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CBSE All India Senior School Certificate Examination
2017 - 2018
Marking Scheme – Legal Studies
Subject Code: 074
Set – 4 Code no 40

1. Please read the following guidelines carefully and seek clarifications from the Head Examiner in case of any doubt to reduce subjectivity and bias.
2. **Credit should be given to student writing the concept in his own language. Marks should not be deducted for non use of bookish language.**
3. Every care has been taken to prepare the Marking Scheme. However, it is important to keep in mind that, it is neither exhaustive nor exclusive. Full credit should be given to candidates who give relevant points other than the ones listed in the Marking Scheme as the answers to the questions. The examiners are requested to use their own knowledge and experience wherever necessary.
4. The Marking Scheme carries only **suggested** value points for an answer. These are only the guidelines and do not constitute the complete answer. The students can have their own expression and if the expression is correct, the marks should be awarded accordingly.
5. Marking should be neither over-strict nor over-liberal. Marks should not be deducted for spelling errors, wrong proper names, minor inaccuracies or omission of detail. No marks should be deducted for overshooting word limit.
6. Though break-up of value points is given in a number of answers, the examiner may be flexible in marking the different parts, if the answers reflect understanding of the scope of the question.
7. A full scale of marks 0-100 has to be used. Please do not hesitate to award full marks if the answer deserves it.
8. As per orders of The Hon'ble Supreme Court, the candidates would now be permitted to obtain photocopy of the answer book on request on payment of the prescribed fee. All Examiners/ Head examiners are once again reminded that they must ensure that evaluation is carried out strictly as per value points for each answer as given in the marking scheme.
9. All the Head examiners/Examiners are instructed that while evaluating the answer scripts, if the answer is found to be totally incorrect, the (x) should be marked on the incorrect answer and awarded (0) marks.

LEGAL STUDIES XII 2018
MARKING SCHEME (Code – 074)

Q.No.	CONTENT	Marks
1.	d) Attorney General (pg 4)	1 M
2.	C) Shyamlal is liable to refund Rs. 6000 Or d) Neither is Shyamlal liable to refund Rs. 6000 nor is Amit under obligation to pay Rs. 4000 (pg 40)	1 M
3.	c) Conciliation Or d) Arbitration (pg 91)	1 M
4.	c) Sanjeev is strictly liable to Gurmeet even though he may not be negligent. (pg 52)	1 M
5.	b) Right against exploitation (pg 122)	1 M
6.	d) Religious minorities (pg 134)	1 M
7.	a) LL.M. (Master of Laws) Or b) All India Judicial Services Examination Or d) All India Bar Examination (pg 154-155)	1M
8.	b) to encourage pleaders to provide free legal aid (pg 168)	1M
9.	Judicial branch of government should be kept separate from the executive and legislative branches due to the following reasons:- <ul style="list-style-type: none"> • It helps in maintaining rule of law, a free and fair society. • It is a guardian of our fundamental rights. • If Judiciary is not kept separate from the other branches, it may result in arbitrariness/ high handedness of executive. • It grants a fair trial to the accused. 	2M

