

## FAR WESTERN UNIVERSITY

**Course title: Constitutional Law.**

**Credit hrs 3**

**Level: B.A, LL. B.**

**Full Marks: 100**

**Course code: Law 201**

**Pass Marks: 50%**

**Semester III**

**Nature: compulsory**

**Course description:** The Constitutions are formulated basing on certain constitutional principles. The constitution as the politico-legal document, determines the political and legal system of the country. Sharing of the power among the organs of the government is determined by the constitution and constitution even reflects the state ideology. This course basically provides knowledge to the students on concept and basic principles of the constitutional law such as the constitutionalism, rule of law, separation of powers and theory of check and balance and types of constitutions. The course entails basic knowledge about principles of constitutional interpretation and supremacy of constitution.

**Course objectives:** This course is designed to:

- a) Provide knowledge to the students about the principles regarding constitutional law.
- b) Impart knowledge to the students on constitutionalism.
- c) Provide knowledge on types of constitution and rule of law.
- d) To acquaint students with the principles of constitutional interpretation.

### **Unit One: Introduction**

**9 hours**

- 1.1. Meaning and Definition of constitution and constitutional law.
- 1.2. Scope and subject matters of constitution.
- 1.3. Sources of constitutional law.
- 1.4. Concept of constitutionalism and its various forms.

### **Unit Two: Classification of constitution**

**10 hours**

- 2.1. Written and Unwritten constitution
- 2.2. Rigid and Flexible constitution
- 2.3. Federal and Unitary constitution
- 2.4. Republican and Monarchical constitution
- 2.5. Parliamentary and Presidential constitution



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### **Unit Three: Rule of Law**

3 hours

- 3.1. Concept of Rule of Law
- 3.2. Principles of Rule of Law

### **Unit Four: Separation of powers and Checks and Balances**

8 hours

- 4.1. Concept of Separation of Powers
- 4.2. Principles of Checks and Balances
- 4.3. Separation of powers and checks and balances under presidential and parliamentary constitution

### **Unit Five: Principles of Constitutional Interpretation**

15 hrs.

- 4.4. Constitution as a fundamental law of land
- 5.2. Independence of judiciary
- 5.3. Judicial review of legislation
- 5.4. Doctrine of fraud on constitution
- 5.5. Doctrine of harmonious construction
- 5.6. Doctrine of severability
- 5.7. Doctrine of colorable legislation
- 5.8. Doctrine of political question
- 5.9. Doctrine of Eclipse

### **Recommended Texts**

Loveland, Ian, Constitutional law: Administrative law and Human Rights ( 6<sup>th</sup> Ed. ), New Delhi: Oxford University Press, 2009.

Anderson, G, Federalism: An Introduction, New Delhi: Oxford University Press, 2008.

Dicey, A. V., An Introduction to the Law of the Constitution ( 10<sup>th</sup> Ed. ), New Delhi: Universal Law Publication, 1975.

Gyawali, Chandra Kanta & Raj, Prakash A, Federalism in the World, Kathmandu: Chandara Kanta Gyawali & Prakash A. Raj, 2010.

Acharya, Bhimarjun, Making Constitution through Constituting Assembly, Kathmandu: Pairavi Prakashan, 2006.

Jennings, W. Ivor, The British Constitution, New Delhi: Universal Book Stall, 1994

Strong, C. F. ,Modern Political Constitutions, London: The ELBS and Sidgwick & Jackson Limited, 1973.

Wheare, K.C., Federal Government, London: Oxford University Press, 1963.



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Jain, M. P., Indian Constitutional Law, Lexis Nexis Wadhwa Nagpur, (5<sup>th</sup> Ed.) 2009.

Wheare, K.C., Modern Constitution, ( 8<sup>th</sup> Ed. ) London: Oxford University Press, 1971.

Basu, D.D. Constitutional Law of India, published by S.C. Sarkar and sons pvt. Ltd.

Bogdanor, Vernon, Politics and the Constitution. Essays on British Government, English  
Dartmouth Publishing Company Limited, 1996.

Gyawali, Chandra Kanta, Constitution, Constitutionalism, Constituent Assembly and  
Restructuring of state ( in Nepali ). Mrs Vijaya Gyawali ( 2064 B.S.)



