

LEGAL STUDIES XII (074)
Marking Scheme
TERM II- SUBJECTIVE

Maximum Marks: 40

Duration of Exam: 2 hours

General Instructions:

- a. The paper is divided into 3 Sections
- b. Overall choice given to the students section wise.
- c. Section A (2 markers) has 6 questions. Attempt any 5 out of 7.
- d. Section B (3 markers) has 7 questions. Attempt any 5 out of 7.
- e. Section C (5 markers) has 5 questions. Attempt any 3 out of 4.

S.No	QUESTION	U N IT	TY PO	M AR KS
SECTION A- 2 MARKERS				
1	Veer challenged the reservation in government jobs to backward classes as being violative of Article 14. Is the petition by Veer maintainable? State and explain the principle, if any, on the basis of which the reservation can be justified	4	A	1+ 1
A	Yes. The principle of equality means that one uniform law cannot be applied to all equally as some may not be similarly placed as others. So 'equality' treats equals similarly and unequals differently.			1 1
2	Which body is responsible for enrolment of advocates? Also state any two other functions of this body.	5	R	1+ 1
A	State Bar Council Functions: a. Determining cases of misconduct against Advocates on the Roll b. organizing legal aid, among other functions.			1 1
3	Amreen, a national of UK was allowed to be enrolled as an advocate in India. Under what arrangement can such an enrolment be allowed? If Amreen was an Indian citizen, state two qualifications, that she requires to practice in India.	5	A	1+ 1

A	Principle of reciprocity Qualifications required: a. Atleast 21 years of age b. LLB degree from an Indian University c. Clearing the All India Bar Examination (Any two)			1+ 1
4	When can a senior advocate be appointed under the NALSA regulation?	6	R	2
A	The services of senior advocates may be availed if the Chairman of the legal services institution forms an opinion to that effect in cases of great public importance and where serious threats to life and liberty of the applicant exists.			
5	In a country Jingpa to give effect to a treaty it was put before the legislature for a vote of the majority. Identify the form of consent and the purpose behind such form of consent.	7	A	1+ 1
A	Consent by ratification This was initiated as a measure to ensure that the representative who signed a treaty had due authority, by seeing whether the state agrees to 'ratify' the same.			1+ 1
6	By passing of which legislation was the right to free legal aid under Article 39A made available to the citizens? Name the judges associated with the movement of legal aid by the State in India.	6	R	1+ 1
A	a. Legal Services Authorities act, 1987 b. i.J Krishna Iyer ii.J PN Bhagwati			1+ 1
7	The Citizens of Yodaland have been facing continuous and grave human rights violations in the form of slavery and racial discrimination. The neighbouring country, Boroway, after becoming aware of such grave human right violations, decided to take action against such violations in the country, Yodaland. There is no treaty between the two countries which gives Boroway the right to interfere in the internal matters of Yodaland. Justify the action of Boroway.	7	A	2
A	There are certain human rights that may constitute ergaomnes obligations			2

	for the state parties. This means that there are some violations that are so grave, that any state may take action against such crimes, regardless of whether they occurred in their jurisdiction or not. All states have a shared interest in elimination of such grave violations.			
SECTION B- 3 MARKERS				
8	Sameer was awarded death penalty in the year 2010 and the same was not executed until 2016. Identify and mention the provisions of the Article in the Indian Constitution under which a remedy is available for such a situation?	4	A	1+ 2= 3
A	Under Article 21, a person can be deprived of his or her 'right to life or personal liberty' only by procedure established by law. This means that any law that limits or takes away one's right to life and personal liberty must contain a procedure that is fair and reasonable and not arbitrary. For example, the Indian Penal Code prescribes death penalty for certain crimes. There should not be delay in executing the prisoner waiting in death row. Also, Indian Penal Code allows for appeal where the wait period is longer than five years			1+ 2
9	“In 2009, Section 377 of the Indian Penal Code, 1860 was declared invalid and unconstitutional by the Delhi High Court to protect rights to privacy, non-discrimination, and liberty of lesbian, gay, bisexual and trans gender people. But in 2013, the Supreme Court reversed the High Court's decision.” Apoorva and Kiran were convicted under Section 377 in the year 2011. Stating the relevant Constitutional provision, explain if the conviction can be upheld in law.	4	C	3
A	Article 20 provides that no person can be convicted for the commission or omission of an act that does not amount to an offense by any law in force at the time of such act. As in the year 2009, section 377 was declared unconstitutional by the Delhi High Court, the conviction of Apoorva and Kiran cannot be upheld in law.			3
10	Answer the following with respect to liberalisation of legal profession in India. a) Under which agreement and treaty is India expected to liberalise the	5	A	1+ 2= 3

