

LEGAL STUDIES SAMPLE PAPER 2019-2020
SUB CODE:074
MARKING SCHEME
CLASS XII

The Marking Scheme carries only suggested value points for the answers. These are only guidelines and do not constitute the complete answer. The students can have their own expression and if the expression is correct, marks should be awarded accordingly. While evaluating, answers which are based on latest information or knowledge and/or are innovative, they may be assessed for their correctness otherwise and marks be awarded to them.

Q No	Value Point	Marks allotted
SECTION A		
1	a. District Judge b. Doctrine of Legitimate Expectation OR Parliamentary form of Government c. Stand by Decision d. Magna Carta OR International Covenant on Civil and Political Rights e. Legal Practitioners Act, 1846	1 X 5 =5
2	a. Socio economic in nature OR Early retirement age b. Chief Justice of High Court c. Senior Advocate d. National Legal Aid Fund e. Code of Hammurabi Or Article 39 A	1 X 5 = 5
3	A. c OR a B. a OR c C. d D. b OR a E. c	1 X 5=5
4	A. F OR T B. T C. F Or F D. T or T E. F	

7	<p>The leading case law that applies to the facts of the case is <i>Carlill vs. Carbolic Smoke Ball Co.</i></p> <p>In this case, the court held that ‘an offer can also be made to the world at large. It is called a General offer and it is valid.</p> <p>Also, in case of general offer, there is <i>no need for communicating acceptance to the offeror</i>. Merely fulfilling the conditions of the offer itself is treated as acceptance to create a contract.</p> <p>Therefore, Chanbar Medicos Ltd. had made a General offer and the contract is valid. Soni by merely fulfilling the conditions of the offer i.e. by consuming the drug as per the directions accepted the offer to create a contract. There was no need to communicate acceptance to Chanbar Medicos Ltd.</p>	1 +1 =2
8	<p>It is Statutory Arbitration. Statutory Arbitration is an arbitration that is imposed on the parties by operation of a particular law or statute, applicable to them.</p> <p>Example: The Defence of India Act, 1971 mandates recourse to arbitration in case of any dispute arising within this Act.</p>	1 +1 =2
9	<ol style="list-style-type: none"> 1. Article 21 states that ‘No person shall be deprived of his life and personal liberty except according to procedure established by law.’ 2. The Supreme court, in 1992-93 affirmed that depriving one from education amounts to depriving one’s right to life. This meant that elementary education was raised to the status of fundamental right from that of a directive principle or policy goal and hence made enforceable. In 2002, Article 21A providing the right to elementary education was created as a fundamental right. <p>Therefore, Right to Education is an extension of Article 21.</p>	1 1
10	<ol style="list-style-type: none"> 1. In Patna High Court case, Ms. Hazra secured a B.L. degree from Calcutta University. She was refused enrolment as a Pleader. She challenged this in the High Court of Patna. In 1922, the Patna High Court had held that women otherwise qualified were not entitled to be enrolled as Pleader. 2. Subsequently the Legal Practitioners (Women) Act, XXIII of 1923 was enacted to expressly provide that no woman by reason only of her sex be disqualified from being admitted or enrolled as a legal practitioner. The Allahabad High Court took the lead by enrolling Ms. Cornelia Sorabji as the first Indian lady Vakil of Allahabad High Court. 	1 1

11	Maneka Gandhi v. Union of India (AIR 1978 SC 597) provided clarity on what procedure means under Article 21. The right to life or liberty could be violated only by a fair, just and reasonable procedure. In the adversarial system, the fairness requires legal representation. Creation of equal opportunity for accessing the courts is a dimension of the equality clause in Article 14.	2
12	Private International Law , is a set of rules and principles that govern interstate interactions and transactions of private parties. It is a body constituted of conventions, model laws, domestic laws of states and secondary legal sources. I	1+1=2
SECTION C		
13	<ul style="list-style-type: none"> a. The tort in the above situation is the Intentional Tort of Conversion. b. Conversion occurs when the defendant intentionally uses or intermeddles with the chattel of the claimant in such a serious way that it becomes fair to ask for compensation or money payment for the total prior value of the chattel. c. The remedy in conversion is forced sale. The defendant is forced to buy the chattel for a purchase price based on the original value. 	<p>3</p> <p>1</p>
14	<p>Prosecution of an offence is usually a two step process. Firstly, the police investigates into a complaint made usually by a victim. Secondly, based on the report of the police, the state prosecutes the accused at a criminal trial where the accused may either be convicted (found guilty), or acquitted (found not-guilty).</p> <ul style="list-style-type: none"> a. Investigation is a preliminary stage conducted by the police and usually starts after the recording of a First Information Report (FIR) in the police station. If, from the FIR, the officer-in-charge of a police station suspects that an offence has been committed he/she is duty-bound to investigate the facts and circumstances of the case and if necessary, takes measures for the arrest of the offender. Investigation primarily consists of ascertaining facts and circumstances of the case. Investigation ends in a police report to the magistrate. b. Trial of an offence: Trial is the judicial adjudication of a person's guilt or innocence. Under the CrPC, criminal trials have been categorized into three divisions each having distinct procedures, called warrant, summons and summary trials. 	2 +2=4

