

# **Syllabus for BA LLB Second Semester**



**Mid-Western University**

**School of Law**

**Surkhet, Nepal**

**2018**

## Course Framework

**Program: BA LLB**

**Semester: Second**

S. N.	Course Code No	Course Title	Credit Hour	Types of Course
1.	LAW 321	Concept of Law	1.5:00	Theoretical
2.	LAW 322	Theories of Logic and Legal Reasoning	3:00	Theoretical
3.	LAW 323	Sociology of Law and Justice System	3:00	Theoretical
4.	LAW 324	Introduction to Nepalese Constitution	1.5:00	Theoretical
5.	LAW 325	Introduction to the Criminal Law: Country Crimes (Code) Act	3:00	Theoretical
6.	LAW 326	Prison Visit and Report Presentation	1.5:00	Practical
Six Subjects		<b>Total</b>	<b>13.5:00</b>	5- Theoretical 1-Practical

## Concept of Law (LAW 321)

**Types of Course: Theoretical (Compulsory)**

**Credit: 1.5:00**

**General Objectives of the Course:**

1. To acquaint students with fundamental concept of Law and Justice.
2. To introduce them with how Rights and Duties are related with those various concepts.
3. To help students understand the relation of these concepts with Concepts or Principles of Justice

S. N.	Chapter	Specific Objective of the Course	Sub Chapter/Detailed Course Outline	Modality of Teaching	Credit Hour
1.	<b>Personality</b>	To make students familiarize with the concept of Personality of natural person and artificial person.	<ul style="list-style-type: none"> <li>• Conceptual framework; (Person, Personality)</li> <li>• Types of Person (Legal Person &amp; Natural Person)</li> <li>• Characteristics of Legal Person and Natural Person.</li> <li>• Theories of Personality (Corporate).</li> <li>• Nepalese Law and Concept of Personality                             <ul style="list-style-type: none"> <li>◦ Personality of (Fetus/unborn, Animal &amp; Dead Body)</li> </ul> </li> </ul>	Lecture including assignment and presentation	3 hours
2.	<b>Rights and Duties</b>	To make students familiarize with basic concept of Rights and Duties.	<ul style="list-style-type: none"> <li>• Conceptual Framework of Rights and Duties.</li> <li>• Classification of Rights and Duties.</li> <li>• Theories of Rights.</li> <li>• Elements of Right</li> <li>• Relation between (Co-relativity of) Rights and Duties.</li> <li>• Concept of Duties and its relation to morality</li> </ul>	Lecture followed by workshop and presentation	4 hours
3.	<b>Liability</b>	To make students familiarize with concept, Types and nature of	<ul style="list-style-type: none"> <li>• Concept of Liability</li> <li>• Nature of Liability.</li> <li>• Types of Liability.</li> <li>• Theories of Liability</li> <li>• Conditions for Liability</li> </ul>	Lecture	2 hours

		liability.	<ul style="list-style-type: none"> <li>• Condition for Exemption of Liability.</li> </ul>		
4.	<b>Property</b>	To make students familiarize with the concept of Property Rights.	<ul style="list-style-type: none"> <li>• Conceptual Framework and definition of Property.</li> <li>• Types of Property.</li> <li>• Acquisition and transfer of Property.</li> <li>• Property law in Nepal               <ul style="list-style-type: none"> <li>○ Partition</li> <li>○ Inheritance</li> <li>○ Women's Exclusive Property.</li> <li>○ Dan and Bakas</li> <li>○ Modes of Transfer of Property</li> </ul> </li> <li>• Intellectual Property</li> <li>• Importance of Intellectual Property</li> <li>• Types Intellectual Property. (Patent, Design, Trademark, Copyright)</li> </ul>	Lecture	4 hours
5.	<b>Ownership</b>	To make students familiarize with the concept of ownership and legal provision related to ownership.	<ul style="list-style-type: none"> <li>• Concept of Ownership; Introduction and Historical Development</li> <li>• Elements of Ownership</li> <li>• Types of Ownership</li> <li>• Rights and Duties created by Ownership.</li> <li>• Nepalese Legal Framework               <ul style="list-style-type: none"> <li>○ Modes of ownership over a property.</li> <li>○ Termination of ownership</li> </ul> </li> </ul>	Lecture	2 hours
6.	<b>Possession</b>	To make students familiarize with possession and legal provision in context of	<ul style="list-style-type: none"> <li>• Conceptual framework and definition of Possession.</li> <li>• Element of Possession.</li> <li>• Types of Possession.</li> <li>• Relation between Possession and Ownership</li> <li>• Rights and Duties created by possession.</li> </ul>	Lecture	2 hours

		Nepal.	<ul style="list-style-type: none"> <li>Acquisition and Termination of Possession.</li> </ul>		
7.	<b>Marriage</b>	To make students familiarize with the concepts of marriage and its condition in Nepal.	<ul style="list-style-type: none"> <li>Conceptual Framework</li> <li>Legal Marriage</li> <li>Types of marriage               <ul style="list-style-type: none"> <li>Void Marriage,</li> <li>Voidable Marriage</li> </ul> </li> <li>Termination of Marriage.</li> </ul>	Lecture	3 hours
8.	<b>Trust</b>	To make students familiarize with the concept of trust and its function.	<ul style="list-style-type: none"> <li>Meaning and Definition.</li> <li>Nature and Importance of Trust.</li> <li>Types of Trust.</li> <li>Nepalese Law in-relation to Guthi and Trust</li> </ul>	Lecture	2 hours
9.	<b>Justice</b>	To make students familiarize with the concept of justice and its principle.	<ul style="list-style-type: none"> <li>Introduction to Justice</li> <li>Law as a means of administration of Justice</li> <li>Types of Justice</li> <li>Theory of Justice.</li> </ul>	Lecture	2 hours

#### RECOMMENDED READINGS:

1. Donald L. Carper, Norbert J. Mietus, T.E. Shoemaker, Understanding the Law, Billwest, Second Edition.
2. Prof. Nomita Aggrawal, Jurisprudence, a Legal Theory
3. Narayan Pd. Lamsal, Principle of Law, Second Edition, 2050, Ratna Pustak Bhandar.
4. Narayan Pd. Lamsal, Jurisprudence, seventh edition 2063 Pairabi Prakashan.
5. H.L.A. Hart, The Concept of Law, Second Edition 196 1, Published by Oxford University.
6. Dr. T. Padma, K.P.C. Rao, The Principle of Jurisprudence, ALT Publication, 2011.