	<ul style="list-style-type: none"> • It acts as a watch dog in society. • It ensures a good governance. <p style="text-align: right;">(pg 6-7, 19)</p> <p style="text-align: center;">(Any two points can be considered) (To be assessed as a whole)</p>	
10.	<p>A. In U.K., 'common law system' is followed. Under this scheme of the common law system, the decisions, orders and judgments developed by the judges help in the creation and development of laws and legal principles, which becomes binding precedents for all subordinate courts in the hierarchy. Therefore, courts play a vital role in creating laws.</p> <p>B. UK follows adversarial mode of dispute resolution, where the judge is neutral, based on the merits of the case as presented by the lawyers, he gives the decision. (Any 1 point)</p> <p>A. In Germany, concept of civil law system is followed. Only the legislature or executive has the power to create laws and rules.</p> <p>B. It follows the inquisitorial mode of dispute resolution, where the judge takes the role of police and investigates the case too. (Any 1 point)</p> <p style="text-align: right;">(pg 3-4)</p> <p style="text-align: center;">(To be assessed as a whole)</p>	<p>1 M</p> <p>1M</p>
11.	<p>The milkman has confessed his fraud to the delivery boy. Hence we can call it extra judicial confession.</p> <p>An extra-judicial confession has been defined to mean "a free and voluntary confession of guilt by a person accused of a crime in the course of conversation with persons other than judge or magistrate seized of the charge against himself".</p> <p>Extra-judicial confession can be accepted and can be the basis of a conviction only if it passes the tests of credibility as laid down in the procedural laws.</p> <p style="text-align: center;">(To be assessed as a whole) (Any other relevant point)</p> <p style="text-align: right;">(pg 72)</p>	2 M
12.	The police is not justified in its action.	1 M
	No person can be detained in custody beyond 24 hours without the authority of a magistrate.	1 M

	Or Article 20(3) Right against self incrimination (pg 118, 120)	
13.	<ul style="list-style-type: none"> • The access to justice itself is one of the most basic human rights, and without it, the realization of many other human rights may become difficult. • Indeed, the right to access to justice or Legal Aid is evolved by judicial creativity for the benevolence of poor persons. • The right to legal aid enables accomplishment of these human rights and makes them worthwhile for the poor masses in the world. • In the present legal system of most of the countries justice is not given but sold. The consumers of justice have to pay remuneration of the counsel. • Indeed, the poverty is an obstacle in the way of getting justice and due to this reason the poor becomes sufferer of social injustice. • Legal aid is only a way for providing social justice to all. Legal aid indeed, is an integral part of human rights and it requires urgent considerations. <p style="text-align: center;">(Any two points can be considered) (To be assessed as a whole)</p> <p style="text-align: right;">(pg 184)</p>	2 M
14.	Pre litigation legal services- <ul style="list-style-type: none"> • Legal education • Legal advice • Legal awareness • Pre litigation legal settlement <p style="text-align: center;">(Any two points can be considered)</p> <p style="text-align: right;">(pg 178)</p>	2 M
15.	Characteristics of PIL- <ul style="list-style-type: none"> • Tools for social change, non adversarial litigation, pits interest of one party over another • It expands the right of third parties to approach the court • Remedial nature, creates a dynamic, welfare oriented society • incorporates directive principles of state policy, which cannot be enforced in courts 	4 M

	<ul style="list-style-type: none"> • they are creating new rights • strengthening democracy • strengthens the role of judiciary as a monitor and watch dog, fear of being dragged to the courts improves the quality of social institutions <p>(Any four points can be considered) (Any other relevant point)</p> <p style="text-align: right;">(pg 9)</p>	
16.	<p>The main problems confronting law courts that have resulted in the rise of ADR mechanism are:</p> <ol style="list-style-type: none"> 1. Lack of number of courts and judges, inadequacy within the justice delivery system; 2. Increasing litigation in India due to increasing population, complex laws, obsolete continuation of some pre-existing legal statutes; 3. Increasing cost of litigation in prosecuting or defending a case, increasing court fees, lawyer's fees and incidental expenses; 4. Delay in disposal of cases resulting in huge pendency in all the courts. <p>(Any four points can be considered) (Any other relevant point)</p> <p style="text-align: right;">(pg 90)</p>	4 M
17.	<p>Conciliation- Parties out of their own free will appoint a neutral third party to resolve their disputes.</p> <p>The role of a conciliator goes beyond that of a mediator. A conciliator may be interventionist in the sense that he/she may suggest potential solutions to the parties, in-order to resolve their claims and disputes.</p> <p>(Any other relevant point)</p> <p style="text-align: right;">(pg 99)</p>	2 M 2M
18.	<p>For qualified lawyers coming from outside England and Wales to practice.</p> <ol style="list-style-type: none"> 1- The Solicitors Regulation Authority does not impose any formal experience requirements in order to re-qualify as solicitors in England and Wales. 2- Some law firms may express their own requirements which can differ from the SRA guidelines. 3- Candidates can take the Qualified Lawyers Transfer Scheme in order to qualify under this jurisdiction. 	4 M

