and Mixed systems.
- to spell out background and development of election law in Nepal.
- to acquaint students with basic election procedure as prescribed by law, and
- to familiarize students with modern trends, concepts and development in the field of election law.

#### I. General Background:

- Concept and forms of Representation.
- Meaning and importance of Election
- Meaning and nature of Election law
- Idea of Adult Franchise

#### II. Basic Concept:

- An introduction to electoral systems – Direct and Indirect, Majority, Proportional and mixed systems.
- Requirement of elections – Qualification of voters, Registration of voters, Delimitation of election districts (Constituencies), Voting process.
- Bi-elections, recall and secret ballot system
- Nature of Voting right

#### III. Election Authorities:

- Composition, power and functions of Election Commission.
- Subsidiary bodies of Election Commission.

## International Air and Space Law

Course Title: **International Air and Space Law** Full Marks: 50  
Course No: Law 429 Pass Mark: 35%  
Duration of the Course: One Year (62 hrs) Level : LL.B.  
Year: II Nature: Optional

### Course Objectives:-

The Main Objectives of this course are:

- to impart the students the knowledge relating to International and national laws of air and space
- to acquaint the students with the principles and practices of aerial navigation with critical appreciation of the growing importance of the air space law
- to enable the students to analyze the contribution of the ICAO in the progressive development of air law
- to familiarize the students with contribution of UN in development of the air and space law.

### I. Introduction:

- i. Meaning scope and sources of International air and space law
- ii. Importance of International air and space law
- iii. Civil Aviation legislation in Nepal
- iv. International Air law convention to which Nepal is a party
- v. Air Service agreement concluded by Nepal
- vi. Recent trends

### II. Air space:

- i. Definition of air space
- ii. Sovereignty over air space
  - a. Nationality and registration of aircraft
  - b. International law and procedure on registration of aircraft

### III. Role and functions of ICAO:

- i. Composition, role, functions, safety measures and settlement of International disputes
- ii. Features of Chicago Convention

### IV. Carriers' Liability:

- i. Warsaw Convention 1929 and Hague Protocol 1955 and the Montreal Convention of 1999.
- ii. The Guadalajara Convention and Montreal Agreement on Nonscheduled carrier's liability
- iii. Nepalese experience on carrier's liability.

### V. Hijacking:

- i. Meaning of aerial piracy/ unlawful seizure of Aircraft
- ii. Tokyo Convention
- iii. Hague Convention

### VI. Montreal convention

- iv. Nepalese law on hijacking with special reference to Tokyo, Hague, and Montreal Conventions.

### Damage:

The Rome convention on damage caused by foreign aircraft to third parties on the surface 1952

### VII. Law of Outer space:

- i. Definition
- ii. Distinction between air space and outer space
- iii. Doctrine of sovereignty
- iv. Liability for accident by objective in the outer space
- v. Special protection to Astronaut disarmament in outer space
- vi. Outer space treaty to which Nepal is party.

### Reading Materials

#### Text Books and Statutes:

1. Airport Certificate Regulation, 2004.
2. Airport Charges Rules, 2058.
3. Aviation Policy, 2050 and 2063.
4. Aviation Security (Management) Rules, 2046.
5. Civil Aviation (Investigation of Accident) Rules, 1962.
6. Civil Aviation Act, 1959.
7. Civil Aviation Authority Act, 2053.
8. Civil Aviation Regulation, 1996 and 2002.

9. Draft of Airlines Liability Act, 2065.
10. Martin, Peter. et. al (eds), **Shawcross and Beaumont's Air Law**, Butterworths, London 1977.
11. Nepal Airlines Act, 1963.

**References:**

1. Ayner, Nancy D. *Aerial Hijacking as an International Crime*, Nijhoff, Leyden, (1974)
2. McNair, Lord. *The Law of Air*, London
3. Upadhyaya, Lakshman Prof. Dr. *Teachers' Guide for Teaching of International Air and Space Law*, Tribhuvan University Curriculum Development Centre, Kirtipur Kathmandu, (2000)
4. Wassenberge, H.A. *Aspects of Air Law and Civil Air Law Policy in the Seventies*, Nijhoff, (1970)

## Environmental Law

Course Title: **Environmental Law**

Course No: Law 430

Duration of the Course: One Year (62 hrs)

Year: II

Full Marks: 50

Pass Mark: 35%

Level : LL.B.

Nature: Optional

### Course Objectives

The Main Objectives of this course are:

- to Impart the students with the basic knowledge of environmental law and principles.
- to Acquaint the students with the different aspects of international environmental law.
- to Familiarize the students with the history and existing environmental law of Nepal.