	<p>legal profession?</p> <p>b) 'There have been contrary positions taken by High courts when it comes to liberalization of the legal profession in India.' Explain.</p>			
A	<p>India signed the WTO Treaty leading to economic liberalization, it is also expected to liberalize the legal services sector under the GATS (General Agreement on Trade and Services).</p> <p>In 2011, in a judgment delivered by the Bombay High Court on a public interest litigation (PIL) was filed by Lawyer's Collective, the High Court held that foreign law firms could not be permitted to set up liaison offices in India. The Madras High Court, in response to a PIL filed by A.K. Balaji, permitted foreign lawyers to practice in India on a "fly in and fly out" basis.</p>			1+ 2
11	<p>"Ms. Hazra, the petitioner, secured a B.L. degree from Calcutta University. She was refused enrollment as a Pleader. She challenged this in the High Court of Patna."</p> <p>What was the decision of the Patna High Court in the year 1922 regarding Ms. Hazra's petition and how was a revolution brought about in the system?</p>	5	C	3
A	<p>Ms. Hazra was refused enrolment as a Pleader. She challenged this in the High Court of Patna. The Court ruled that the sections of the Legal Practitioner's Act referred to males and not females. Since 1793, no woman had ever been admitted to the roll of pleaders. To remove doubts about the eligibility of women to be enrolled and to practise as legal practitioners, the Legal Practitioners (Women) Act, XXIII of 1923, was enacted to expressly provide that no woman would by reason only of her sex disqualified from being admitted or enrolled as a legal practitioner or from practising as such.</p>			3
12	<p>Why does legal aid stand first in the species of human rights?</p>	6	R	3
A	<p>Mere declaration and passing of resolutions about human rights are not enough, the guarantee for the enforcement of these rights is equally essential.</p> <p>Human rights are only mere pious declaration without legal aid. They become lucrative only when they are enforced.</p> <p>The right to legal aid enables accomplishment of these human rights and makes them worthwhile for the poor masses in the world</p> <p>Hence, it will not be incorrect to say that right to legal aid stands first in the species of human rights.</p>			3

13	Mention any six categories of persons entitled to receive free legal aid under the provisions of the Legal Services Authorities Act?	6	R	3
A	<p>(a) A member of a Scheduled Caste or Scheduled Tribe; or</p> <p>(b) A victim of trafficking in human beings or beggar as referred in article 23 of the Constitution; or</p> <p>(c) A woman or a child; or</p> <p>(d) A person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or</p> <p>(e) A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood drought, earthquake or industrial disaster; or</p> <p>(f) An industrial workman; or</p> <p>(g) In custody, including in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987.</p>			0.5 *6
14	<p>“These bodies were established by the Legal Services Authorities (Amendment) Act, 2002, for settling disputes concerning public utility services at pre litigation stage”</p> <p>a. Identify the institution being talked about in the above lines.</p> <p>b. Enlist any four services covered under Public Utility Services?</p>	6	R	1+ 2= 3
A	<p>a. Permanent lok adalats</p> <p>b. "Public utility service" means any 1) Transport service for the carriage of passengers of goods by air, road or water; or 2) Postal, telegraph or telephone service; or 3) Supply of power, light or water to the public by any establishment; or 4) System of public conservancy or sanitations; or 5) Service in hospital or dispensary; or 6) Insurance service.</p>			1+ 2