## FAR WESTERN UNIVERSITY

**Course Title:** Public International Law  
**Credit hrs:** 3  
**Semester:** III  
**Course Code:** Law 205

**Pass Marks:** 100%  
**Pass Marks:** 50%  
**Duration:** 45 hrs.  
**Nature:** Compulsory

**Course Description:** Formation of international law is often resulted in the harmonious relation among the states. In the context, international law is said to govern the relation between states, states and international organizations, state and international organizations and international law and individuals. The course elaborately provides the knowledge on the theoretical aspect of international law, such as; subjects, sources and jurisdiction of international law. Similarly, this course also provides knowledge on some other practical and theoretical aspects of the international law such as; recognition of state and government, nationality, asylum, extradition, immunity and privileges of head of the states and envoys.

### **Course Objectives**

This course aims to;

- provide an understanding of public international law involving its meaning, basis, historical development, theories, and general principles.
- intends to make students critical about the legal domain applicable between states.
- endeavor to develop a critical approach about interplay between world situation and International Law.
- equip the students with the skills to use the processes and techniques of International Law for better world.

### **Course Details:**

#### **Unit 1: Introduction to international law (4 hrs.)**

- 1.1 Definition, nature, and development of international law
- 1.2 Theories as to basis of International Law
- 1.3 General Principles International Law
- 1.4 The relation between International Law and Municipal Law

#### **Unit 2: Sources of International Law and Codification (7 hrs.)**

- 2.1 Treaties,
- 2.2 Custom,
- 2.3 General principles of law,
- 2.4 Judicial decisions
- 2.5 Writings of the most highly qualified publicists
- 2.6 Other sources of international law
  1. Ex aequo et bono (equity, justice, and good conscience)
  2. Resolution of the General Assembly and Security Council
  3. Draft Conventions of International Law Commission

#### **Unit 3: Subjects of International Law (5 hrs.)**

- 3.1 State: Concept of state and sovereignty



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- 3.2 Individuals (position of individuals in International Law)
- 3.3 International organizations
- 3.4 Non state actors (Insurgents or belligerents and other entities)

**Unit 4: Recognition and State Succession (8 hrs)**

- 4.1. Meaning and Nature of recognition.
- 4.2. Types of recognition
- 4.3. Recognition of state and government
- 4.4. Effect of recognition and non-recognition
- 4.5. Theories of state succession
- 4.6. Succession of state
- 4.7. Succession of government
- 4.8. Succession of international organization

**Unit 5: Nationality (3 hrs.)**

- 5.1. Meaning, and importance of nationality
- 5.2. Modes of acquiring and losing nationality.
- 5.3. Statelessness

**Unit 6: Asylum (2 hrs.)**

- 6.1. Meaning and concept of Asylum.
- 6.2. Rights to asylum.
- 6.3. Types of Asylums
- 6.4 Rights and duties of asylum-seekers vis-a-vis asylum granting country.

**Unit 7: Extradition (3 hrs.)**

- 7.1 Meaning and concept of extradition.
- 7.2 Principles and bases of extradition
- 7.3 extraditable and non-extraditable crimes
- 7.4 Mutual Legal Assistance

**Unit 8: State Responsibility (5 hrs.)**

- 8.1 The nature of state responsibility
- 8.2 Diplomatic Protection of Nationals
- 8.3 Responsibility for treatment of aliens
- 8.4 Responsibility for Internationally Wrongful acts
- 8.5 Responsibility for breach of treaty, in respect of Contractual obligation

**Unit 9: Jurisdiction and Immunities (5 hrs)**

- 1.1 Concept of jurisdiction
- 1.2 Territorial Jurisdiction
- 1.3 Personal Jurisdiction
- 1.4 Maritime Jurisdiction
- 1.5 Jurisdiction in aerospace

**Unit 10: Immunities and Privilege (5 hrs)**

- 10.1 Diplomatic immunities



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- 10.2 Consular immunities
- 10.3 Immunities of special missions
- 10.4 Immunity of foreign states
- 10.5 Immunity and privileges of international organizations
- 10.6 Limitations on immunities

#### **Reading Materials**

##### **A. Prescribed Materials:**

1. Starke, J.G. *An Introduction of Public International Law*, Butterworth's London, 1997.
2. Crawford, James, *Brownlie's Principles of Public International Law*, Oxford: Oxford University Press, 2012.
3. Clapham Andrew, *Brierly's Law of Nations*, seventh ed. Oxford, 2012.
4. Kaczorowska Alina, *Public International Law*, Old Bailey Press, 2002.
5. Hingorani, R.C. *Modern International Law*, New Delhi: Oxford and IBH publishing company, 1982.
6. Shaw, Malcolm N., *International Law*, Cambridge, CUP, 2008.
7. Thapa Karna Bahadur, *An introduction to law of International Institutions*, Legal Insight, 2078, Kathmandu.
8. K. C. Yadav, *International Law*, Pairavi Prakashan, Kathmandu.
9. S.K. Kapoor, *International Law and Human Rights*, Allahabad Law Agency,

##### **B. References:**

10. Basyal, Binod, *Public International Law (Nepali)*, Kathmandu
11. Sharma, Dr. Gopal, *Public International Law (Nepali)*, Ratna Pustak Bhandar, Kathmandu 1990.
12. Poudel, Madhav, *Public International Law (Nepali)*, Nepal, Konoon Kitab Pvt. Ltd., 1989.