### 1. Introduction

- a. Meaning, nature and scope of environmental Law
- b. Global, Regional and National Environmental Problems and issues: Loss of biological diversity, disappearance of species, climate change, global warming, green house effect, depletion of ozone layer, acid rain and Pollution etc.
- c. Emerging principles of Environmental law
  - Polluter pays principle
  - Precautionary principle
  - Public trust doctrine
  - Sustainable development
  - Responsibility not to cause environmental damages
  - Principles of Preventive Action
  - Principles of Good Neighborliness and International Cooperation
  - Principles of Common but Differentiated Responsibility
  - Environmental Impact Assessment

### 2. International Environmental Law

- a. Meaning, nature, kinds and sources of International Environmental Law 1 Period

b. Brief Introduction on Global Conferences

- United Nations Conference on Human Environment 1972 (Stockholm)
- UNCED 1992 (Rio)
- WSSD 2002 (Johannesburg)

c. Selected Multilateral Environmental Agreements (MEAs)

- Convention on International Trade in Endangered Species (CITES) 1973
- Ramsar Convention 1972
- Convention Concerning the Protection of the world Cultural and Natural Heritage 1972
- Vienna Convention on Ozone Layer Depletion (1985)
- Montreal Protocol (1987) and subsequent amendments
- Trans-boundary Movements of Hazardous Wastes (1989)
- Framework Convention on Climate Change (FCCC) 1992 and Kyoto Protocol (1997)
- Convention on Biological Diversity 1992 and Bio safety Protocol 2000
- Agenda- 21 1992
- Convention Against Desertification 1994
- Other environmental treaties to which Nepal has become a party
- Convention on Non-navigational uses of International Water Courses 1997
- Treaty Banning Nuclear Weapons Tests 1963
- Outer space Treaty 1967
- Other treaties to which Nepal is a party

d. International Environmental Institutions

- United Nations Environmental Program (UNEP)
- Commission on Sustainable Development (CSD)
- Global Environmental Facility (GEF)
- Conference of Parties and other bodies formed under MEAs

Other International Institutions

3. Regional Approach for the Protection of Environment:

- South Asian Association for Regional Cooperation (SAARC)
- South Asia Cooperative Environment Programme (SACEP)
- International Center for Integrated Mountain Development (ICIMOD)

4. Environmental Laws of Nepal

- Brief History of Environment Protection in Nepal
- Constitutional Provision and Environment
- Policy of Nepal Government for the Protection of Environment
  - National Conservation Strategy
  - Nepal Environmental Policy and Action Plan
  - EIA Guidelines
  - Periodic Plans
  - Industrial Policy
- Chapters of National Code
  - Of fire
  - Of Animals
  - Of Lands
  - Other Provisions
- Forest Law
  - Forest Protection (Special arrangement) Act 1967
  - Plant Protection Act, 1982
  - Soil and Watershed Conservation Act 1982
  - Forest Act 1992
  - Forest Regulations
- Wildlife and Biological Diversity Law
  - National Parks and Wildlife Conservation Act 1972
  - Rules regarding to the conservation of National Parks i.e. Chitwan National Park Rules, Royal Bardiya National Parks Rules etc.
  - Conservation Area Management Regulations
  - Aquatic Animals Protection Act 1960 (2017)



g. Cultural Heritage Law

- Ancient Monuments Protection Act. 1956 (2013)
- Lumbini Development Fund Act 1985 (2042)
- Pashupati Area Development Fund Act 1987 (2044)

h. National Heritage Law

i. Water Resource Law

- Soil and Watershed Conservation Act 1982 (2039)
- Drinking Water Corporation Act 1983 (2040)
- Water Resources Act. 1992 (2049)
- Electricity Act 1992 (2049)

j. Pollution Prevention and Control Law

- Solid Waste (Management and Resource Mobilization) Act 1987 (2044)
- Tourism Act 1988 (2045)
- Industrial Enterprises Act 1992 (2049)
- Labour Act 1990 (2048) Chapter 5. Sec. 27-36
- Mining and Minerals Act 1985 (2042)
- Local Self Government Act 1998
- Local Self Government Regulation 1999
- Petroleum Act, 2040 B.S.

k. Environment Protection Act and Rules (1996 and 1997) 1 Period

i. Other Laws

m. Institutional and Environmental Protection in Nepal

n. Judiciary and Environmental Protection in Nepal

**(Decisions of the Supreme Court in selected Cases.)**

- Advocate Bharat Mani Gautam Vs. HMG Council of Ministers Secretariat, and others *Supreme Court Bulletin* year 10 No. 13 Vol 223 pp.10-12 (2058)
- Advocate Bharat Mani Gautam Vs. HMG Council of Ministers Secretariat, and others- 2056-2-31 Prakash Mani Sharma et.al.

