

SAMPLE QUESTION PAPER 2016-17
CLASS XII
LEGAL STUDIES
MARKING SCHEME

S no.	Expected answers	Marks
1.	c	1
2.	c	1
3.	d	1
4.	d	1
5.	b	1
6.	d	1
7.	b	1
8.	b	1
9.	No, He is not liable for theft. A crime of theft is committed if someone intends to take someone else's property and indeed takes that property without the other person's consent. Mere intention to commit theft is not enough.	1+1
10.	This involves established procedures like, 1) death penalty is awarded only in 'rarest of rare' cases, and 2) 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+1
11.	i. Any one aggrieved of human rights violation or their representatives can lodge a complaint with the Commission in any language. ii. The complaint can be filed online at or by paper petition using the complaint format provided on the website. iii. The complaint can be sent either by Post or Fax or through E-mail. iv. The complaint must be filed within a year of the occurrence of the human rights violation.	0.5*4=2 0.5 marks for each point (procedure)
12.	The most authoritative source of international law is Article 38(1) of the Statute of the International Court of Justice, which provides that when a court which deals with disputes relating to international law, it shall apply: "International conventions, whether general or particular, establishing rules expressly recognized by the contesting states, a) International custom, as evidence of general practice accepted by law b) The general principles of law recognized by civilized nations c) Subject to provisions of Article 59, judicial decisions and teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of international law"	0.5 for identifying+ 1.5 for explaining
13.	The purpose of this amendment is to bring out certain changes in the Legal Services Act, 1987 especially for the establishment of permanent Lok Adalats to settle disputes concerning public utility services at pre-litigation state.	2

14.	<p>The Vienna Declaration and Programme of Action (1993).</p> <p>This led to the creation of the post of the UN High Commissioner for Human rights who would principally be responsible for UN human rights activities. The High Commissioner can make recommendations to other UN bodies and can also coordinate between them.</p>	1+1=2
15.	<p>Firstly , Judiciary's independence is linked to its role as the watch-dog in a democracy. It monitors and maintains the checks and balances over the other arms of the government. Thus judiciary emerges as a mediator when any organ of the government exercises 'excess power' which tends to violate the larger societal or individual interest.</p> <p>Second, in-order to ensure that constitutionally guaranteed freedoms such as freedom to speak in public or peacefully assemble, are interpreted as per the true constitutional philosophy, judiciary has been kept free from any external pressures.</p> <p>Third, Judiciary acts as a guardian of fundamental rights which are constitutionally granted to every citizen in India. Independence of judiciary was carved out during the formation of Indian Constitution as India was transitioning from a feudal to a democratic order.</p> <p>Fourth, In the domain of criminal law as well, independence of judiciary is linked to the granting of a fair trial to the accused. This becomes extremely important even when the accused are foreign nationals or persons who have committed crimes against the state, e.g. terrorists.</p>	1 mark for each correct point.
16.	<p>a. The institution of Lok Adalat in India, as the very name suggests, means, People's Court."Lok" stands for "people" and the term "Adalat" means court.</p> <p>b. mediation, negotiation or through arbitral process</p> <p>c. The evolution of movement called Lok Adalat was a part of the strategy to relieve heavy burden on the Courts with pending cases and to give relief to the litigants who were in a queue to get justice.</p> <p>Values: fairness, voluntariness, neighbourliness, transparency, efficiency and lack of animosity</p>	1+1+1+1=4
17.	<p>Part IV(A) – Article 51A of the Constitution prescribes fundamental duties of every citizen. In that, certain conduct and behavior are expected of the citizens. The salient features of fundamental duties are given below.</p> <ul style="list-style-type: none"> • The fundamental duties cannot be enforced in a court of law for violation of the duties, and no one can be punished for the violation. • Fundamental duties contain standards to be followed by the citizens. • They remind citizens not to behave irresponsibly but help building a free, democratic and strong society. 	1+3