	<p>4- Lawyers coming from EU Member States can rely on EU Directive 77/249 in this area.</p> <p>European lawyers can practice to the same level as they did in the own country.</p> <p>(To be assessed as a whole)</p> <p>(pg 161)</p>	
19.	<p>'Ambulance chasers' are personal injury lawyers in USA who are robust in their advertising- on billboards, newspapers, flyers, and even distasteful ads on the television.</p> <p>The position in the USA is different from that in India, where lawyers have a right to advertise but subject to reasonable restrictions. (Any 1 point on USA)</p> <p>Norms - In India advertising by lawyers has been strictly restricted by the Bar Council of India. An advocate is prohibited from promoting himself through circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned.</p> <p>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>(To be assessed as a whole)</p> <p>(pg 151)</p>	<p>1M</p> <p>1M</p> <p>2M</p>
20.	<p>Composition –</p> <p>The SLSA consists of - the Chief Justice of High Court as the Patron-in-Chief, a Judge of the High Court nominated by the Governor as Executive Chairman, and other members nominated by the State Government in consultation with the Chief Justice of High Court.</p> <p>Functions –</p> <p>a) Give legal service to persons who satisfy the criteria laid down under this Act.</p> <p>b) Conduct Lok Adalats, including Lok Adalats for High Court cases</p> <p>c) Undertake preventive and strategic legal aid programmes</p> <p>d) Perform such other functions as the State Authority may in</p>	2M

Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

- to present to the President, annually and periodically, reports on the working of the safeguards and recommendations for the effective implementation of the safeguards and protection, as well as welfare, and socio-economic development of the Scheduled Castes and Scheduled Tribes.

OR

FUNCTIONS OF NHRC

Inquiry and Investigation –

- to conduct inquiry and investigation into the alleged violation of human rights or abetment (aiding or supporting) or negligence in the prevention of such violation by a public servant.
- The complaint can be filed by the victim or his or her representative, or the court may direct the Commission with a complaint, and at times the Commission may initiate inquiry and investigation on its own (sou motu).
- Once the inquiry is completed, the Commission can make recommendations to governmental authority in cases where any public servant is the perpetrator of human rights violation. The recommendation may include payment of compensation to the victims or suggest initiation of proceedings for prosecution of the public servant.
- The Commission can also approach the Supreme Court or the High Court for directions and orders. The Commission may also ask the State authority to provide immediate interim relief to the victim.

Intervening in court proceedings –

- The Commission may with the permission of the court intervene in court proceedings concerning human rights violations. For example, the Commission can request the Supreme Court to transfer pending riot cases out of a state in which the riots had happened to ensure the witnesses are not threatened in any manner and that evidences are not damaged.

Inspection of jails, etc.– The Commission may also visit any jail

	<p>or other governmental institutions, where prisoners are lodged or detained, to study the living conditions of the inmates and make recommendations to the government.</p> <p>Awareness and Sensitization –</p> <ul style="list-style-type: none"> ➤ review various human rights laws either in the Constitution or other statutes and recommend measures to the government for their effective implementation. ➤ evaluate various factors, including acts of terrorism, which prevent the enjoyment of human rights and recommend appropriate remedial measures to the government. ➤ studying various international human rights laws and make recommendations for their effective implementation at the domestic level ➤ undertake and promote research in the field of human rights as well as spread human rights literacy among various sections of society ➤ promote awareness of the safeguards available for the protection of these rights through publications, media, seminars, and other available means. ➤ encourage and support the efforts of non governmental organizations and institutions involved with human rights work. <p style="text-align: center;">(Any 2 points) (To be assessed as a whole) (pg 129-130; pg 138-139)</p>	2M
23. a)	<p>The most authoritative source of international law is Article 38(1) of the Statute of the International Court of Justice – It provides that when a court which deals with disputes relating to international law, it shall apply:</p> <p><i>a) "International conventions,</i></p> <p><i>b) International custom, as evidence of general practice accepted by law -</i></p> <p><i>c) The general principles of law recognized by civilized nations -</i></p> <p><i>d) Judicial decisions and teachings of the most highly qualified publicists</i></p>	1 M
b)	<p>ICJ has to apply 'international custom.' This source of public international law is described as 'evidence of a general practice accepted as law.' International customary law is</p>	2 M