(edi), *Compendium of Cases relating to Environment*, Pro-Public, pp.283-289

- Advocate Bhojraj Iyer on behalf of Pro-Public Vs. HMG Ministry of Population and Environment, *Supreme Court Bulletin* year 11, No. 1, Vol 235, P. 10 (2059)
  - Advocate Prakash Mani Sharma vs. Council of Ministers and others, *NKP* vol. 39, No. 6, pp312-322, (1997)
  - Gopal Shiwakoti 'Chintan' et al vs. Ministry of Finance (Arun III case), *NKP*, No. 4 (2051 B.S.)
  - Prakash Mani Sharma et. al. vs. HMG, Ministry of Population and Environment et. al. (Setting Pollution Standard), Writ No.3429, decision date 2062-09-04 (17-12-2008). *Some Important Precedents of the Supreme Court relating to Public Welfare*, Vol.08, Supreme Court (2006)
  - Surya Prasad Dhungle vs. Marble Industries, *NKP Golden Jubilee Special Issues* pp.132- 50, 169, (2052)
  - Yogi Narahari Nath vs. HMG Ministry of Education and others *NKP* Vol. 38 No. 1, pp.33-49, (1996)
- o. Environmental Impact Assessment Law

**Reading Materials**

**Prescribed**

1. Belbase, Narayan *The Implementation of International Environmental Law in Nepal* IUCN- The World Conservation Union Kathmandu Nepal, 1997
2. Belbase, Narayan (ed.) *Environmental Law and Justice, IUCN, Forum for Justice Nepal*, 2055
3. Leeiakrishnan P., *Environmental Law in India* New Delhi; Butterworths: 1999
4. Singh Gurdeep, *Environmental Law: International and National Perspectives*, Lawman India Pvt. Ltd. New Delhi 1995

**References**

1. Adhikari, Pravakar "Environmental Protection Issues related to Civil Aviation", *Nepal Law Review*, Vol. 15, No. 1/2 (2002)
2. Ancient Monument Act 1313
3. Aquatic Protection Act 2017
4. Belbase, Dr. Lekhnath et.al, *Jaibik Bibidhata Samrakshan Shrot Sangalo*, Pro-Public (2057)

5. Birnie, Patrica and Allan Boy Ley, *Internatioanl Law and the Environment* (Oxford Clarendon Press 1972)
6. Desai Bharat, *Environmental Laws of India Basic Documents* (New Delhi: Lancers, 1994)
7. Drinking Water Corporation Act, 2040
8. Electricity Act, 2049
9. Environment Protection Act 2053 and Environmental Protection Rules 2054
10. Forest Act, 2049
11. Industrial Enterprise Act, 2049
12. IUCN, UNEP, WWF, *Caring for the Earth: Strategy for Sustainable Living* (Switzerland: IUCN, UNEP, WWF, 1991)
13. Local Self-government Act 2055 and it's rule 2056
14. Lumbini Development Fund, 2042
15. Mine and Mineral Act, 2042
16. Muliki Ain, Aago Lagauneko Mahal, Chaupayako mahal, Pashu Karani ko Mahal.
17. National Parks and Wildlife Protection Act, 2039 and different rules
18. Nature Conservation Fund Act, 2039
19. Pant, Amber Prasad Dr., *et. al.*, Teachèr's Guide on Environmental Law (LL.B.), CDC, TU (2000)
20. Pashupati Area Development Fund 2044
21. Plan, Policies and programs of Government of Nepal
22. Private Forest Nationalization Act, 2013
23. Rosencranz, Armin, *et. al.*, *Environmental Law and Policy in India Cases, Materials and Statutes*, 2001 Tripathi, Bombay India,
24. Sharma Prakashmani *et. al.*, *Collection of Environmental Cases* (In Nepali), Pro-public (2057)
25. Soil and Watershed Conservation Act, 2039
26. Solid Waste and Resource mobilization Act 2044
27. The Interim Constitution of Nepal 2063
28. Tourism Act, 2045
29. Water Resource Act, 2049

**Note:** The students are required to keep well informed of the latest Constitution, Acts, Rules, precedents and reading materials in the respective subject area.

## Refugee Law

Course Title: **Refugee Law**

Course No: Law 431

Duration-of the Course: One Year (62 hrs)

Year: II

Full Marks: 50

Pass Mark: 35%

Level : LL.B.

Nature: Optional

### Course Objectives:

The objectives of the course are:

- to Acquaint the students with the meaning, nature, scope and history of refugee law.
- to Familiarize the students with the International instruments relevant to refugees, asylum seekers and persons in refugee like situation.
- to Acquaint the students with various state practices in the treatment of refugees and asylum seekers.
- to Familiarize the students with the role and mandates of the UNHCR and other agencies in the protection of refugees.
- to Enable the students to contribute to the development of legal framework for refugee law in Nepal.