7. Prof. Dr. Yubaraj Sangroula, Jurisprudence the Philosophy of Law Oriental Perspective with special reference to Nepal, 1<sup>st</sup> edition 2010, Kathmandu School of Law.
8. Prof. Dr. Yubaraj Sangroula: Jurisprudence and Legal Theory, 6<sup>th</sup> Edition, Kathmandu School of Law.
9. Rajit Bhakta Pradhanga and Kishwor Silwal, a General outline of Jurisprudence, 1<sup>st</sup> edition, 2046, Ratna Pustak Bhandar.
10. Dr. Avatar Singh, Introduction to Jurisprudence, 1<sup>st</sup> edition Reprint, 2005, wadhawa and Company Law Publisher.
11. A. K. Sakar, Summary of Salmond Jurisprudence, 3<sup>rd</sup> Edition, 1973Gopsons Paper LTD.
12. LaxmiSapkota General Concept of Law, 1<sup>st</sup> edition 2018/2074, Sahayatra Publication.
13. Prof. Dr. Yubaraj Sangroula, Jurisprudence and Legal Theory, 3<sup>rd</sup> edition 2050, Parabi Prakashan.
14. Prof. Dr. Yubaraj Sangroula, Jurisprudence and Legal Theory, 4<sup>th</sup> edition 2050, Parabi Prakashan.
15. W. Friedman, Legal Theory, 5<sup>th</sup> edition, Universal Law and publishing Co. Pvt. Ltd.
16. Mahesh Pd. Tandan, Rajesh Tandan, Jurisprudence, Legal Theory, 5<sup>th</sup> edition, Allahaba Law Agency.
17. Dr. B.N. Mani Tripathi, Jurisprudence a Legal Theory, Allahaba Law Agency, 14<sup>th</sup> edition Reprint 2001.
18. Dr. S. R. Myneni, Jurisprudence (Legal Theory) 2<sup>nd</sup> edition, reprint 2007.
19. Constitution of Nepal, 2074.
20. Muluki civil Code 2974.

## Theories of Logic and Legal Reasoning (LAW 322)

**Types of Course: Theoretical (Compulsory)**

**Credit: 03:00**

### General Objectives of the Course:

1. To help students, method of forming reasoning and understand fallacies in relation with understanding of the Law, Concept of Law and Justice.

S.N.	Chapter	Sub Chapter/Detailed Course Outline	Modality of Teaching	Credit Hour
1	<b>Conceptual understanding of Logic</b>	<ul style="list-style-type: none"> <li>• Meaning and Definition of Logic</li> <li>• Types of Logic</li> <li>• Functions of Language in Logic</li> </ul>	Lecture and Discussion	6 hours
2	<b>Method of Logic</b>	<ul style="list-style-type: none"> <li>• Inductive method of logic</li> <li>• Deductive method of logic</li> <li>• Differences between inductive and deductive method</li> <li>• Case study on the application of inductive and deductive method</li> </ul>	Lecture and Discussion	6 hours
3	<b>Understanding of common sense knowledge and scientific knowledge</b>	<ul style="list-style-type: none"> <li>• Characteristic of common sense knowledge</li> <li>• Characteristic of scientific knowledge</li> <li>• Differences between common sense knowledge and scientific knowledge</li> </ul>	Lecture and Discussion	4 hours
4	<b>Syllogism in Western logic</b>	<ul style="list-style-type: none"> <li>• Aristotelian Syllogism</li> <li>• Stoic Syllogism</li> </ul>	Lecture and Discussion	4 hours
5	<b>Syllogism in Hindu Philosophy</b>	<ul style="list-style-type: none"> <li>• Nyaya Syllogism</li> </ul>	Lecture and Discussion	4 hours
6	<b>Understanding of Fallacy</b>	<ul style="list-style-type: none"> <li>• Meaning and Definition of Fallacy</li> <li>• Types of Fallacy</li> <li>• Identification of the fallacy in the contemporary issues</li> </ul>	Lecture and Discussion	4 hours
7	<b>Theories of perception</b>		Lecture and Discussion	4 hours
8	<b>Understanding of</b>	<ul style="list-style-type: none"> <li>• Meaning of Truth and Reality</li> </ul>	Lecture and	6 hours

	<b>Truth and Reality</b>	<ul style="list-style-type: none"> <li>Theories of Truth</li> <li>Differences between Truth and Reality</li> </ul>	Discussion	
9	<b>Sources of knowledge (Epistemology)</b>	<ul style="list-style-type: none"> <li>Understanding of Rationalism</li> <li>Understanding of Empiricism</li> </ul>	Lecture and Discussion	4 hours
10	<b>Introduction of Seven System of Hindu Philosophy</b>	<ul style="list-style-type: none"> <li>Introduction of Seven System of Hindu Philosophy</li> </ul>	Lecture and Discussion	2 hours
11	<b>Introduction to Buddhism Logic and Truth</b>	<ul style="list-style-type: none"> <li>Introduction to Buddhism Logic and Truth</li> </ul>	Lecture and Discussion	2 hours
12	<b>Introduction to Islamic System of Logic</b>	<ul style="list-style-type: none"> <li>Introduction to Islamic System of Logic</li> </ul>	Lecture and Discussion	2 hours

#### RECOMMENDED READINGS:

1. Dr. Yubaraj Sangroula, *Theories of Logic, with Emphasis on Oriental Perspectives*, 2018, Sahayatra Publication Kathmandu.
2. Luca Frassiniti, *The Philosophy Book*, Dorling Kindersley Limited, 2011, London.
3. Ajitha T.S. *Indian Philosophy*, University of Calicut, 2014.
4. G. Boolos, *Logic, Logic and Logic*, Cambridge MA. Harvard University, 1998.
5. L.T.F Gamut, *Introduction to Logic, Vol. 1*, University of Chicago Press, 1991.