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# FAR-WESTERN UNIVERSITY

**Course Title: Law of Evidence.**

**Course Code: Law 210**

**Semester: III**

**Duration: 45 Hrs.**

**Credit: 3**

**Full Marks: 100**

**Pass Marks: 50%**

**Nature: Compulsory**

**Course description:** Law of evidence is a system of rules for ascertaining disputed questions of fact in judicial process. Knowledge of evidence law is pivotal to the law students. The subject is taught to the students to provide knowledge about role of evidence in determining the facts relevant to the dispute. This course particularly focuses on basic principles and classification of evidence, facts and disposition of testimony and burden of proof and estoppels.

**Course Objectives:** The course has the main objectives as follows:

- To Provide the basic Knowledge of Law of Evidence
- To acquaint students with the practical knowledge of collection and evaluation of evidence
- To enable students to have critical appreciation of various kinds of evidence and leading cases relating to law of evidence
- To provide the knowledge about different forms of evidence, their importance and testimony in the due course of collection of evidence and presentation in litigation process.

## 1. Introduction

3 hrs.

- 1.1. Meaning, Nature, Importance and Scope of Evidence Law.
- 1.2. Kinds of Evidence
- 1.3. Historical Development of the Law of Evidence in Nepal

## 2. Basic Principles of Law of Evidence

3 hrs

- 2.1. Evidence must be confined to the Fact in Issue
- 2.2. Best Evidence Must be Produced
- 2.3. Hearsay Evidence is no Evidence
- 2.4. One Who Asserts Must be Prove

## 3. Classification of Evidence

7 hrs

- 3.1. Original and Hearsay Evidence
- 3.2. Direct and Circumstantial Evidence
- 3.3. Primary and Secondary Evidence
- 3.4. Oral, Documentary and Real Evidence
- 3.5. Exhibits and their Evidential Value
- 3.6. Forensic Evidence (a). Physical Evidence (b) Scientific Evidence © Medical Evidence (Medical Report, Case- firm Report, Autopsy Report)

## 4. Facts

2 hrs.

- 4.1. Facts in Issue and Relevant of Facts
- 4.2. Facts Which Need not be Proved-(Formal Admission, Judicial Notice, Presumption)

## 5. Deposition and Testimony of Evidence

20 hrs

- 5.1. Admissible and Inadmissible Evidence
- 5.2. Admission and Confession
- 5.3. Statement on the Spot
- 5.4. Dying Declaration
- 5.5. Special Statements by Person on Particular Occasions

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- 5.6. Facts Recorded in Public Documents
- 5.7. Facts Recorded in Books of Account
- 5.8. Facts Published in Books and Articles
- 5.9. Matters Recorded in Regular Statistics, Lists and Statements etc.
- 5.10. Statement Given by Witness in Other Cases
- 5.11. Documents Prepared at Time of Investigation
- 5.12. Certificate, Reports, and Special Kinds of Statistics
- 5.13. Expert's Report and Opinions
- 5.14. Statement of Witness
- 5.15. Inadmissible Evidence (a). Confession under Threat, Inducement (b). Statement Expressed for the Purpose of Compromise©. Statement not Recorded as Witness at Court(d). Character of Party©. Privileges to Party and Witness

## 6. Burden of Proof

10 hrs.

- 6.1. General Concept of Burden of Proof
- 6.2. Shifting of Burden of Proof
- 6.3. Preponderance of Evidence in Civil Cases
- 6.4. Provision of Burden of Proof in Difference Nepalese Acts-(Evidence Act, Corruption law, Narcotics Drugs Law, Woman's Trafficking and other Laws)
- 6.5. Estoppel, Plea of Alibi,
- 6.6. Procedure Relating to Collection and Examination of Evidence
- 6.7. Custody of Physical Evidence

## Prescribed Cases (Responsible teacher must explain cases in concern topics)

- Nanda Devi Joshi Vs. Nepal Government, 1 NKP, (2069), D.N.8760
- Mohamod Javed Vs. Nepal Government, 10 NKP, (2073), D.N.---
- Nepal Government Vs. Tulashi Prasad Giri, 9 NKP, (2073) D. N.---
- Gurumukh Sobharaj Vs. Nepal Government, 5 NKP, (2067), D.N. 8378
- Shibanandan Sah Teli Vs. Hit lal Sah Teli, 2NKP, (2067), D.N. 8309