SECTION C- 5 MARKERS

15	<p>A) Against whom can an action for Fundamental Rights violation be taken? B) Identify and explain if a Fundamental Right has been violated in the following situations. Give reason for your answer and explain the right violated, if any.</p> <p>i. Rajni, a girl living in a village in Chattisgarh is unable to attend school because there is no school in her village or in the neighboring villages.</p> <p>ii. Amrit was prevented from making a speech that was aimed at inciting the people to commit violence.</p> <p>iii. Donations in temples that are used for the upkeep of temples being taxed.</p> <p>iv. Ratan Singh convinced unemployed rural people to migrate to the city on the pretext of employment. However, the poor people were duped into an organ transplant racket.</p>	4	A	1+ 1+ 1+ 1+ 1= 5
A	<p>A) Fundamental rights are mostly enforceable against the State and in some cases against private persons.</p> <p>B)</p> <p>a. Yes, Right to education under Article 21A has been violated. Article 21A provides- 'The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.' This article provides for right to education to all between the age of six and fourteen and obligates the state to implement this.</p> <p>b. No. Article 19 prescribes and protects freedom of speech and expression. However, this right is not absolute and is subject to reasonable restrictions. The State can 'reasonably' limit or take away the right to 'freedom of speech and expression' when there is a threat to the sovereignty and integrity of India, or the security of the State, or friendly relations with foreign States, or public order, or decency or morality, or in relation to contempt of court, or defamation or incitement to an offence.</p> <p>c. Yes. Article 27 prohibits forcing anyone to pay any taxes on revenues that are used in payment of expenses for the promotion or maintenance of any religion or section. For example, donations in temples that are used for the upkeep of the temple cannot be taxed.</p>			1+ 1+ 1+ 1+ 1

	d. Yes, this situation is violative of Right against exploitation. Article 23 prohibits human trafficking, beggar and forced labor. Forced organ transplantation is a part of Right against Exploitation.			
16	Shivam, an advocate, wants to be an Advocate on Record (AOR). Advise him on the necessary steps that he will have to undertake in order to become an AOR. Also, describe the role of an AOR.	5	R	3+ 2= 5
A	<p>An Advocate on Record (AOR) is an advocate who has passed a qualifying examination conducted by the Supreme Court. The examination is taken by an advocate who has been enrolled with a Bar Council for at least five years and has completed one year training with an AOR of not less than five years standing.</p> <p>Role: Only an AOR can file a vakalatnama, a petition, an affidavit or any other application on behalf of a party in the Supreme Court. All the procedural aspects of a case are dealt with by the AOR, with the assistance of a registered clerk. It is the AOR's name that appears on the cause list. The AOR is held accountable by the Supreme Court for the conduct of the case. Any notice and correspondence from the Supreme Court are sent to the AOR, and not to the party. AORs can argue matters, but frequently they serve in a solicitor like role.</p>			3+ 2
17	<p>India entered into an International Agreement to stop the killing of a species of fish. However, this international agreement restricted the 'Right to Trade' (which is a Fundamental Right provided under Part III of Indian Constitution) of certain fishermen by prohibiting killing of the fish.</p> <p>Can this International Agreement be enforced in India? Explain in light of constitutional provisions and decided cases.</p>	7	C	5
A	<p>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'.</p> <p>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.</p>			5

	<p>India generally follows that merely affirming 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. In the land mark case of Kesavananda Bharti v. State of Kerala, it was observed that the court must interpret the provisions of the constitution in light of Charter of the United Nations.</p> <p>In the case of Magan Bhai Patel v Union of India, the court held that if a treaty or international agreement restricts the rights of the citizens or modifies the laws of the state would require to have a legislative measure.</p> <p>If no such right is restricted then it does not need to have a legislative measure to enact it or give rise to some weight in domestic law in the treaty.</p> <p>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.</p> <p>The most revolutionary of these cases was the case of Vishaka v State of Rajasthan, in which the Indian courts used the provisions of the Convention on Elimination of all forms of Discrimination against Women, (CEDAW), to create legally binding obligations regarding sexual harassment.</p>			
18	What is the contribution of UNESCO and WHO to foster greater cooperation between nations and create awareness about health issues in various countries of the world?	7	R	5
A	<p>By promoting culture, preserving the heritage, sharing knowledge and understanding that are beneficial for the whole of mankind, UNESCO aims to aid sustainable development and foster greater cooperation between nations.</p> <p>WHO has been a core agency for setting up of norms and standards to be followed with regards to human health and research regarding the containment of diseases as well as assessing worldwide health trends. It coordinates with various agencies in different countries to facilitate greater knowledge and awareness of health issues in various countries</p>			2.5 +2. 5