	<p>probably the most disputed and discussed source of international law. For example, it is not clear when a particular State practice becomes a <i>legally binding</i> State practice. An observed custom could be derived from the law of nature or mutual consent</p> <ul style="list-style-type: none"> ➤ It is extremely fluid. ➤ Custom is usually derived by sifting through many layers and evidences of state practice and opinion juris. ➤ Other sources such as unsigned treaties and United Nations declarations have been included to identify and cover more and more customs and practices in the international domain. <p style="text-align: center;">(To be assessed as a whole)</p> <p style="text-align: right;">(pg 192-193)</p>	
24 a)	<p>The International Criminal Court (ICC) is a tribunal set up through the Rome Statute in 2002 with the purpose of prosecuting criminals for 4 major crimes: Crimes against Humanity Genocide, War Crimes Crime of Aggression</p>	2 M
b)	<p>The ICC may prosecute criminals for crimes committed in a country which accepts the jurisdiction of the court. Thus, only if countries agree to submit to the jurisdiction can the ICC take up certain cases in which the person who has committed the crime is a national of the country or if it was committed in the territory of that country</p>	2 M
c)	<p>Only if countries agree to submit to the jurisdiction can the ICC take up certain cases in which the person who has committed the crime is a national of the country or if it was committed in the territory of that country. The cases may be referred by the country directly to the ICJ or through the Prosecutor of the ICC, who is the person appointed to try cases on behalf of the ICC.</p> <p>Note: Some points of content in b) and c) part of the question are the same. Students should get the credit for the same.</p> <p style="text-align: right;">(pg 201-202)</p>	1 M
25.	<p>The specific steps to be taken in the elevation of Priyansh, an advocate of High Court to the post of Chief Justice of High Court in the collegium model are:</p> <ul style="list-style-type: none"> ➤ For High Courts, the collegium comprises of the Chief 	6 M

	<p>Justice of the High Court and two senior most judges of the High Court.</p> <ul style="list-style-type: none"> ➤ The Chief Justice conveys his recommendations to the Chief Minister of the State and the Governor of the State, ➤ They in turn send their views directly to the Union Minister of Law and Justice. ➤ The complete material is then forwarded to the Chief Justice of India, who in consultation with a collegium of two Judges of the Supreme Court, sends his recommendations to the Union Minister of Law and Justice. ➤ The Union Minister of Law and Justice then puts up the same to the Prime Minister who will advise the President in the matter of appointment of a HC judge. ➤ The seniority of a Judge plays a vital role in his/her elevation or appointment as Chief Justice. <p style="text-align: center;">(To be assessed as a whole)</p> <p style="text-align: right;">(pg 14)</p>	
26.	<p>Administrative action can be of four types:</p> <ol style="list-style-type: none"> 1) Administrative Legislative Action <ul style="list-style-type: none"> ➤ Wherein the administration puts on the hat of the legislature ➤ it is not possible for any legislature in the world to legislate so that their laws are able to cover the possibility of all kinds of conflicts ➤ Administrative legislative action includes rule-making action as well as delegated legislation. ➤ many decisions can be taken only by the grass root authorities 2) Administrative Adjudicatory/ quasi judicial Action <ul style="list-style-type: none"> ➤ administration performs functions which can be put under the judicial domain ➤ there is some adjudication on legal rights of the individuals involved in the matter. 3) Simply Administrative Action <ul style="list-style-type: none"> ➤ Of all the actions undertaken by administrative authorities, other than the two types of actions mentioned before, the rest are called 'Administrative Actions' 	1.5 X 4 = 6