15	<p>a. Yes, the action would be justified. Article 24 of the Constitution of India prohibits employment of children below the age of fourteen years in factories, mining, and other hazardous employment. This article can be enforced against private individuals.</p> <p>b. No, the action would not be justified. Article 19 prescribes and protects the following kinds of freedoms to all citizens:</p> <ol style="list-style-type: none"> a) Freedom of speech and expression. b) Freedom to assemble peaceably and without arms. c) Freedom to form associations or unions. d) Freedom to move freely throughout the territory of India. e) Freedom to reside and settle in any part of the territory of India; and f) Freedom to practice any profession, or to carry on any occupation, trade or business. <p>This article, however, is enforceable only against state action and not against a private individual.</p> <p style="text-align: center;">OR</p> <p>a. Article 13 elevates the authority of fundamental rights. It ensures that the State or other competent authority do not make laws including ordinances, orders, bye laws, rules, regulations, notifications, customs or usages that contradicts or takes away or breaches the fundamental rights.</p> <p>b. Article 32 provides the right to the aggrieved ones, whose fundamental rights have been violated or denied, to petition the Supreme Court for the enforcement of fundamental rights. The Supreme Court can issue writs in the nature of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition for enforcement of the Fundamental Rights.</p>	<p>1X 4=4</p> <p>2 +2=4</p>
16	<p><u>Pre- Independence India:</u> Section 340(1) of the Code of Criminal Procedure, 1898, provided that if a man was charged with an offence punishable with death, the court could provide him with a counsel upon his request. This was subjected to a twisted interpretation by the Supreme Court by classifying it as a privilege rather than the duty of the magistrate</p>	2

	<p>in Tara Singh v. State. <u>Post Independence India:</u> However, India in the Code of Criminal Procedure, 1973, facilitated statutory implementation of free legal aid .Section 304(1) provides that: In a trial before the sessions judge, if the accused has not sufficient means to engage a pleader, the court should assign a pleader for his defense at the expense of the State.</p>	2
17	<ol style="list-style-type: none"> 1. As far as advertising by advocates is concerned, the position in the USA is different from that in India, where lawyers have a right to advertise but subject to reasonable restrictions. 2. There is the Model Rules of Professional Conduct which serves as an indicative reference point. Model Rules prohibits false and misleading communication about services, Rule 7.3 articulates no- solicitation periods (e.g. families and victims of mass disasters are off limits for 30-45 days). 3. Lawyers in the US can provide information about class actions, can approach clients by handing out business cards and can advertise on internet forums. 4. Personal injury ads are commonplace in the USA. Often known as 'ambulance chasers', these personal injury lawyers are robust in their advertising- on billboards, newspapers, flyers, and even distasteful ads on the television. These Ambulance chasers solicit business by lurking around hospitals or by ads in newspapers and in Yellow Pages with toll free numbers and "free" consultations. 	1X 4 =4
SECTION D		