### I. Introduction:

- Nature, sources, scope and history of refugee law.
- Relations between human rights law, humanitarian law and refugee law.

### II. Definition of Refugees:

- Definition of refugees in historical perspective (1920-to date, OAU, Cartagena)
- Persons in refugee-like situations, internally displaced persons, stateless migrants, fugitives from justice and asylum, seekers.

### III. The concepts of asylum and the principle:

- Rights of Asylum
- Types of Asylum
- Duties of the state of Asylum and Asylees
- Principle of non-refoulement

**IV. Status determination Procedure:**

- Review and comparison of state practices
- Individual determination/prima facie determination
- Loss of state (cessation and revocation)

**V. International efforts for the protection of refugee and other persons in need of protection:**

- 1951 Geneva Refugee Convention and Protocol
- OAU Convention
- The Cartagena Declaration
- Rights and Duties of Refugees
- The Four Geneva Convention
- The two convention of statelessness
- General Human Rights Instruments
- The U.N. General Assembly
- And the Exom resolution

**VI. International Organizations concerned with the refugees and other persons in need of protection:**

- The UNHCR
- ICRC

**VII. New trends in Refugee Law:**

- Temporary protection
- Safe country of origin and safe country of asylum
- First country of asylum

**VIII. Refugees in the world with particular reference to Asia including Nepal:**

- Complex humanitarian crisis the cases of Cambodia Somalia and former Yugoslavia
- Prospects for possible legal framework for refugee law in Nepal

**Reading Materials**

**Prescribed**

1. Atle, Grahi Maden. *The Status of Refugees and International Law*. Vol. 1 and 2, A.W. Leyden 1966.

2. Gowlland, Vera. and Samson, Klous. (eds) *Problems and Prospects of Refugees*, The Graduate Institute of International Studies, Geneva, 1992.
3. Guy, Goodwin. *The Refugees in International Law*, Oxford Clarendon Press, 1983 Gill.

**Reference**

1. AALCC, Combined Report 26-30<sup>th</sup> Sessions, New Delhi, AALCC Secretariat, 1992.
2. AALCC, Reports and Selected Documents of the Thirty Second Session, New Delhi, 1993, Chapter II on Refugees.
3. Bhandari, Surendra Dr. *Teaching of Refugee Law*, Tribhuvan University Curriculum Development Centre, Kirtipur, Kathmandu, 2000.
4. Hingorani, R.C. (ed) *Humanitarian Law*. New Delhi, Oxford & IBH, New Delhi, 1987.
5. Madsen, Grohi., Atle. *The Status of Refugees and International Law*, vol. 1 & 2 Leyden, 1996.
6. The Faculty of Law, T.U. & UNHCR (Nepal), *Proceeding of the World Conference on Refugee Law in Nepal: Prospects and Future*, Kathmandu 1994.
7. UNHCR, Collections of *International Instruments Concerning Refugees*, Geneva, 1979.
8. UNHCR, *The State of the World's Refugees*.

## **Criminology**

Course Title: **Criminology**

Course No: Law 432

Duration of the Course: One Year (62 hrs)

Year: II

Full Marks: 50

Pass Mark: 35%

Level : LL.B.

Nature: Optional

### **Course objectives**

The Main Objectives of this course are:

- to impart knowledge on the cause of crime and the factors affecting the crime.
- to explain the concept of the punishment along with the modern trends towards reformation.
- to impart knowledge on juvenile delinquency, its problem, measures of controls, legal and social means of rehabilitation.
- to enable the students about causes of crimes and other anti-social behavior.
- to impart the knowledge about Organized crimes and Trans-national organized crimes, and its effects.

### **Unit - 1: Introductory:**

- 1.1. Definition and scope of Criminology.
- 1.2. Utility of Criminology.
- 1.3. Study method of Criminology.

### **Unit - 2: Introduction and Etiology of Crime:**

- 2.1. Universal nature of Crime.
- 2.2. Definition of Crimes.
- 2.3. Causes of crimes.
- 2.4. Classification of Crime.
- 2.5. Nature of Criminal Law.
- 2.6. Modern trends as to Crime and Criminals.

### **Unit - 3: Traditional Explanation of Crime:**

- 3.1. Demonological Approaches.
- 3.2. The free will Theory.
- 3.3. The Classical and Neo Classical Theory.
- 3.4. The Geographical Theory.

### **Unit - 4: Biological Explanation of Crime:**

- 4.1. The typological Theory (Lombroso, Garofalo, Ferri).
- 4.2. Phrenology and Crime.
- 4.3. The Chromosome Theory.
- 4.4. The Feeble Minded Theory.
- 4.5. Psyche-Analysis Theory.