	<p>➤ they essentially deal with execution of crucial administrative decisions.</p> <p>4) Purely Administrative Action/ Ministerial Action</p> <p>➤ Those actions which are copybook action and no discretion is vested with the authority (that is there is only one way of performing that action), such action will be called purely administrative action or ministerial action.</p> <p>➤ For example, the statute which created a University mandates that the University open a bank account with a given Bank Y. This is a purely administrative action or a ministerial action as there is no scope of any discretion in its performance.</p> <p style="text-align: center;">(To be assessed as a whole)</p> <p style="text-align: right;">(pg 74-75)</p>	
27.	<p>Mediation –</p> <p>Process-</p> <p>The neutral third party facilitating the process of mediation is known as a mediator. Mediation does not follow a uniform set of rules, though mediators typically set forth rules that the mediation will observe at the outset of the process. There is no uniform set of rules for mediators to become licensed, and rules vary by state regarding requirements for mediator certification.</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 style="text-align: center;">(To be assessed as a whole)</p> <p style="text-align: right;">(pg 97-98)</p>	<p>1 M</p> <p>5M</p>
28.	<p>Article 51A of the Constitution prescribes fundamental duties. In that, certain conduct and behavior are expected of the citizens.</p> <p>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 	<p>2 M</p> <p>2M</p>

	<p>for violation of the duties, and no one can be punished for the violation.</p> <ul style="list-style-type: none"> • Fundamental duties contain standards to be followed by the citizens. • They remind citizens not to behave irresponsibly but help in building a free, democratic and strong society. <p>(Any 2 points)</p> <p>Difference –</p> <p>Fundamental rights are enforceable in the higher courts of law. One can claim one’s rights if they are violated, whereas fundamental duties are laid down for the citizens to follow, but for the violation, no one is punished and they are not enforceable in courts.</p> <p>(Any other relevant point)</p> <p>(pg 114, 127)</p>	2M
29.	<p>An Advocate has a duty to:</p> <ul style="list-style-type: none"> ➤ 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 ➤ expected to uphold and maintain the values of the profession. ➤ 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 ➤ maintain client confidentiality ➤ not to instigate litigation or to charge contingency fee (fee depending on success or favourable result of matters) ➤ ensure that his/her duties do not conflict with the client's interests. ➤ not to negotiate directly with the opposing party (only through the opposing advocate) ➤ to carry out legitimate promises made. <p>(Any 6 points)</p> <p>(pg150-151)</p>	6 M

30 a)	The 1976 amendment of the Constitution inserted Article 39-A in the Constitution. It provided that the state should provide free legal aid, by suitable legislation or schemes, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. It bought in equality to promote access to justice for all by creating equal opportunity.	2 M
b)	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. Thus it gives a chance to the poor too to defend themselves and have a fair trial.	2 M
c)	<p>NALSA Regulations- ensure that legal aid is granted to the poor. The Regulations are applicable to the Legal Service Committees of the Supreme Court, High Courts, the States, districts and taluks.</p> <p>Selection of panel lawyers- Applications are invited from legal practitioners with requisite professional experience to indicate the types of cases as they may be entrusted with. A panel is formed. The panel lawyer is barred from taking any fee, remuneration or other valuable consideration from any person for whom legal services are rendered</p> <p>Payment of Fee The Regulations specify the rules regarding the payment of fees for panel lawyers which shall be in accordance with the State regulations without any delay on receipt of completion of proceedings for them.</p> <p>Senior Advocates- services of senior advocates may be availed if the Chairman of the legal services institution forms an opinion in cases of great public importance and where serious threats to life and liberty of the applicant exists.</p> <p style="text-align: center;">(Any other relevant point) (To be assessed as a whole)</p> <p style="text-align: right;">(pg173-175)</p>	2 M