## Reading Materials

- Monir M. Text Book on Law of Evidence, eleventh ed. Universal, India, 2018.
- Adrian Kean, The Modern Law of Evidence 6<sup>th</sup> ed. Oxford University Press, 2006
- D.W. Elliott, Manual of Law of Evidence, 11<sup>th</sup> ed., Universal Law Publishing Co. India, 2001
- K.C. Prakash, Law of Evidence, 1<sup>st</sup> ed., Bhaktapur, 2016
- Osti, Prakash, Evidence Law (in Nepali), (5<sup>th</sup> ed.), Kathmandu, Pairavi Pakashan (2074).
- Sharma Shalabh, Rajendra. Evidence Law ( In Nepali), Kathmandu, Lumbini Publication (2075)
- Shrestha, Pradip Kumar. The Law of Evidence, Kathmandu, Pairavi Book House, Pvt. Ltd. (2019).
- Shingh, Avatar. Principles of the Law of Evidence, Allahabad; Central Law Publications. (2018)
- Evidence Act 2031



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# FAR-WESTERN UNIVERSITY

**Course Title: Property Law**

**Level: B.A, LL.B.**

**Course Code: Law 215**

**Duration: 45 hrs.**

**Nature: Compulsory**

**Credit: 3**

**Semester: III**

**Full Marks: 100**

**Pass Mark: 50%**

**Course Description:** Property is a thing necessary for human subsistence. Even it is a matter of disputes among individual persons. Thus law students should have ample idea about property law dealing with how property can be obtained and transferred. This course deals with the concept of property, modes of acquisition and transfer of property, kinds of property such as tangible and intangible and other constitutional and legal provisions on property.

**Course Objectives:**

Followings are the Main Objectives of This Course:

- To give general and theoretical knowledge of the law of property with special reference to Nepalese law
- To impart a comparative and critical knowledge of the law of property of Nepal and other countries.
- To impart critical knowledge of the nature and development of Property law in Nepal
- To enable the students to have critical appreciation of leading cases relating to property the law decided by Supreme Court of Nepal.

## **Unit One: Introduction of the Law of Property (7 hrs.)**

- 1.1. Meaning and Concept of Property
- 1.2. Theories of Property
- 1.3. Kinds of Property.
- 1.4. Ownership and Possession over Property.
- 1.5. Constitutional and Legal Position of Property Rights in Nepal

## **Unit Two: Modes of Acquisition and Transfer of Property (5 hrs.)**

- 2.1. Modes of Acquisition of Property in Nepal
- 2.2. Modes of Acquiring Ownership of Property in Nepal
- 2.3. Transfer of Property in Nepal

## **Unit Three: Intellectual Property (8 hrs.)**

- 3.1. Meaning of Intellectual Property
- 3.2. Kinds of Intellectual Property
- 3.3. Right and Ownership in Intellectual Property



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- 3.4. Transfer of Intellectual Property
- 3.5. Infringement and Remedies.

#### **Unit Four: Legal Provisions Related to Property in Nepal**

(16 hrs)

- 4.1. Trust (Guthi)
- 4.2. Land Cultivation (Jagga Aavad)
- 4.3. Land Encroachment (Jagga Khichola)
- 4.4. Land eviction (Jagga Pajani)
- 4.5. House Construction and House Rent (Ghar Nirman tatha Ghar bahal)
- 4.6. Partition (Angsabanda)
- 4.7. Succession and Inheritance (Aputali)
- 4.8. Will and Gifts (Dan-Bakas)
- 4.9. Servitude (Subhidabhar)
- 4.10. Usufruct (Phalopvog)

#### **Unit Five: Legal Process of Transfer of Property**

(9 hrs)

- 5.1. Registration and transfer of immovable property (registration)
- 5.2. Transaction of movable property (lenden byavahar)
- 5.3. Process relating to Preemptive rights (Hak safa) over immovable property

**Prescribed Cases** (Responsible teacher must explain cases in concerned topics)

Ritsu Mishra Vs. Makhamali Mishra 12 NKP, (2073), D.N. 9724

Gangadhar Sah et.al Vs. Rundi Khang Khatwe, 2NKP, (2073), D.N. 9543

Vikkiratna Shakya Vs. Kulratna Shakya, 11 NKP, (2071), D.N. 9279

Chandraman Nanju Vs. Krishns Bhakta Khayargoli, 11 NKP, (2069), D.N. 8920

Padam Bahadur Bhandari et.al Vs. Nepal Government et.al, 8 NKP, (2063), D.N. 7747