### **Unit - 5: Economic Explanation of Crime:**

- 5.1. The Poverty and Crime.
- 5.2. The Socialist Theory.
- 5.3. Economics Prosperity and Crimes.
- 5.4. White Color Crime.
- 5.5. Comparison of Tradition crime with white Color Crime.

### **Unit - 6: Sociological Explanation of Crime:**

- 6.1. The Social disorganization Theory.
- 6.2. The Anomie Theory.
- 6.3. The differential association Theory.
- 6.4. The Environmental Theory.

### **Unit - 7: Multiple Causation and Crimes:**

- 7.1. The multiple causation Theory
- 7.2. Family condition and Crime
- 7.3. School condition and Crime
- 7.4. Mass media and Crime
- 7.5. Racism and Crime

### **Unit - 8: Theories of Punishment:**

- 8.1. Definition of Punishment
- 8.2. Features of Punishment
- 8.3. Theories of Punishment

### **Unit - 9: Capital punishment System:**

- 9.1. Introduction of Capital punishment
- 9.2. Historical development of Capital punishment
- 9.3. Traditional attitude towards Capital punishment
- 9.4. Modern thought towards Capital punishment

### **Unit - 10: The Prison System:**

- 10.1. Historical development of prison System

- 10.2. Reform in Prison System
- 10.3. Alternative to Prison System
- 10.4. The Nepalese Prison System
- 10.5. Defect underlying the Prison System

**Unit - 11: Other forms of Punishment System:**

- 11.1. Corporal Punishment
- 11.2. Banishment
- 11.3. Social Disgrace
- 11.4. Fine and Restitution

**Unit - 12: Re-socialization of Offenders:**

- 14.1. Probation
- 14.2. Parole
- 14.3. Treatment of offenders
- 14.4. After care Programme

**Unit - 13: Juvenile delinquency:**

- 13.1. Introduction & Causes to Juvenile delinquency
- 13.2. Difference between the law for Juvenile delinquency and Adult Criminals (substantive & procedural)

**Unit - 14: Victimology:**

- 14.1. Introduction to Victimology
- 14.2. Place of the victim in criminal Justice

**Unit - 15: Sentencing policy of the Court:**

- 15.1. The Court Proceeding
  - i. Hearing
  - ii. conviction and
  - iii. Sentencing.
- 15.2. Nepalese Sentencing policy

**Unit - 16: Organized Crime:**

- 16.1. Introduction of Organized Crime.
  - i) Arms Trafficking.
  - ii) Human Trafficking.
  - iii) Drugs Trafficking.
  - iv) Money Laundering
- 16.2. Characteristics of Organized Crime.

- 16.3. Nature of Organized and Trans-national Organized Crime.

- 16.4. Crime Problem in Relation to Nepalese Society

**Leading Cases:**

1. Advocate Aashish Adhikari (on behalf of Bablu Godia) Vs. Banke District Court et. al., D. Date: 2057/12/12, (Robbery) Habeas Corpus.(unpublished)
2. Advocate Aashish Adhikari (on behalf of Shyam Krishna Pahari) Vs. District Police Office et. al., D. Date: 2058/4/29 (Rape); Habeas Corpus. (unpublished)
3. Bhim Bdr. Pariyar et. al. Vs. HMG, *Supreme Court Bulletin*, No. 17, Year 12 (2060) p18.
4. HMG Vs. Gorden William Robinson, Drugs case, *NKP*, 2061 Year 8, D. No.7421, p. 980.
5. HMG Vs. Samjhana Lamichane, (Murder; Infanticide), *NKP*, 1/2 (2060), Year 1&2, D.N. 7169, p. 77
6. Krishna Bdr. Rana Vs. HMG, (Mandamus), Rehabilitation to victim; Case No.3257; D. D. 2061/9/6. (unpublished)
7. Rabindra Prasad Dhakal (on behalf of Rajendra Pd. Dhakal) Vs. HMG, *NKP* 2064 (*Disappeared Person*) Habeas Corpuses No. 2, D.No. 7817, p.179
8. Resma Thapa Vs. HMG, (Mandamus), inhumane behavior as Witch, *NKP* 2062, Vol 2, p. 205.
9. Shanti B. K. Vs. HMG, (Murder; Infanticide), *NKP* Year 6 (2061), D.No.7399; p.769.
10. Walter Roland Vs. HMG, Case: Counterfeiting, C. No. 3103, D.D. 2061-1-11. (unpublished)

**Reading Materials**

**Prescribed**

1. Acharya, Madhav P. *Criminology* (in Nepali). Kathmandu: Ratna Pustak Bhandar. (2060 B.S.).
2. Ahuja, Ram *Criminology*. New Delhi: Rawal Publications. (2000).
3. Doherty, Micheal *Criminology* London: Id Bailey Press. (3<sup>rd</sup> ed.) (1997).
4. Siddqui, Ahmand *Criminology: Problem and Prospective* India: Easter Book Co. (4<sup>th</sup> ed.) (1997).