18.	<p>i. The Act recognizes only one class of practitioners, that is, Advocates. An Advocate on the State Rolls is entitled to practice as of right before any tribunal, or authority of India, or any court including the Supreme Court. Advocates have been classified as Senior Advocates and other Advocates. The designation of an Advocate as a Senior Advocate is the responsibility of the Supreme Court or High Court based on the ability, experience and standing in the Bar of the Advocate in question. In 1977, the provisions relating to dual system (Advocates and Attorneys) in the Bombay and Calcutta High Courts were deleted. Any advocate enrolled in the State Rolls is entitled to practice in the Supreme Court. The Advocate- on- Record (AOR) is another category of Advocate in the Supreme Court. To be able to become an Advocate on Record, an advocate must practice as an advocate for four years, train with a senior AOR for one year, then appear for an examination conducted by the Supreme Court. An AOR must also have an office in Delhi within 16kms from the Court and must appoint a registered clerk.</p> <p>ii. In order to be eligible for enrolment, an Advocate must be: a citizen of India, atleast 21 years of age and must have an LLB degree from an Indian University. A foreign national may be enrolled on a reciprocal basis with the country of his citizenship, and his foreign degree may be recognized by the Council for the purpose. In the absence of such reciprocity, foreign nationals cannot practice law in India. The Council has released a list of foreign degrees that it recognizes. There is an additional requirement of an All India Bar Examination since 2010, which Advocates must clear in order to be able to start practice.</p>	2+2
19.	<p>According to the principle of Doctrine of Election [Section 35 of the TPA], a party to the transfer cannot accept as well as reject in a single transaction. In other words, while claiming advantage of an instrument, the burden of the instrument should also be accepted.</p> <p>If a person to the transfer gets two selections (a benefit and a burden), then he has to accept both the benefit and the burden or none. He cannot accept the benefit and reject the burden in a single transaction.</p> <p>Affect: No right to coice. Either accept full or reject full.</p> <p>The Doctrine of lis pendens emerged from the Latin maxim 'ut lite pendent nihil innovetur' meaning 'nothing new should be introduced in a pending litigation'. When a suit or litigation is pending on an immovable property, then that immovable property cannot be transferred.</p> <p>Affect: possession cannot be transferred;</p>	1+1+1+1=4
20.	Keshvananda Bharathi case gave the doctrine of 'Basic Structure' and limited the power of the legislature to amend the constitution.	1 mark for answering why. 1 mark each for two points

		discussed in the case. 1 mark for the impact.
21.	<p>Lokpal and Lokayukta were given formal recognition by the passing of The Lokpal and Lokayukta Act, 2013.</p> <p>The Act applies to the public servants in and outside India. It is important to note that the Act includes in its purview even the current and ex-prime ministers of India except in matters pertaining to international relations, external and internal security, public order, atomic energy and space. According to the Act, the Lokpal shall consist of:</p> <ul style="list-style-type: none"> • A chairperson who has been a Chief Justice of India or is or has been a Judge of the Supreme Court or is an eminent judicial member of impeccable integrity and outstanding ability having special knowledge and expertise of not less than 25 years in matters relating to anti-corruption policy, public administration, vigilance or finance. • Further, the total members of Lokpal shall not exceed 8, out of whom 50% shall be Judicial Members. <p>Besides the Prime Minister, it brings within its purview any person who is or has been a Minister of the Union and any person who is or has been a Member of either House of Parliament. The Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of either House of Parliament in respect of anything said or a vote given by him/her in Parliament or any committee thereof covered under the provisions contained in clause (2) of Article 105 of the Constitution.</p>	4 marks
22.	<p>A. 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.</p> <p>a. equality- to check child marriages b. against equality principle.</p> <p>B. Article 15 is based on the equality principle. It prohibits State from discriminating anyone based on grounds of religion, race, caste, sex or place of birth.</p> <p>Article 16 is also based on the equality principle of Article 14. It provides for equality of opportunity in matters of public or State employment and bars any discrimination to any citizen on grounds of religion, race, caste, sex, descent, place of birth, or residence.</p> <p>Under Article 17 "Untouchability" is abolished and its practice in any form is forbidden. This article can be enforced against both the State as well as private individuals and the offence is punishable in accordance with special laws like the Protection of Civil Rights</p>	