#### **Recommended Texts.**

- 1. Constitution Of Nepal (2072)
- 2. Muluki Civil Code 2074
- 3. Patent Design and Trademark Act, 2022
- 4. Copyrights Act 2059
- 5. Shrestha, Gyaindra Bahadur, Property Law (in Nepali), Kathmandu; Pairavi Prakashan



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6. Megary, R.E. & Wade, H.W.R. The Law of Real Property (6<sup>th</sup> ed.), London; Sweet& Maxwell, (2000)
7. Fitzgerald, P.J. Salmond on Jurisprudence (12<sup>th</sup> ed.), New Delhi: University Law Publishing Co. Pvt. Ltd. (1970), Indian Economy Reprint (2010)
8. Mishra J.P.Dr. An Introduction to Intellectual Property Rights, Central Law Publications, 107, Allahabad
9. E. Bouchoux Deborah, Intellectual Property Rights, DelmarLearning, Third Indian Reprint (2009)



# **FAR WESTERN UNIVERSITY**

**Course Title: Family law**

**Semester III**

**Level: B.A, LL. B.**

**Full Marks: 100**

**Duration: 3 Credit hrs (45 hrs).**

**Pass Marks: 50%**

**Course Code: Law 220**

**Nature: Compulsory**

**Course Description:** Family law is a branch of private law. It deals family relations and disputes including property relating to family. This course covers issues relating to rights and duties of the family members, particularly, marriage, divorce, matrimonial relief, adoption, and partition and inheritance.

## **Course Objectives**

The main objectives of this course are:

- to spell out the background and development of family law and evaluate different laws relating to family of other country
- to acquaint the students with the comparative knowledge of the Nepalese, Indian, American and the English family law in brief.
- To enable the student to analyze the challenges of Nepalese family law
- to familiarize the students with the leading Family law cases of Nepal.

## **Unit I Introduction (8 Hrs)**

1. Meaning, Nature, Function and Scope of Family Law
2. Sources of Family Law
3. Importance of Studying Family Law
4. Historical development of Family Law of Nepal
5. Impact of gender justice in the Nepalese Family Law
6. Recent Trends and Criticism of Family Law

## **Unit II Marriage (10 Hrs)**

1. Concept of Marriage
2. Right to Marry
3. Condition of Valid Marriage
  - a. Conditions of Traditional Marriage and Civil Marriage
  - b. Procedural requirements of Civil Marriage





c. Difference between Registration of Marriage and Registered Marriage  
(Civil Marriage)

4. Nullity of Marriage
5. Polygamy, Adultery and conflicting issues of Family (Third gender, cohabitation/living together)
6. Marriage Custom in Nepal

**Unit III Matrimonial Reliefs (10 Hrs)**

1. Concept of Matrimonial Reliefs
2. Grounds for Matrimonial Reliefs
3. Bars to Matrimonial Reliefs
4. Types of Matrimonial Reliefs
  - a. Judicial Separation
  - b. Restitution of Conjugal Rights
  - c. Divorce
5. Paternity, Surrogacy and Protection of Child

**Unit IV Adoption (4 hrs)**

1. Concept and scope of Adoption.
2. Conditions of adoption.
3. Status of Adopted Children.
4. Conditions for invalidating adoption.
5. Adoption by foreigners.

**Unit V Partition and Inheritance (10 Hrs)**

1. Concept and scope of Partition.
2. Ancestral Joint Property and Personal Property
3. Joint family and coparcenery
4. Gender equation in Partition
5. Rights and duties of Manager or Karta
6. Mano Chhutina
7. Maintenance/Juni
8. Reunion of Families
9. Meaning of Inheritance