5. Williams, Katherine *Textbook of Criminology*. London: Blackstone Press. (2001)

**References/Recommended**

1. Barnes and Tecters, *New Horizon in Criminology*.
2. Cressy, Donald and Sutherland, E.H., *Principles and Criminology*.
3. Morris, *Deviance and Control*
4. Paranjane, Dr. N.P., *Criminology and Administration of Criminal Justice*.
5. Sharma, Dr. Lokendra, *Criminology* (in Nepali) Kathmandu: Nepal Educational Cooperation Centre (2<sup>nd</sup> ed.). (2058 B.S.).
6. Taylor, Walton and Yornd, *The New Criminology*, International Library of Sociology.
7. *The Children Act, 2048 B.S.*
8. *The Prison Act, 2019 and Rules, 2020 B.S.*
9. Tripathi, Hari Bansh, *Criminology*. Kathmandu: Nepal Kanoon Kitab Co.
10. Verma, P., *Introduction to Criminology*.
11. Wilsed, Paul., *The Sociology and Crime and Delinquency in Britain*. Year 1 and 2.

**Gender and Inclusive Justice**

Course Title: **Gender and Inclusive Justice**

Course No: Law 433

Duration of the Course: One Year (62 hrs)

Year: II

Full Marks: 50

Pass Mark: 35%

Level : LL.B.

Nature: Optional

**Course Objectives**

The Main Objectives of this course are:

- to acquaint the students with the meaning, nature & scope of Gender and Inclusive Justice.
- to familiarize the students with the international instruments relevant to the Gender and Inclusive Justice.
- to enable the students to examine the laws relating to Gender and Inclusive Justice in Nepal.
- to enable the students to appraise the role of judiciary for upholding Gender and Inclusive Justice in Nepal.

**1. Introduction**

- a) Concept of Justice: Meaning and Kinds.
- b) Meaning, Nature, Kinds & Scope of Gender Justice.
- c) Meaning, Nature & Scope of Inclusive Justice.
- d) Rights of Women, Dalits, Indigenous/ethnic groups (Adivasi Janajati), Madhesi Communities and other groups.

**2. International Instruments relating to Gender and Inclusive Justice.**

- a) Universal Declaration of Human Rights 1948
- b) International Covenant on Economic, Social and Cultural Rights 1966
- c) International Covenant on Civil and Political Rights 1966
- d) Optional Protocols to the International Covenant on Civil and Political Rights 1966.
- e) Convention on the Elimination of All Forms of Discrimination against women 1979
- f) Declaration of Violation Against Women 1993
- g) International Convention on the Elimination of All Forms of Racial Discrimination 1965 & its optional protocols.

- h) Convention on the Rights of Persons with Disabilities and optional Protocol (RPD 2006).
- i) Convention on Indigenous and Tribal People 1989 (ILO Convention 169).
- j) Declaration on Indigenous Peoples, 2007.

3. **Laws relating to Gender Justice in Nepal**

- a) Constitutional provisions on Gender Justice.
- b) Civil law provisions on Gender Justice (property, employment, reputation, reproductive health, and status)
- c) Criminal Law provisions on Gender Justice (Domestic violence, rape, sexual harassment, trafficking, dowry, witchcraft)

4. **Inclusive Justice: Right of the Dalits, Indigenous/Ethnic groups, Madhesi communities & other groups (Differently abled, senior citizens & internally displaced persons) in Nepal**

- a) Constitutional & legal provisions against untouchability
- b) Constitutional and legal provision on the rights of indigenous/ethnic groups (Adivasi Janajati)
- c) Constitutional and legal status of Madhesi communities
- d) Constitutional and legal rights of Differently able (Differently abled), Senior Citizens and Internally Displaced Person
- e) Need for a comprehensive law on inclusive justice.