	Act, 1955 and the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.	
23.	<p>a. The legal services institution is vested with the authority to invite applications from legal practitioners with requisite professional experience to indicate the types of cases as they may be entrusted with. The panel shall be prepared by the Executive Chairman of the legal service institution in consultation with the Attorney-General (for Supreme Court), Advocate-General (for High Courts), Government pleader (for districts/Taluks) and the Bar Association President. The legal practitioner shall have three years or more of experience at the bar for being considered for empanelment. The personal traits like competence, integrity, suitability and experience shall be given due consideration. Separate panels shall be maintained for different types of cases. The Regulations also provide for retainer lawyers. The Panel has to be reconstituted every three years without disturbing the work of panel lawyers already representing on-going cases. In such cases where the panel lawyer wishes to withdraw from a case entrusted to him shall communicate this to the Member Secretary and the latter may permit him to do so.</p> <p>b. The panel lawyer is barred from taking any fee, remuneration or other valuable consideration from any person for whom legal services are rendered under the Regulation or Act. The panel lawyer may be withdrawn from a case or his name removed from the panel on account of nonperformance of duties satisfactorily or for actions against the object and purpose of the Act or Regulations.</p>	3+2
24.	<p>1923: Barristers of England had come to occupy a predominant position in the legal profession. The Government of India in 1923 appointed the Indian Bar Committee, popularly known as the Chamier Committee to address the existing disparities in the Legal profession. The Committee in its report stated that it was not practical at that time to organize the Bar on an all-India basis. However, the Committee suggested the establishment of Bar Council for each of the High Courts. The Committee suggested that a Bar Council should have power to make rules in matters such as qualifications and admission of persons to be Advocates of the concerned High Court, legal education, discipline and professional conduct of Advocates, terms on which Advocates of another High Court could appear occasionally in the concerned High Court or any other matter prescribed by the High Court.</p> <p>• 1926: Giving effect to the Chamier Committee recommendations, the Central Legislature enacted the Indian Bar Councils Act, 1926. The Act was to provide for the constitution and incorporation of Bar Councils, to confer powers and impose duties on the Bar Councils and to consolidate the regulations pertaining to the legal profession. The Bar Councils could, with the consent of the High Court, make rules for: a) the rights and duties of Advocates of High Court and professional conduct; and b) legal education and examinations.</p> <p>Advovates Act,1961 The Advocates Act also established an All India Bar</p>	

	<p>Council for the first time, with the Attorney-General and Solicitor General of India as ex- officio members of the Bar Council. The All India Bar Council has one member elected to it by each State Bar Council and it elects its own Chairman and Vice Chairman. The Act has created a State Bar Council in each State with the Advocate General of the State as an ex- officio member, and 15-25 Advocates elected for a period of five years. The State Council's main functions include: admitting law graduates on its Roll, determining cases of misconduct against Advocates on the Roll and organizing legal aid, among other functions. Application for enrolment is therefore made to the State Bar Council. The Bar Council of India regulates the content, syllabus, duration of the law degree, subject to which every University can lay down its own provisions. The Council has a Legal Education Committee for this purpose. State Council rules need to be approved by the Bar Council, however the Central Government has overriding power to make rules.</p>						
25.	<table border="1"> <tr> <td data-bbox="318 707 816 743">Division of Power</td> <td data-bbox="829 707 1344 743">Separation of Power</td> </tr> <tr> <td data-bbox="318 749 816 882">Law making authority distributed between the state and center</td> <td data-bbox="829 749 1344 882">The organs of the government executive, legislature and judiciary, work without interference of each other</td> </tr> </table>	Division of Power	Separation of Power	Law making authority distributed between the state and center	The organs of the government executive, legislature and judiciary, work without interference of each other		2 marks for each correct difference
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26.	<p>Yes, liable for strict liability.</p> <p>Strict liability torts do not care about the intention or carelessness of the defendant when the defendant caused the injury. The claimant does not have to establish any sort of or level of blame attributable to the defendant based on the intention or the degree of carelessness. Strict liability is available in a very limited context. For example, where the defendant's animals may cause an injury to the claimant or where the defendant is involved in an unusually hazardous activity like blasting dynamite.</p> <p>The general rule with respect to ultra-hazardous activity is that when the defendant carries out or keeps an unusually hazardous situation or activity on his or her building or involves in an activity that offers an inevitable danger of injury to the claimant or his or her property, the defendant could be responsible for the damage caused even if the defendant has exercised reasonable care to prevent the harm.</p> <p>In India, a related principle of Absolute Liability was introduced by the Supreme Court in the aftermath of the two instances of gas leaks from factories injuring many.</p>						