10. Daughter's right in inheritance

11. Other's right in inheritance

**Unit VI Family Court (3 hrs)**

1. Meaning, Scope and Nature of Family Court

2. Jurisdiction of Family Court

**Leading Cases (cases must be taught with concerned topics)**

1. Babulal Shahuteli vs Sugiya Telin, NKP (2045) (Difference Between Partition and Inheritance)
2. Chijkaji Gurung vs Aashmaya Gurung, NKP (2055) (Grounds of Divorce)
3. Chitra Bahadur Khadka vs Pushpa Kumari Khadka, NKP (2058) (Personal Property)
4. Ganga Prasad Bhattarai vs Pusparaj Bhattarai, NKP (2056) (Mano Chhutiya pachhiko sampattima Ansha Nalagne)
5. Kaushalya Devi Ghimire vs Parbati Devi Pandey, NKP (2048) (Daijo Pewa)
6. Meera Kumari Dhungana vs. HMG, NKP (2052) (Daughter's Coparcener)
7. Purna Sunwar vs Indra B. Bhandari, NKP (2052) (Paternity)
8. Rabindra Kami v Tilattama Kami, NKP (2062) (Mother as Karta)
9. Ratna Sambhab Tuladhar vs Sonam Tuladhar, NKP (2041) (Paternity)
10. Sukum Thapa et al. v. Pitamber Thapa et al., NKP (2076) (Married Daughter as Coparcener)
11. Tej Bahadur Katuwal v. Office of the President et al., NKP (2076), Constitutional Bench Part (Married Daughter as Coparcener)
12. Nirmala Roka v. Balkrishna Roka, NKP (2070) (Daughter as a coparcener)



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### **Prescribed Materials**

1. Agnes, Flavia, **Family Law**, Vol 1 and 2, New Delhi: Oxford University Press, 2011
2. Curzon, L. B., **Family Law**, London: Cavendish Publishing Limited, 1995
3. Kate, Standley, **Family Law**, 6<sup>th</sup> edition, New York: Palgrave Macmillon, 2008
4. Paudyal, Govinda Sharma and Paudel, Bibek Kumar, **An Introduction to Family Law (Nepali)**, Kathmandu: MM Publication

### **Reference Materials:**

5. Adhikary, Shashi Kumari and Poudel Manisha, **Family Law**
6. Agrawala, R. K., **Hindu Law**, New Delhi: Jain Book Agency, 2008
7. Kusum, **Family Law**, Nagpur: LexisNexis Butterworths Wadhwa, 2010
8. Majupuria, Indra and Majupuria, Trilok Chandra, **Marriage Customs in Nepal: ethnic groups, their marriage customs and traditions**, Kathmandu: Indra Majupuria, 1978
9. Nandan, D., **Marriage, Divorce and Hindu Law**, Allahabad: Allahabad Law Agency, 1989
10. Pradhan, Poonam, **Family Law**, Haryana: LexisNexis, 2013
11. Subedi, Mudhusudhan, **History of Hindu Marriage**, (in Nepali), Kathmandu: Ms. Sanumaiya Subedi, 2056



## Principles of Criminal Law

Course title: Principles of Criminal Law

Full Marks: 100

Course Code. No. Law 225

Pass Mark: 50 %

Duration of the Course: 3 Credit (45 hours)

Level: B.A. LL.B.

Semester: III

Nature: Compulsory

**Course Description:** Criminal law is the branch of public law. It deals with criminal activities of human beings. It provides punishment for criminal liability. This course covers general principle of substantive criminal law and provisions of prevailing criminal code of Nepal.

### Course Objectives:

The objectives of this course are:

- To enable the students to understand the basic and fundamental knowledge of criminal law.
- To enable the students for analyzing general principles of criminal law and criminal liability.
- To impart comparative knowledge on relevant principles being practiced in USA, UK, India and Nepal.
- To enable the students to link the leading cases decided by the Supreme Court of Nepal with the principles of criminal law.

### Course Contents

#### Unit-I: Introduction to Criminal Law (10 hours)

1. Meaning and Nature of Crime
2. Meaning and Function of Criminal Law
3. Sources of Criminal Law
4. Difference between crime, tort and breach of contract
5. Principles of criminal liability
6. Jurisdiction of criminal law
7. Extradition

#### Unit-II: History of Criminal Law in Nepal (4 Hours)



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- 1 Criminal Law before 1910 BS
2. Criminal Law after 1910 BS (Era of Muluki Ain of 1910 BS to 2020BS)
3. Efforts of Codification (Drafts Criminal Codes of 2012, 2030, 2058 B.S., 2059 B.S. and 2067 B.S.)
4. Muluki Criminal Codes, 2074

### **Unit-III: General Principles of Criminal Law (7 hours)**

1. *Ingnoratia juris non excusat* (Ignorance of law is no excuse)
2. *Nullum crimen sine lege and Nulla poena sine lege* (No crime without the law and No punishment without the law)
3. *Actus personalis moritur cum persona* (Crime dies with the criminal)
4. Principle of *ex post facto* law
5. Principle of double jeopardy
6. Principle against self-incrimination
7. Principle of Presumption of Innocence

### **Unit-IV: Elements and Stages of Crime (10 hours)**

#### **1. Elements of Crime**

##### **1.1. *Actus Reus***

- a. Meaning and Requirements of *actus reus*
- b. Forms of Human Conduct: Act, Omission and State of Affairs
- c. Principle of Causation