5. **Role of Judiciary in upholding Gender & Inclusive Justice in Nepal.**

- 1. Babu Krishna Maharjan V Office of the Council of Ministers, Writ No. 3666 of 2061
- 2. Lal Bahadur Nepali et.al V Secretariat of Council of Ministers, *NKP*, 2061, No. 4
- 3. Man Bahadur B.K. V. HMG/Nepal, Writ No. 2506 of 2049
- 4. Meera Dhungana V. HMG/ Ministry of Law Justice and Parliamentary Affairs *NKP* 2052, vol. 6, p. 462
- 5. Meera Dhungana V. HMG/MLJPA, Writ No.110 of 2059 B.S.
- 6. Ratna Bahadur Bagchand V.HMG, Writ No.46 of 2061

- 7. Resma Thapa V HMG/Nepal, Writ No 2891 of 2058
- 8. Sapana Pradhan Malla V. HMG/Nepal, Writ No 34 of 2060
- 9. Sita Acharya V Public Service Commission, Writ No. 3975 of 2056
- 10. Sudarshan Subedi V.Secretariat of Council of Ministers, *Some Important Precedents relating to Public Welfare established by Supreme court* ( 2015-2062), part 8,2063,p.171

**Reading Materials**

**Prescribed Books**

- 1) National Judicial Academy, *Laingik Nyaya: Shrot Samagri* (Nepali version), Kathmandu, (2062 B.S.)
- 2) Siwakoti, Gopal 'Chintan' (edt.), *Manab Adhikar Sambandi Sorbocha Aadalatka Faisalahaaruko Tippani*, T.U. Manab Adhikar Kendra, Faculty of Law, (2059)
- 3) Siwakoti, Gopal 'Chintan' (edt.), *Nepalma Manab Adhikar tatha Kanuni Upachar*, T.U. Manab Adhikar Kendra, Faculty of Law, (2059)
- 4) Steiner H.J. & Alston P., *International Human Rights in Context*, Oxford, (2000)

**Reference:**

- 1. Acharya M, *Efforts of Promotion of Women in Nepal*, TPMF/FES (2003)
- 2. Acharya M, *Gender Equality and Empowerment of Women*, Kathmandu, UNFPA, (1997)
- 3. Beijing Platform for Action and Beijing Declaration 1995.
- 4. Belbase,K.,*Bridhdaharooko Hak, Hit Yabam Surakshhyako Prsna Ra Nepalma Tatsambandhi Byabastha*, A Mini Research Report Saubmitted to Faculty Of Law,T.U., (2057)
- 5. Bhasin K. *Understanding Gender*, New Delhi, Kali for Women, (2000)
- 6. Bhasin K., *What is Patriarchy*, New Delhi, Kali for Women, (1993)
- 7. Bhattarai S.K. and Koirala U, *Sarbochha Adalatbata Jari Bhayeka Nirdeshanatmak Aadheshharuko Karyanowyanko Abastha* (In Nepali), N.J.A, Kathmandu, (2063 B.S.)
- 8. CBS, *Population Monograph of Nepal*, Kathmandu, (2003/04)

9. Convention for the Suppression of the Traffic in persons and of the Exploitation of the Prostitution of others (1949)
10. Convention on the Nationality of Married Women 1957
11. Convention on the Political Rights of Women 1952
12. Convention on the Rights of the Child 1989.
13. HMG/MWCSW, *National Plan of Action for Implementing CEDAW*, Kathmandu, (2004)
14. HMG/MWCSW, *National Plan of Action of Gender Equality and Women Empowerment*, Kathmandu, HMG/MWCSW, (2004)
15. Human Trafficking Control Act, 2064 B.S.
16. *Ibid*, *Mahila Adhikarko Sandarbhama youn Tatha Prajanan Swasthya Sambandhi Adhikar Ra Nepalma Yasko Sthiti*, A Mini Research Report Submitted to Faculty Of Law, T.U., (2057)
17. *Ibid*, *Violation against women and Efforts of its Elimination*, A Research Report submitted to UGC.
18. ILO Convention (No. 100) Concerning Equal Remuneration for Men and Women Workers for work of Equal Value 1951.
19. Interim Constitution of Nepal, (2063)
20. Kaplan T., "Women's Rights and Human Rights; Women as Agents of Social Change" in Marjorie Agosin (edt.) *Women Gender and Human Rights: A Global Perspective*, New Delhi, Rawal Publications, (2003)
21. Kapur R. and Crossman B. "On Women Equality and the Constitution: Through the Looking Glass of Feminism" in NRM Mennon (edt.) *National Law School Journal*, Special Issue on Feminism and Law, Vol. 1, Bangalore, NLSI University, (1993)
22. Karki, Bharat Bahadur Prof. Dr. "Impact of Conflict on Dispensation of Justice", *The Telegraph*, vol. 23, No 36 November 8, Wednesday (2006)
23. Karki, Bharat Bahadur Prof. Dr. "Role of Judiciary in Upholding Justice" *The Telegraph*, vol. 23, no. 39, Nov. 29, Wednesday (2006)
24. Khanal B., *Human Rights and Development*, Kathmandu, Manjusha, (2006)
25. Koirala, A.P., "Violation of Human Rights of People of Disabilities in Nepal" *Disabled Empowerment*, National monthly, Kartik (2061)