18	<p>1. The following provisions have been made for enhancing judicial skills:</p> <ol style="list-style-type: none"> 1. National Judicial Academy is a government funded training institute constituted for the training of Supreme and High Court judges and judicial officers in India. 2. The National Judicial Education Strategy (NJES) has been established in 2006 to provide judicial education to High Court judges, District Judiciary and State Judicial Academies. The training consists of conferences, orientations, workshops on core judicial skills and administration and seminars on substantive law and justice. The Academy also aims at enhancing the online skills registry of Indian judges to increase their proficiency and making better access to judicial decisions. <p>1. The collegiums system is not constitutionally mandated but is a creation of case laws:</p> <ol style="list-style-type: none"> 1. The first Judges case (1981) gave primacy to the Executive and stated that the CJI's recommendation to the President can be refused for cogent reasons. 2. The second Judges case (1993) held that the Chief Justice of India has primacy in the matter of appointments to the Supreme Court and the High Courts, and that an appointment 'has to be in conformity with the final opinion of the Chief Justice of India', while emphasising the desirability of consultation of the Chief Justice with other Judges. 3. Later in 1998, the Supreme Court in a Presidential reference (1998 advisory decision) emphasized upon the role of 'consultation' and held that the process of appointment of Judges to the Supreme Court and the High Courts is an 'integrated participatory consultative process'. The Chief Justice of India firms up his opinion after consultation with a plurality of judges; his opinion is formed by a body of senior Judges. 	<p>1.5 X 2=3</p> <p>1 X 3=3</p>
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19	<p>Wager – Wager is a contract where one person promises to pay the other money on the happening of an uncertain future event and the other person promises to pay on the non-happening of the event. Wager is an invalid contract.</p> <p>In wager, there is always a reciprocal promise.</p> <p>Third parties do not have an interest in wager.</p> <p>Wager is contingent in nature</p> <p>Contingent Contract - is a contract to do something or not to do something on the happening or non-happening of an event, which is collateral to the contract. Contingent contracts cannot be enforced until the uncertain future event happens. If the uncertain future event becomes impossible, contingent contracts become void</p> <p>Contingent contracts are valid.</p> <p>Third parties may have an interest in contingent contract.</p> <p>Contingent contracts are never wagering.</p>	3 3
20	<p>a. Mediation/arbitration hybrids can pose significant ethical and process problems for mediators. Many of the options and successes of mediation relate to the mediator's unique role as someone who wields no coercive power over the parties or the outcome. The parties' awareness that the mediator might later act in the role of judge could distort the process.</p> <p>Using a different individual as the arbiter addresses this concern.</p> <p>b. The major advantage of an ombudsman is that he or she examines complaints from outside the offending state institution, thus avoiding the conflicts of interest inherent in self-policing. However, the ombudsman system relies heavily on the selection of an appropriate individual for the office, and on the cooperation of at least some effective official from within the apparatus of the state.</p> <p style="text-align: center;">OR</p> <p>a. The use of cross-examination can be an effective way to test the credibility of witnesses presented.</p> <p>b. The cost of the justice system falls upon the parties. This creates an in-built discrimination amongst the litigants. Parties with better resources are able to access justice by hiring competent lawyers and presenting sophisticated evidences which may not be immediately available for parties that lack these resources. Accessibility and affordability to justice are important challenges for the adversarial system of dispute resolution</p> <p>c. Yes, this system offers more willingness to accept the decision as they have effective control over the process. The judge remains neutral and bases his decision on the version and evidence presented by the parties.</p>	3 3 2 2 2

21	<p>India balances the interplay between international law and municipal law:</p> <ol style="list-style-type: none"> 1. Article 51 of the Indian Constitution specifically states that the State shall endeavor to 'foster respect for international law and treaty obligations in the dealings of organized peoples with one another'. 2. Under Article 253 of the Constitution of India, the Parliament and the Union of India have the power to implement treaties and can even interfere in the powers of the state government in order to give power to provisions of an international treaty. 3. India generally merely affirms a treaty by way of ratifying it by the assent of the executive unless the treaty requires ratification by way of an act of the legislature. 4. In the land mark case of <i>Kesavananda Bharti v. State of Kerala</i>, it was observed that the court must interpret the provisions of the constitution in light of Charter of the United Nations. 5. In the case of <i>Magan Bhai Patel v Union of India</i>, the court held that if a treaty or international agreement restricts the rights of the citizens or modifies the laws of the state, it would require to have a legislative measure. If no such right is restricted then it does not need to have a legislative measure to enact it. 6. It is also a very clear of Indian law that international treaties cannot on their own override domestic law. Hence, these treaties which are not enabled by the legislature will not have the same force in law if there is a contradictory law provided for. 7. However, in the case of <i>Sheela Barse v Secretary Children's Aid Society</i>, the Supreme Court held that India had ratified conventions regarding the protection of children and this placed an obligation on the State Government to implement these principles. 	<p>Any 6 1 X 6 = 6</p>
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