## Sociology of Law and Justice System (LAW 323)

**Types of Course: Theoretical (Compulsory)**

**Credit: 03: 00**

### General Objectives of the Course:

1. To help students to relate relations of Laws with general human behaviours and functions of Laws in society.
2. To impart theoretical knowledge about how Law and Justice contribute in control human behaviours and change in society.
3. To help understand how laws are modified or evolved by social development.

S.N.	Chapter	Sub Chapter/Detailed Course Outline	Modality of Teaching	Credit Hour
1	<b>Society, Law and Crimes</b>	<ul style="list-style-type: none"> <li>• Relation between Society and Law                             <ul style="list-style-type: none"> <li>○ Law, Religion and Morality</li> <li>○ Law and Custom</li> </ul> </li> <li>• Relation between Society, Law and Crimes                             <ul style="list-style-type: none"> <li>○ Social values, Rules and Sanctions</li> <li>○ Law as a Means of Social Control</li> <li>○ Law as a Means of Social Change</li> <li>○ Law as a Means to Prevent Crime</li> </ul> </li> </ul>	Lecture and Discussion	10 hours
2	<b>Meaning and Concept of Sociology of Law</b>	<ul style="list-style-type: none"> <li>• Meaning of Sociology of Law</li> <li>• Conceptual Development of Sociology of Law</li> <li>• Sociology of Law as a Sub-division of Sociology</li> <li>• Sociology of Law as a Part of Sociological Jurisprudence</li> <li>• Basic Propositions of Sociology of Law</li> </ul>	Lecture and Discussion	8 hours
3	<b>Some Theories on Sociology of Law:</b>	<ul style="list-style-type: none"> <li>• Emile Durkheim</li> <li>• Max Weber</li> <li>• Karl Marx</li> <li>• Roscoe Pound: Social Engineering and Balance of Conflicting Interest.</li> </ul>	Lecture and Discussion	8 hours
4	<b>Sociology of</b>	<ul style="list-style-type: none"> <li>• Historical Development of Nepali Law with</li> </ul>	Lecture and	10 hours

	<b>Law in Nepal.</b>	<p>Reference to Ancient to Modern Social Contexts.</p> <ul style="list-style-type: none"> <li>• Nepali Society and New Muluki Ain.</li> <li>• Nepali Society and Nepalese Constitutions.</li> <li>• Provision on Protection of Ethnicity, Religion and Language (judicial Attitude also) in the Constitution of the Nepal.</li> </ul>	Discussion	
5	<b>Reflection of Social Changes in Judicial Process and Administration of Justice:</b>	<ul style="list-style-type: none"> <li>• Meera Dhungana V. HMG</li> <li>• Man Bahadur Bishokarma vs HMG</li> <li>• Lal Bahadur Thapa Vs. Kathmandu Municipality (Language Case)</li> <li>• Rina Bajracharya vs. Royal Nepal Airlines Corporation. (Gender Equality)</li> <li>• Tara Poudel Vs. Kaski District Court ( case on incest)</li> </ul>	Lecture and Discussion	6 hours
6	<b>Problems of the Enforcement of Law</b>	<ul style="list-style-type: none"> <li>• Past and Present Legal Psychology</li> <li>• Problem of Power Relation (Gender, Caste &amp; Class)</li> <li>• Analysis of Present Law and order Situation and the Role of Law</li> </ul>	Lecture and Discussion	6 hours

#### RECOMMENDED READINGS:

1. Constitutions of Nepal
2. Ehrlich, E., Fundamental Principles of Sociology of Law, New York, 1972
3. Friedman, W.G. 1951 Law and Social Change in Contemporary Britain, London, Sweet and Maxwell.
4. Muluki Ain
5. Regmi, D.R, Ancient Nepal, Calcutta, Mukhapadhy, 1969
6. Yubaraj Sangroula Condemned to Exploitation, Trafficking of Girls and Women in Nepal, KSL, 2001.
7. Yubaraj Sangroula, Kanoonsastra and Kanoonka Siddhanta, Pairavi Prakashan, 2001.

## Introduction to Nepalese Constitution (LAW 324)

**Types of Course: Theoretical (Compulsory)**

**Credit: 1.5: 00**

### General Objectives of the Course:

1. To familiarize the constitution of Nepal, with emphasis on Fundamental Rights and Duties, the Directive Principles, Federal Structure of Nepal, Powers and functions of Federal State and Local Level Governments.
2. To aware students that constitution is Fundamental Law of the Country.
3. To familiarize students on Constituent Assembly Process of Constitution Making in Nepal.