26. Malla S.P., *Baseline Study of Inheritance Right of Women*, Kathmandu: FWLD, (2000)
27. Malla S.P., *Discriminatory Laws Against Women: An update Study*, Kathmandu: FWLD and The Ford Foundation, (2007)
28. Malla S.P., *Special Measures for Women and their Impact*, Kathmandu, Forum for Women, Law and Development, (2003)
29. Muluki Ain.
30. Nepal Government, *Nepal Government's 3 years Interim Plan*, (2007)
31. Sangroula, Y. and Pathak, G., *Gender and Laws: Nepalese Perspective*, Kathmandu: Pairavi Prakashan, (2002)
32. Sharma P., et. al, *Laingik Nyaya Sambandhi Muddhaharuko Sangalo (Collection of Gender Justice Cases)* Kathmandu, Unijem and Pro-public, (2060 B.S.)
33. Social Welfare Act, 2049 B.S.
34. Thapalia S, "Vaivahik Valatkar : Kanoonko Samsodhan Aabasyak" (In Nepali), *Prachi*, Vol 52 (2004.)
35. Thapalia S. and Subedi N, "Male Culture of Law: An Instrument of Oppression of women", *Nepal Law Review*, vol. 19, no 1 and 2, Kathmandu, Nepal Law Campus, (2006)
36. West R., "Jurisprudence and Gender" in Smith (edt.) *Feminist Jurisprudence*.



## Law of Insurance

Course Title: Law of Insurance  
Course No: Law 434  
Duration of the Course: One Year (62 hrs)  
Year: II

Full Marks: 50  
Pass Mark: 35%  
Level : LL.B.  
Nature: Optional

### Course Objectives:

The Objectives of the Course are:

- to survey the basic types of insurance policies, legal principles of insurance.
- to study the role insurance plays in society.
- to analyse laws related to insurance industry and insurance policy structure and interpretation.

### Unit 1: Introduction

- 1.1 The History and Functions of Insurance
- 1.2 Some Classification of Insurance
- 1.3 The Legal Definition of Insurance

### Unit 2: Formalities and Formation of the Insurance Contract

- 2.1 Nature and Classification of Insurance Contract
- 2.2 Formation of the Insurance Contract
- 2.3 Formalities
- 2.4 Temporary Cover and Cover Note
- 2.5 Duration and Renewal of Insurance Policies

### Unit 3: Regulation of Insurance

- 3.1 The Development of State Control
- 3.2 Impact of Nepalese Insurance Laws
- 3.3 The Protection of Policyholders
- 3.4 Constitution, Functions and Powers of Insurance Committee
- 3.5 Re-Insurance Policy and Re-Insurance Pool

### Unit 4: Repudiation of Policies and Liability

- 4.1 Unfair Terms in Consumer Insurance Policies and Liability
- 4.2 Void Contracts
- 4.3 Voidable or Discharged Contracts

- 4.4 Repudiating the Contract or Claim
- 4.5 Loss of Right to Avoid or Repudiate

### Unit 5: Premium

- 5.1 Payment of Premium
- 5.2 Return of Premium

### Unit 6: Intermediaries

- 6.1 Agent, Surveyor and Broker
- 6.2 Relevant Agency Principles
- 6.3 The Regulation of Intermediaries

### Unit 7: Life Insurance

- 7.1 Nature and Types of Life Insurance
- 7.2 Formalities and Disclosure
- 7.3 Assignment of Life Policy
- 7.4 Trust of Life Policies

### Unit 8: Non-Life Insurance

- 8.1 Meaning and Nature of Fire, Motor, Marine and Personal Insurance
- 8.2 Non-Life Insurance Policies
- 8.3 Principles of Non-Life Insurance

### Unit 9: Impact of Economic Liberalization on the Volume of Insurance Business

- 9.1 Introduction
- 9.2 Performance of Life Insurance Companies
- 9.3 Performance of Non-Life Insurance Companies
- 9.4 Impact of Investment Pattern of Insurance Business

### Reading Materials

#### Text Books:

1. Ali, Sajid Dr., Mohammad, Riyaz and Masharique, Ahmad, *Insurance in India*, Chapter Seven, (2007)
2. Birds, John, *Modern Insurance Law*, London, Sweet and Maxwell (1997)
3. Insurance Act and Rules
4. Mishra, M. N., *Law of Insurance*, India
5. Re-Insurance Regulation

**References Readings:**

1. Advocate Bharat Mani Gautam Vs. His Majesty's Government of Nepal, *NKP* 2058, Decision No. 7004, Page 280.
2. Mishra, M.N. and S.B. Mishra, *Insurance: Principles and Practice*, India
3. Rastriya Bima Samiti Act.
4. Steele, T. John, *Principles and Practice of Insurance*, U.K., London
5. Vats, R.M. *Laws Relating to Insurance*, India