27.	<p>Mediation is a method of ADR in which parties appoint a neutral third party who facilitates the mediation process in-order to assist the parties in achieving an acceptable, voluntary agreement. Mediation is premised on the voluntary will of the parties and is a flexible and informal technique of dispute resolution.</p> <p>Broadly speaking, mediation may be triggered in three ways:</p> <p>(i) Parties may agree to resolve their claims through a pre-agreed mediation agreement without initiating formal judicial proceedings (pre-litigation mediation).</p> <p>(ii) Parties may agree to mediate, at the beginning of formal court proceedings (popularly known as court referrals).</p> <p>(iii) Mediation may be taken recourse of, after formal court proceedings have started, or even post trial, i.e. at the appellate stage.</p> <p>i. Evaluative ii. Facilitative iii. Transformative</p>	
28.	<p>The interplay between municipal and international law is complex. Some authors believe that international law and the law of the domestic jurisdiction, also referred to as the municipal law of the country, do not intersect and are completely different entities which cannot affect or overrule each other. However in practice it seems that this does not hold true. There are some principles that are clear as this conflict between international law and domestic law is concerned.</p> <p>Municipal law cannot serve as a defense to a breach of international law, i.e. you cannot use a domestic law to justify the breach of an international one. Neither can one say that their consent to a treaty has been invalidated by way of a change of its municipal law. Similarly, the International Court of Justice has also stated that the lack of domestic legislation cannot be brought up as a defense if there is an international obligation on the state not to do a certain act. There have been various cases on points that state that international law is prevalent over the domestic law however that does not mean that domestic legislations carry no force.</p> <p>Some international treaties require that countries adopt domestic legislation in line with the international obligations it has already agreed to. Owing to such requirements there is a blurring of the distinction between international and municipal law and domestic courts have also started analyzing international obligations of states in domestic disputes.</p> <p>In countries such as the United Kingdom, there is a doctrine of transformation that states that before any international agreement can be considered applicable domestically it must be transformed into municipal law. This means that the provisions of the treaty need to be transformed into local law, passing a domestic legislation with concurrent provisions as the international obligations.</p> <p>Similarly in the United States of America, the position is that customary</p>	

	<p>international law is federal law and if the federal courts in the US determine it to be binding then it's binding on the state courts as well. However, no act of legislature may be invalidated merely on the basis of a violation of customary international law. The US Supreme court believes that there should be respectful consideration to be given to the interpretation of international treaties however a domestic rule to the contrary would be given supremacy over those provisions.</p>	
29.	<p>Free Legal Aid under Criminal Law to the accused in criminal proceedings, appeals and jails. In 1960, the Union Government initiated the national legal aid scheme which faced financial shortages and died a natural death. In 1973, in the second phase, the Union Government constituted a committee under the chairmanship of Justice Krishna Iyer to develop a legal aid scheme for states. The Committee devised a strategy in a decentralized mode with legal aid committees in every district, state and the centre. A committee on judicature was set up under the chairmanship of Justice P N Bhagwati to implement the legal aid scheme. This Committee suggested legal aid camps and nyayalayas in rural areas and recommended the inclusion of free legal aid provision in the Constitution. In 1980, the Committee on National Implementation of Legal Aid was constituted with Justice Bhagwati as its head. Subsequently, the Parliament enacted the Legal Services Authorities Act, 1987.</p> <p>The 1976 amendment of the Constitution inserted Article 39-A in the Constitution which is as follows: Equal Justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The wording of Article 39-A reiterates that kind of an equality which shall promote access to justice for all by creating equal opportunity. That this constitutional guarantee that was often violated than observed is visible in many of the cases brought before the courts including the apex court. Among many crucial reasons for this, it is evident that a technical application of statutory law or constitutional obligation is inadequate. Only a fair procedure can ensure the concept of equality and access to justice.</p>	
30.	<p>An Advocate has a duty to act in a dignified manner, to respect the court, not to communicate with a judge in private and impair impartiality, not to act in an illegal manner towards the opposition, to refuse to represent clients who insist on adopting unfair means. In addition, being an office of the Court, an Advocate is expected to uphold and maintain the values of the profession.</p> <p>Furthermore, an Advocate's duty towards the client include being bound to accept briefs, not to withdraw from service, not to appear in matters where he/she is a witness, not to suppress material or evidence. An Advocate also had to maintain client confidentiality and not to instigate litigation or to charge contingency fee (fee depending on success or favourable result of matters).</p>	

	<p>There is a general duty to ensure that his/her duties do not conflict with the client's interests. An Advocate is also expected not to negotiate directly with the opposing party (only through the opposing advocate) and to carry out legitimate promises made. Breach of these rules and standards of conduct lead to disciplinary action against advocates which may result in suspension or debarment.</p> <p>The right of advocates to advertise their services or solicit clients has been a controversial issue in the field of legal ethics and professionalism. In India advertising by lawyers has been strictly restricted by the Bar Council of India.</p> <p>An amendment to this rule allows advocates to furnish certain information on their websites after</p> <p>intimating and taking approval from the Bar Council of India. However, only 5 pieces of information can be put up on the internet, that is first, the name of the advocate or the firm, second, the contact details, third details of enrolment with the Bar, fourth, his professional and academic qualification and fifth the areas of practice.</p> <p>Taking approval from the Bar Council of India.</p>	
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