S. N.	Major Course Outline	Specific Objective of Course	Sub-Chapter/Detail Course Outline	Modality of Teaching	Credit hours
1.	<b>Concept of Constitution</b>	To make students know about the concept of constitution	<ul style="list-style-type: none"> <li>• Definition of Constitution</li> <li>• Importance of Constitution</li> <li>• Scope, Nature and Sources of Constitution</li> </ul>	Lecture	2 hrs
2.	<b>History of Nepalese Constitution</b>	To make students familiarize with history and development of Constitution in Nepal with specific features thereof.	<ul style="list-style-type: none"> <li>• Pre Written History of Constitution of Nepal</li> <li>• Features of Nepal Government Act 2004 BS</li> <li>• Features of The Interim Governance of Nepal Act 2007 B.S</li> <li>• Features of The Constitution of the Kingdom of Nepal, 2015</li> <li>• Features of The Constitution of Nepal, 2017 B.S</li> <li>• Features of The Constitution of the Kingdom of Nepal, 2947 B.S</li> <li>• Features of The Interim Constitution of Nepal, 2063 B.S</li> </ul>	Lecture Comparative study	4 hrs
3.	<b>Prevailing</b>	To make students	<ul style="list-style-type: none"> <li>• Introduction of Constitution</li> </ul>	Lecture	4 hrs

	<b>Constitution of Nepal</b>	know about principles and features of prevailing constitution of Nepal	<p>of Nepal, 2072 B.S.</p> <ul style="list-style-type: none"> <li>• Features of The constitution of Nepal, 2072 B.S.</li> </ul>		
4.	<b>Constitution making Process in Nepal</b>	To make students aware about constitution making procedure in Nepal	<ul style="list-style-type: none"> <li>• Constitution making Procedure and promulgation of constitution of Nepal 2047 B.S.</li> <li>• Constitution making Procedure and promulgation of Interim constitution of Nepal 2063 B.S.</li> <li>• Constitution making Procedure and promulgation of constitution of Nepal , 2072 B.S.</li> </ul>	Lecture Comparative study	<b>2 hrs</b>
5.	<b>Constituent Assembly in Nepal</b>	To make students aware about the constituent assembly in Nepal	<ul style="list-style-type: none"> <li>• Concept of Constituent Assembly</li> <li>• 1st Constituent Assembly, Formation, Power and Functions</li> <li>• 2<sup>nd</sup> Constituent Assembly, , Formation, Power and Functions</li> </ul>	Lecture Comparative study	<b>2 hrs</b>
6.	<b>Guarantee of Fundamental Rights in Constitution of Nepal</b>	To make students acquainted with the fundamental rights guaranteed in Constitution of Nepal	<ul style="list-style-type: none"> <li>• Concept of Fundamental Rights</li> <li>• Fundamental Rights in the Constitution of Nepal, 2072 B.S.</li> <li>• Constitutional Guarantee of Fundamental Rights and Duties of Citizens</li> </ul>	Lecture	<b>2 hrs</b>

7.	<b>Separation of Power and Power Sharing in Nepal</b>	To make students know about separation of Power, check and Balance, restructuring of state and power sharing among different levels of government	<ul style="list-style-type: none"> <li>• Concept of Separation of Power and Check and Balance</li> <li>• Executive, Legislative, Judiciary and check and Balance in Nepal</li> <li>• Independence of Judiciary in Nepal</li> <li>• Restructuring of State and Distribution of State power</li> <li>• Federalism in Nepal</li> <li>• Power sharing between Federal, Provincial and Local Government in Nepal</li> <li>• Concurrent and Residual Power in Constitution of Nepal</li> </ul>	Lecture	4 hrs
8.	<b>Constitutional Institutions in Nepal</b>	To make students know about the constitutional institutions of Nepal	<ul style="list-style-type: none"> <li>• Concept of Constitutional Institutions</li> <li>• Constitutional Institutions in Nepal; Mandate, Power and Functions               <ul style="list-style-type: none"> <li>○ Commission for the Investigation of Abuse of Authority</li> <li>○ Auditor General</li> <li>○ Public Service Commission</li> <li>○ Election Commission</li> <li>○ National Human Rights Commission</li> <li>○ National Natural Resources and Fiscal Commission</li> <li>○ Other Commissions</li> </ul> </li> </ul>	Lecture	2 hrs

9.	<b>Other Important Provisions in Constitution of Nepal</b>	To make students know about the Important Provisions in Constitution of Nepal	<ul style="list-style-type: none"> <li>• Provision of Citizenship</li> <li>• Directive Principles and State Policy</li> <li>• National Security</li> <li>• Emergency Power</li> <li>• Amendment of Constitution</li> <li>• Political Parties</li> </ul>	Lecture	2 hrs
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## RECOMMENDED READINGS:

### Constitution

1. Nepal Government Act 2004 BS
2. The Interim Governance of Nepal Act 2007 B.S
3. The Constitution of the Kingdom of Nepal, 2015 B.S
4. The Constitution of Nepal, 2017 B.S
5. The Constitution of the Kingdom of Nepal, 2947 B.S
6. The Interim Constitution of Nepal, 2063 B.S
7. Constitution of Nepal, 2072 B.S

### Books, Articles and Reports

1. A V Dicey, An introduction to the study of the law of Constitution, 10<sup>th</sup> Edition, Publication by Universal Law Publishing Co. Pvt. Ltd., Delhi.2003
2. AG Noorani, Constitutional Questions and Citizen's Right, 2006, Published by Oxford University Press.
3. Chandrakant Gyawali and Prakash A. Raj, Federalism in the World, 2010, Published by Pairavi Prakashan, Putalisadak
4. Dr. Bhimarjun Acharya, Dynamics of Fundamental Rights, 2009, Published by National Peace Campaign, Kathmandu
5. Dr. Bhimarjun Acharya, Making Constitution Through Constituent Assembly, 2006, Published by Pairavi Prakashan, Putalisadak, Kathmandu
6. Dr. Shashtra Dutta Pant, Comparative Constitutions of Nepal, 1995. Published by Pairavi Prakash, Putalisadak
7. Dungel, Adhikari, Bhandari and Murgatroya's, Commentary on the Nepalese Constitution, 1998, Published by DeLF, Lawyer's Inc.
8. Kamal Raj Thapa (ed), Governance, Constitution and Contemporary issue, 2066, Published by LRAF Pvt. Ltd., Kathmandu,2066
9. Rishikesh Shah, Politics in Nepal, 1990, Published By Manohar Publication, New Delhi.