##### **1. 2. *Mens Rea***

- a. Meaning and elements of mensrea
- b. Types of *Mens Rea*: Intention, Knowledge, Recklessness, Negligence
- c. Doctrine of Transferred Malice

#### **2: Stages of Crime and Inchoate Offence**

1. **Stages of Crime:** Intention, Preparation, Attempt and Complete Crime
2. **Inchoate Offence:** Incitement/Abetment/Instigation, Conspiracy and Attempt

### **Unit – V: Parties to the Crime (4 hours)**

#### **1. Meaning of Parties to Crime**



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## 2. Classification of Parties to the Crime

### Unit- VI: General Defenses (10 hours)

1. Concept and justification of General Defenses
2. Classification of General Defenses

**2.1 Excusable Defense:** Infancy, Insanity, Mistake, Intoxication

**2.2 Justifiable Defenses:** Private Defense, Consent, Necessity, Duress, Superior order

### Leading Cases:

1. Ashok Sitikhu and others vs GoN, NKP (2069), DN 8761, p. 149, (Attempt to Murder).
2. Bhuvane Basnet Kshetri vs GoN, Case: Murder, NKP 2031, p. 87, (Actus Reus).
3. GoN vs Rameshwar Raut Baraiet. al., Case: Murder, NKP 2041, p. 360 (Jurisdiction of Criminal Law).
4. Government of Nepal v. Kesh Bahadur Budhathoki, NLR (2062), DN 7491., (Mistake of Fact)
5. Hendric Otto vs GoN, NKP (2069), Vol 7. p. 1076. DN 8860. (Sexual Abuse of Children, meaning of rape and principle of strict construction)
6. HMG vs Balmanjari, Homicide, NKP (2040); p.279. (General Defence)
7. HMG vs Mayasori Damini, NKP (2037), p. 261, (Crime dies with Criminal).
8. Lokbahadur Karki vs GoN, NKP (2072), Vol. 2 (Statutory Rape)
9. Manish Shrestha vs Gov. of Nepal, NKP (2070) Vol 8, p. 1050 (*Nullum Crimen Sine Lege*).
10. Nar Bahadur Reule vs GON, NKP (2061), p. 1486 (Transferred Malice).

### Prescribed Reading Materials

1. Acharya, Mahdavi Prasad and Bhandari, Badri Prasad, *A Critical Study on Criminal* (In Nepali), Kathmandu: Bhrikuti Academy Publications (2003).
2. Pillai, P.S.A., *Criminal Law*, Bombay: N.M. Tripathi Limited.
3. Pradhananga, Prof. Dr. Rajit Bhakta et. al., *Introduction to Criminal Law* (In Nepali), Kathmandu: Bhrikuti Academy Publications (2063).





4. Acharya, Madhav Prasad and Bhandari, Badri Prasad, *A Critical Study on Criminal Law* (In Nepali), Kathmandu: Bhrikuti Academy Publications (2063).
5. Acharya Suvash, *Text Book on Criminal Law*, Pairavi Prakashan Kathamandu.
6. Pradhananga Rajit Bhakta, *Homicide Law In Nepal*, Pairavi Prakashan, Kathamandu.

**References:**

1. Ashworth, Andrew, *Principles of Criminal Law* (3<sup>rd</sup> ed.), London: Oxford University Press. (1999).
2. Smith, J.C. and Hogan B., *Criminal Law* (10<sup>th</sup> ed.), London: Butterworth Lexis Nexis, (2002).
3. Vaidya, Tulsi Ram and Manandhar, Tri Ratna, *Crime and Punishment in Nepal: A Historical Prospective*, Kathmandu: BinisBaidya and Pruna Devi Manandhar (1<sup>st</sup>ed.) (1985).
4. Williams, Glanville, *Text Book of Criminal Law*, Delhi: Universal Publishing Co. Pvt. Ltd. (1983), (First Indian Reprint 1999).
5. Sehgal, B.P. Singh, *Global Terrorism and Perspectives*, Deep and Deep.



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## FAR WESTERN UNIVERSITY

**Course Title: Theories of Crime and Punishment**

**Level: B.A, LL. B.**

**Course Code: Law 230**

**Credit hrs: 3 (45 hrs.)**

**Semester III**

**Full Marks: 100**

**Pass Marks: 50%**

**Nature: Compulsory**

**Course Description:** This course deals with the theoretical aspects of crime, criminal and punishment. It also deals with the sentencing, correction and rehabilitation of the offender and protection of victim of crime. This course fundamentally focuses on theoretical and philosophical aspects from criminological perspective.