10. Surendra Bhandari, Constitutional Design and Implementation Dynamics; Federalism and Inclusive Nation Building in Nepal, 2015, Published by Himal innovative development and research Pvt. Ltd.
11. UNDP, Participatory Constitution Making in Nepal, Post Peace Agreement Constitution Making in Nepal volume 1, 2014.
12. UNDP, The Federalism Debate in Nepal, Post Peace Agreement Constitution Making in Nepal volume 2, 2014.
13. Kashiraj Dahal, संबिधान, लेखन, अभ्यास र अनुभव, 2070, Published by Font trader's Pvt. Ltd.
14. मुकुन्द रेग्मी, संवैधानिक विकास र नेपाल अधिराज्यको संविधान २०४७, 2061, Published By Milineum press.
15. राजेश गौतम, नेपालको संवैधानिक इतिहास र राजनिति, 2054, Published By Ratan Pustak Bhandar.
16. *Features of Constitution of Nepal*, 2072 available at <http://www.moljpa.gov.np/हाम्रो-संविधान-समावेशी-स/>
17. संविधानसभा प्रक्रिया, पद्धति र विषयहरु, 2064, Published By CeLRRD

#### Cases

1. Kamalesh Dwevedi Vs PM and et.al. 2064
2. Kamal Thapa Vs Parliament Secretariat et.al. 2064
3. Ek Raj Bhandari V. Home ministry 2064
4. Adv. Chandra kant Gyawali Vs. PM Girija Pd. Koirala 2064
5. Rajiv Parajuli on Behalf of Sanjeev Parajuli Vs. Royal Commission for Control of Corruption (RCCC) 2062
6. Bharatmani Junjgum Vs. Parliament Secretariat et.al. 2058
7. Adv. Guna Nidhi Neupane Vs. PM Man Mohan Adhikari 2057
8. Sewa Ram Vs. Purbanchal Regional Administration 2070
9. Ganesh Panjiyar Vs. Judicial Council Secretariat 2067
10. Tilu Ghale on Behalf of Chij Kumari Ghale Vs. District Police Office Hanumandhoka 2051
11. Yogi Narahari Nath Vs. PM Girija Pd. Koirala 2053
12. Binod Karki Vs. Finance Minister Bharat Mohan Adhikari 2062
13. Bal Krishna Neupane Vs Speaker of CA and others 2068

## Introduction to the Criminal Law: Country Crimes (Code) Act (LAW 325)

**Types of Course: Theoretical (Compulsory)**

**Credit: 03: 00**

### General Objectives of the Course:

1. To introduce students about evolution of Criminal Justice System in Nepal.
2. To impart detail knowledge on various types of Crimes dealt by the crimes (code) Act.
3. To familiarize students with procedures of Crime Investigation, Presentation and Trial.

S. N.	Major Course Outline	Sub-Chapter/Detail Course Outline	Modality of Teaching	Credit hours
1.	<b>Introduction</b>	<ul style="list-style-type: none"><li>• Definition of Crime</li><li>• Nature of Criminal Law</li><li>• Jurisdiction of Criminal Law</li><li>• Distinction of Crime from Tort and Breach of Contract</li><li>• Classification of Criminal Liability<ul style="list-style-type: none"><li>◦ Relative Liability (the Four Stages of Crime)</li><li>◦ Strict Liability</li><li>◦ Vicarious Liability</li><li>◦ Classification According to the Rules of Procedure</li></ul></li><li>• General Principles of Criminal Liability<ul style="list-style-type: none"><li>◦ Ignorance of law is not excused</li><li>◦ Act alone does not amount to guilt; it must be accompanied by <i>mens rea</i>.</li><li>◦ Doctrine of double jeopardy</li><li>◦ Criminal law has no retrospective effect.</li><li>◦ Crime dies with the criminal</li><li>◦ - Presumption of Innocence.</li></ul></li></ul>	Lecture and discussion	6 hours
2.	<b>Elements of Crime</b>	<ul style="list-style-type: none"><li>• <i>Actus reus</i> : Act, Omission, State</li></ul>	Lecture	3 hours



		of Affairs, <ul style="list-style-type: none"> <li>• Act Committed Through Innocent Agent</li> <li>• Act Committed in a Series of Fragmentation Forming Part of the Same Transaction.</li> <li>• <i>Mens rea</i>:             <ul style="list-style-type: none"> <li>○ Intention</li> <li>○ Recklessness</li> <li>○ Negligence</li> <li>○ Motive</li> </ul> </li> <li>• Transferred Intention (Transfer of Malice)</li> <li>• <i>Actus reus</i> and <i>Mens rea</i> must Concur Together to Give Criminal Liability</li> </ul>	and discussion	
3.	<b>General Defenses</b>	<ul style="list-style-type: none"> <li>• Infancy</li> <li>• Insanity</li> <li>• Drunkenness and Drug Taking</li> <li>• Self Defense (Private Defense)</li> <li>• Necessity</li> <li>• Duress and Coercion</li> <li>• Consent</li> <li>• Mistake</li> <li>• Superior Order</li> <li>• Inevitable accident</li> </ul>	Lecture and discussion	<b>4 hours</b>
4.	<b>Inchoate Offences</b>	<ul style="list-style-type: none"> <li>• Incitement</li> <li>• Conspiracy</li> <li>• Attempt</li> </ul>	Lecture and discussion	2 hours
5.	<b>Parties to the Crime</b>	<ul style="list-style-type: none"> <li>• Accessories Before the Fact</li> <li>• Accessories on the Fact (Principle/Secondary Offender)</li> <li>• Accessories After the Fact</li> <li>• Waiving the enterprise</li> </ul>	Lecture and discussion	4 hours

		<ul style="list-style-type: none"> <li>• Entrapment</li> <li>• Vague Knowledge of Crime (<i>mens rea</i>)</li> <li>• Passive observation (<i>actus reus</i>)</li> <li>• Consequence remotely connected</li> <li>• Transferred Malice when relevant in relation to abettors</li> <li>• Cases where perpetrator immune, abettor liable</li> <li>• Abettors immune under duress</li> <li>• Conspirators equally liable</li> <li>• No abettors in provocative incident except inciter</li> <li>• No abettor in negligent offence except inciter</li> </ul>		
6.	<b>Homicide and Abortion</b>	Homicide and Abortion	Lecture and discussion	<b>1 hour</b>
7.	<b>Assault and Battery</b>	Assault and Battery	Lecture and discussion	<b>1 hour</b>
8.	<b>False Imprisonment</b>	False Imprisonment	Lecture and discussion	<b>1 hour</b>
9.	<b>Offences Relating to Medical Case and Treatment</b>	Offences Relating to Medical Case and Treatment	Lecture and discussion	<b>1 hour</b>
10.	<b>Trafficking in Human Beings</b>	Trafficking in Human Beings	Lecture and discussion	<b>1 hour</b>
11.	<b>Kidnapping and Hostage taking</b>	Kidnapping and Hostage taking	Lecture and discussion	<b>1 hour</b>
12.	<b>Rape</b>	Rape	Lecture	<b>1 hour</b>

			and discussion	
13.	<b>Incest</b>	Incest	Lecture and discussion	<b>1 hour</b>
14.	<b>Unnatural Sex offences (Homo Sexuality, Bestiality)</b>	Unnatural Sex offences (Homo Sexuality, Bestiality)	Lecture and discussion	<b>1 hour</b>
15.	<b>Sexual Harassment</b>	Sexual Harassment	Lecture and discussion	<b>1 hour</b>
16.	<b>Marriage (valid marriage, void marriage, voidable marriage, punishable marriage Adulterous marriage, Registered Marriage)</b>	Marriage (valid marriage, void marriage, voidable marriage, punishable marriage Adulterous marriage, Registered Marriage)	Lecture and discussion	<b>1 hour</b>
17.	<b>Domestic Violence</b>	Domestic Violence	Lecture and discussion	<b>1 hour</b>
18.	<b>Introduction of Draft Bill relating to Disappearance</b>	Introduction of Draft Bill relating to Disappearance	Lecture and discussion	<b>1 hour</b>
19.	<b>Theft and dealing with stolen property</b>	Theft and dealing with stolen property	Lecture and discussion	<b>1 hour</b>
20.	<b>Looting</b>	Looting	Lecture and discussion	<b>1 hour</b>
21.	<b>Cheating</b>	Cheating	Lecture and discussion	<b>1 hour</b>
22.	<b>Arson</b>	Arson	Lecture and	<b>1 hour</b>

			discussion	
23.	<b>Forgery of document and Fraud</b>	Forgery of document and Fraud	Lecture and discussion	<b>1 hour</b>
24.	<b>Forgery of weight and measure</b>	Forgery of weight and measure	Lecture and discussion	<b>1 hour</b>
25.	<b>Offense relating to animal</b>	Offense relating to animal	Lecture and discussion	<b>1 hour</b>
26.	<b>Offense against state</b>	Offense against state	Lecture and discussion	<b>1 hour</b>
27.	<b>Public offense</b>	Public offense	Lecture and discussion	<b>1 hour</b>
28.	<b>Offense against social custom and caste discrimination and untouchability</b>	Offense against social custom and caste discrimination and untouchability	Lecture and discussion	<b>1 hour</b>
29.	<b>Offense against witch craft and social boycott of sick person</b>	Offense against witch craft and social boycott of sick person	Lecture and discussion	<b>1 hour</b>
30.	<b>Offense relating to narcotic drug</b>	Offense relating to narcotic drug	Lecture and discussion	<b>1 hour</b>
31.	<b>Motoring offense</b>	Motoring offense	Lecture and discussion	<b>1 hour</b>
32.	<b>Bribery and corruption</b>	Bribery and corruption	Lecture and discussion	<b>1 hour</b>
33.	<b>Cyber crime</b>	Cyber crime	Lecture and discussion	<b>1 hour</b>

34.	<b>Introduction to Criminal Procedure and Penal Code 2017.</b>	Introduction to Criminal Procedure and Penal Code 2017.	Lecture and discussion	<b>1 hour</b>
35.	<b>Other offense as stated in schedule one of State cases Act 2049 and other enactments relating to crime in which government is plaintiff (Introduction only)</b>	Other offense as stated in schedule one of State cases Act 2049 and other enactments relating to crime in which government is plaintiff (Introduction only)	Lecture and discussion	<b>1 hour</b>

### RECOMMENDED READINGS:

1. Analysis and Reforms of Criminal Justice System in Nepal, CeLRRd, 1999.
2. Andrew Ashworth, Principles of Criminal Law, 5<sup>th</sup> Ed. Oxford University Press, 2006.
3. Baseline Survey on Criminal Justice System of Nepal, Center for Legal Research and Resource Development (CeLRRd), 2000.
4. Criminal Jurisprudence, Prof. Madhav Pd. Acharya and Ganesh Bhattarai, 2065, Kathmandu
5. Diane Birch et al, Blackstone's Criminal Practice 9<sup>th</sup> ed. Blackstone press limited, 1999
6. Dr. Rajit Bhakta Pradhanang, Homicide Law in Nepal, Concept History and Judicial Practice, 1<sup>st</sup> ed., Ratna Pustak Bhandar, Kathmandu, 2001.
7. Glanville, Williams, Textbook of Criminal Law Stevens and Sons, London 1978.
8. Janet Dine and Tames Gobert Cases and Materials on Criminal Law (1993) Balckstone Press Limited.
9. K.D. Gaur, Criminal Law cases and Materials 4<sup>th</sup> ed. Lexis Nexis Battworths New Delhi, 2005
10. Kannon Bi Monthly and Nayaydoot Monthly
11. Lafare, Criminal Law 3<sup>rd</sup>, Wayne R. Lafave, Criminal Law 3<sup>rd</sup> ed, West Group USA 2000.
12. National Workshop on Criminal Justice System in Nepal: Existing Realities and Prospective Reforms, 1997, ILRR.
13. Ratanlal and Dhirajlal, The Indian Penal Code
14. Report on Impact of Corruption in Criminal Justice System on Women, CeLRRd, 2000 AD
15. Report on Study of Counter Corruption Legal Framework, CeLRRD, 2000 AD
16. Smith and Hogan, Criminal Law Cases and Materials, 4<sup>th</sup> ed., Butterworth & Co. Ltd, 1990
17. William Wilson, Criminal Law doctrine and theory Longman UK 1998.
18. फौजदारी कार्यविधि दिग्दर्शन : सेलर्ड, महान्यायाधिवक्ताको कार्यालय, प्रहरी प्रधान कार्यालय, नेपाल बार एसोसिएसन, न्यायाधीश समाज, २०५८