### Course Objectives

- To impart knowledge of crime and criminology.
- To familiarize the student about various causes of crime and reaction to crime.
- To impart the knowledge of concept and various theories of the punishment and penology.
- To give the knowledge regarding reformation and rehabilitation of offenders in his society.
- To familiarize the student about basic concept of sentencing.
- To enable the students to link the case law with the theories of criminology and penology.

### Unit 1: Introduction (7hrs)

- 1.1. Concept, Nature and Scope of Criminology
- 1.2. Study Methods of Criminology
- 1.3. Concept and Classification of Crime and Criminals
- 1.4. Concept, Nature and Purpose of Criminal Law and Criminal Justice System

### Unit 2: Theories of Crime Causation (12hrs)

- 2.1. Pre-Classical Theory
- 2.2. Classical and Neoclassical theory
- 2.3. Biological Theory
- 2.4. Psychological Theory
- 2.5. Sociological Theory
- 2.6. Economic Theory



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**Unit 3: Causative Factors of Crime (5hrs)**

- 3.1. Personal Factors
- 3.2. Situational Factors

**Unit 4: Role of the Police to Control Crime (4 hrs)**

- 4.1. Objectives, Need and Functions of Police Organization
- 4.2. Role of police in prevention of crime
- 4.3. Police and investigation of crime
- 4.4. Police and protection of crime victim and offender

**Unit - 5: Reaction to Crime (8 hrs)**

- 5.1. Concept of Punishment
- 5.2. Approaches and Theories of Punishment
- 5.3. Types of Punishment

**Unit - 6: The Prison System and Its Alternative (6 hrs)**

- 6.1. Meaning and Purposes of Prison
- 6.2. Historical Development of Prison
- 6.3. Alternative to Prison
- 6.4. The Nepalese Prison System and alternative to Prison in Nepal

**Unit - 7: Sentencing System (3 hrs)**

- 7.1. Concept of Sentencing
- 7.2. Difference between Conviction and Sentencing
- 7.3. Major Features of Nepalese Sentencing Law

**Leading Cases: (responsible teacher shall must explain cases in concerned topics)**

- 1. *Advocate RatnaBahadurBagchand, vs Council of Ministers and others*, Writ No. 46/061  
Date of Decision 2062/1/8, (Untouchability)
- 2. *Sunil BabuPanta vs Council of Ministers and others*, Writ No. 917/064, Date of Decision  
2064/9/6, (Identification of Third Gender)
- 3. *JeetKumariPangeni vs Council of Ministers and others*, Writ No. 0035/064, Date  
Decision 2060/11/11, (Marital Rape)
- 4. *Krishna BahadurRana Vs HMG (Mandamus)*, (Rehabilitation to victim) Case No. 35  
DD 2061/9/6.



5. *Jung Bahadur Singh vs Office of PM and Council of Ministers and others*, Writ No 2066/1222, NKP 2068, Vol. 6, p. 986, DN 8631, (Sexual rights of the prisoners)
6. *Praksh Mani Sharma vs Council of Ministers and others*, NKP 2065, Vol 4. DN 795 (Sexual rights of the women prisoners)
7. *HMG Vs. Samjhana Lamichhane*, (Murder: Infanticide), NKP 2060, DN 7169, p 77.
8. *Shanti B.K. Vs HMG*, NKP 2061, Vol. 6, p. 769. (Mitigating factors)
9. *Ranjan Koirala vs HMG* (Decision Date: 2079-02-12)

### Reading Materials

1. Acharya, Madhav P. *Criminology Penology*. Bhrikuti Academic Publications. (2012).
2. Ahuja, Ram, *Criminology*. New Delhi: Rawal Publications. (2000).
3. Cressey, Donald R. and Sutherland, E. H., *Principles and Criminology*. (Indian Reprint)
4. Qadri, S.M.A, *Ahmad Siddque's Criminology and Penology* India: Eastern Book Co. (6<sup>th</sup> ed.) (2011).
5. Williams, Katherine S., *Textbook on Criminology*. London: Blackstone Press. (Indian Reprint 2001).

### References:

1. Acharya, Madhav P. *Criminology (in Nepali)*, Bhrikuti Academic Publications, 2014.
2. Burke, Roger Hopkins, *An Introduction of Criminological Theory*, UK: Willan Publishing
3. Mainali, Laxmi Prasad et al (eds), *Juvenile Delinquency*, Kathmandu: Faculty of Law, 2017.
4. Paranjape, N. V., *Criminology and Penology with Victimology*, Allahabad: Central Law Publications (2012).
5. Robert, I. Simon, M.D., *Bad Men Do What Good Men Dream*, Delhi: Byword Books Private Limited, 2008.



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