१९. फौजदारी कानून एक समिक्षात्मक विवेचना, प्रा. माधवप्रसाद आचार्य, बन्नी प्रसाद भण्डारी, भृकुटी एकेडेमीक पब्लिकेशन २०६३, काठमाडौं
२०. ज्ञानेन्द्र बहादुर श्रेष्ठ, मुलुकी ऐन (२०५५), पैरवी प्रकाशन
21. New Criminal Codes.

### **Leading Cases**

1. Four stages of Crime Commission- NG v. Tek Bdr. Kshetry NKP 2066 P. 743 (rape of under aged girl)
2. Strict Liability- R.V Tyrell (1894) IQB 610 (Under aged girl instigating boyfriend for Kernal knowledge)
3. Doctrine of Double Jeopardy- Durga Lal Chaudhary v. HMG NKP 2042, P. 46 (offense against state/pardon/docoit charge again)
4. Criminal Law has no retrospective effect- Uttam Lama v. HMG NKP 2061, P. 1103 (Commission of trafficking crime before 2043 / Law 2043 applied)
5. Crime dies with the criminal- Jirawat Kurmi v. Chandreswor NKP 2016, P 271 (Docit / death before conviction / order to continue the trial to facilitate victim's right to compensation)
6. Right to notice / False imprisonment- Amar Bdr. Gurung V. TIA NKP. 2049, P. 31 (Drug case / illegal detention at first / Detention Legalized by concealing the fact / aggrieved party may pursue course of action under false imprisonment)
7. Omission- HMG v. Kumar Adhikari, NKP 2056, P. 152 (Rape / Passive observation)
8. *Mens rea* (Intention)
  - Devi Bdr. Shimkhada v. HMG 2037 P. 148 (Murder / intention to be discovered from use of weapon harm sustained by the victim and circumstances)
  - HMG v. Kallu Dhobi, NKP 2060, P. 582 (Recklessness) Quarell between two while working in farm / one of them strikes with sickle on the waist / death / liable for murder)
  - Karna Bdr. v. HMG 2037, P. 178 (Negligence) (Throwing stone to the same direction from where the accused received the hit / death / liable for negligence)
  - Transferred malice
  - HMG v. Nara Bdr. Reule NKP 2061, P. 1486 (In a broil – how to distribute head of animals sacrificed in the temple / out of rage swinging knife / hitting his own brother / death / held liable)
9. Insanity - Tirtha Dangol v. HMG NKP 2042 P. 435 (Striking at a sleeping wife with loud cry/ confession/mental disease proved/acquittal)
10. Self Defense
  - Kousila Pun v. HMG NKP 2042 P. 13 (Quarell between husband and wife / both receiving injury / husband found dead with throat injury / wife acquitted)

- HMG v. Bal manjari et al NKP 2040 (Bisheank) P. 297 (Striking at the assailants attempting to rape / when he is already unconscious / no defense of chastity / held liable for murder)
- HMG v. Dhana Maya NKP 2031 P. 1123 (Killing one's own mentally unsound son by mother who raped her 3 times within one and half hour time span / acquittal)
- 11. Consent - HMG v. Abdual Fatte Musalman NKP 2044 P. 840 (Love affairs, Suicide pact / consent)
- 12. Conspiracy - Kamal Basyal v. HMG NKP 2060, P. 851 (Conspiracy in murder)
- 13. Attempt
  - Mahendra Bom v. HMG NKP 2051, P. 226 (Attempt to murder converted into hurt)
  - HMG v. Bakutu Tamang NKP 2045 P. 1163 (girl detained in cowshed/charged in Trafficking)

Mid-Western University, School of Law, Surkhet, Nepal

## Prison Visit and Report Presentation (LAW 326)

**Types of Course: Practical (Compulsory)**

**Credit: 1.5: 00**

### General Objectives of the Course:

1. To provide opportunity for students to practically observe the functional status of Criminal Justice System.

S. N.	Major Course Outline	Specific Objective of Course	Sub-Chapter/Detail Course Outline	Modality of Teaching	Credit hours
1.	<b>Concept of Punishment</b>	To make students know about the concept of Punishment	<ul style="list-style-type: none"> <li>• Definition of Punishment</li> <li>• Theories of Punishment</li> <li>• Types of Punishment in Nepal</li> <li>• Concept of Suspect, Accused, Culprit, Detainees, Prisoners</li> </ul>	Lecture	<b>3 hrs lecture</b>
2.	<b>Detention Center and Prison Management in Nepal</b>	To make students know about the concept of Detention Center and Prison Management in Nepal	<ul style="list-style-type: none"> <li>• Role and Responsibility of Officer managing Detention center</li> <li>• Role and Responsibility of Officer managing Prison</li> <li>• National Laws Governing Prison and Detention Center</li> </ul>	Lecture Workshop Presentation	<b>4 hrs lecture</b>
3.	<b>Other forms of Punishment practiced in Nepal</b>	To aware students about Other forms of Punishment practiced in Nepal	<ul style="list-style-type: none"> <li>• Concept and Practice of Child Reform Home</li> <li>• Parole and Probation</li> <li>• Community Service</li> </ul>	Lecture Workshop Presentation	<b>3 hrs lecture</b>
4.	<b>Punishment and Vulnerable Persons</b>	To aware students about Punishment to Vulnerable Persons.	<ul style="list-style-type: none"> <li>• Human Rights of Vulnerable group in Detention and Prison or Reform Home;                             <ul style="list-style-type: none"> <li>○ Children,</li> <li>○ Differently Able Person,</li> <li>○ Pregnant Women and</li> </ul> </li> </ul>	Lecture Workshop Presentation	<b>3 hrs lecture</b>



			○ Diseased Person		
5.	<b>Concept and Practice of Detention</b>	To make students know about the concept of detention, Human rights of Detainees and familiarize them with Detention center.	<ul style="list-style-type: none"> <li>• Concept of Detention</li> <li>• Human Rights of Detainees</li> <li>• National and International Provisions on Detention Center and Detainees</li> <li>• Psycho-Social Counseling to Detainees</li> <li>• Group Division, Task Allocation, Research and Team work in Workshop for Detention Center Visit</li> <li>• Observation visit to Detention Center and Interview with Detainees and Officers to find Human Rights Situation and Infrastructural situation</li> <li>• Report Presentation of Field Visit of Detain Center</li> </ul>	Lecture Workshop and Field Visit Presentation	<b>4 hrs lecture</b>
6.	<b>Concept and Practice of Prison</b>	To make students know about the concept of Prison, Human rights of prisoners and familiarize them with Prison.	<ul style="list-style-type: none"> <li>• Concept of Prison</li> <li>• Human Rights of Prisoners</li> <li>• National and International Provisions on Prison and Prisoners</li> <li>• Psycho-Social Counseling to Detainees</li> <li>• Group Division, Task Allocation, Research and Team work in Workshop for Prison Visit</li> <li>• Observation visit to Prison and Interview with Prisoners and Officers to find Human Rights Situation and Infrastructural situation</li> <li>• Report Presentation of Field Visit</li> </ul>	Lecture Workshop and Field Visit Presentation	<b>4 hrs lecture</b>

			of Prison		
7.	<b>Reform of Detention and Prison</b>	To make students know about the reform initiated by Nepal Government in Prison	<ul style="list-style-type: none"> <li>• Prison Management Department Role and Responsibility</li> <li>• Reform initiated by Nepal Government in Prison and Detention</li> <li>• Recommendation of Reform from Field Visit on Detention Center and Prison</li> </ul>	Lecture Workshop Presentation	<b>3 hrs lecture</b>

## RECOMMENDED READINGS:

### Constitution

1. Constitution of Nepal, 2072 B.S

### National Acts and Regulations

1. *Muluki Faujdari (Samhita) Ain 2074* (Muluki Criminal Code Act)
2. *Muluki Faujdari Karyabidhi (Samhita) Ain 2074* (Muluki Criminal Procedure Code Act)
3. *Muluki Faujdari Kasur tatha Sajaya Nirdharan Ain 2074* (Sentencing Act of Nepal)
4. *Karagar Ain 2019* (Prison Act)
5. *Karagar Niyamawali 2020 B.S.* (Prison Regulation)
6. *Karagar Byabastaphan Karyabidhi 2073* (Prison Management Procedure)
7. *Karaghar Nirsdesika 2053* (Prison Directives)

### International Laws:

1. International Covenant on Civil and Political Rights, 1966.
2. Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, 1984
3. The 1949 Geneva Conventions and the two Protocols Additional of 1977.
4. Statutes for International Criminal Court, 1998.
5. Universal Declaration of Human Rights, 1948.
6. Standard Minimum Rules for the treatment of Prisoners, 1955.
7. Basic Principles for the treatment of prisoners, 1990
8. Body of principle for the protection of All Persons under Any Form of Detention or Imprisonment, 1988.

9. Principles of Medical Ethics relevant to the role of Health Personnel, particularly Physicians in the Protection of Prisoners and Detainees against Torture and other cruel, Inhuman or degrading Treatment or Punishment, 1982
10. Code of conduct for law Enforcement Officials, 1979.
11. Declaration On the Protection of All Persons from Enforced Disappearance, 1992
12. Principles on the Effective Prevention and Investigation of Extra- Legal, Arbitrary and Summary Execution, 1989.
13. African Charter on Human and People's rights, 1981.
14. American Convention on Human Rights, 1969.
15. Inter- American Convention to Prevent and Punish Torture.
16. Inter- American Convention on the Forced Disappearance of Persons, 1994.
17. European Convention on Human Rights, 1950.
18. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987.

#### **Books and Reports**

1. Basic Education in Prisons, United Nations and UNESCO, Institute of Education, 1995
2. Nepal's Penal System: An Agenda for change, Center for Victims of Torture Nepal, 1<sup>st</sup> Edition, 2001
3. Penal Reform in Nepal, Published by PRI and CIVICT, Kathmandu, 2000
4. बन्दी कानुनी सहायता निर्देशिका २०६४, Published By CeLRRd
5. न्याय प्रशासनको कार्यमा संलग्न कर्मचारीका लागी मानव अधिकार दिग्दर्शन, २०६० Published By CeLRRd
6. Yubaraj Sangroula, Nepalese Legal System HR Perspective, 2005
7. Yubaraj Sangroula, Concepts and Evolution of Human Rights Nepalese Perspective 2005
8. नेपालको फौजदारी न्याय प्रणालीमा मनाबधिकार कानून कार्यन्वयन सम्बन्धि तालिम पुस्तिका, Published By Kathmandu School of Law
9. Prison Management Operational Manual, 2004, Published by Prison Management Department.