

Total Time Allotted: 3 Hours

Total Marks : 250

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off.

NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

Name: Aditya Mahave

Subject: Law / Test 3

Phone: [REDACTED]

Teacher's Remark

your conduct is good you
can but learn to try to write within
time limit.
pym in needs improved

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Question No.

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Q 1.(a)

Asylum refers to the process whereby shelter and active protection is granted to those persons of other state ~~request~~ it, thereby giving them refugee status.

Evolution of Right of Asylum

1. Originally, considered a customary right of state to grant asylum.
↳ Reason: Natural to concept of sovereignty of states.
↳ Depended more on political considerations.
2. UDHR, Article 14 later provided for right to seek asylum.
3. 1967 International Declaration on Territorial Asylum: cannot refuse people.
4. Refugee Convention: Article 31-33 are about non imposition of penalty on illegal asylum seekers.

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	5. <u>UNSC Resolution 2001</u>: No asylum to terrorists. 6. <u>Kundiram Chakma vs UOI</u>: Article 21 right to life and dignity applicable on refugees. <u>Types of Asylum</u> <u>Columbia vs Peru</u> 1. <u>Territorial Asylum</u> ↳ Based on municipal law ↳ Exercise of sovereignty ↳ Can give political, not general asylum. ↳ <u>Eg</u> 1971 refugees in India Bangladesh War 1971. 2. <u>Extra territorial Asylum</u> ↳ On national territories like embassies, consuls, war ships ↳ Based on international law and customs. ↳ Impedes sovereignty of other state ↳ Cannot be given to criminal offenders; political offenders with no immediate harm. Ultimately, granting asylum is a political act.	51

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Q1 (a)	Recognition refers to the <u>unilateral international political act</u> whereby a state decides the <u>scope and character</u> of its relations with another state / government. <table><tr><th>De Facto Recognition</th><th>De Jure Recognition</th></tr><tr><td> 1. <u>Temporary</u> 2. State may not satisfy <u>Article 1</u> of <u>Montevideo Convention</u>. 3. May lack <u>stability, commitment</u>, or will to abide by international rules. 4. For <u>short term</u> goals - ↳ trade, national protection 5. <u>Luther vs Sager</u> explains impacts - ↳ cannot participate in </td><td> 1. <u>Permanent</u> in nature. 2. Satisfies <u>Montevideo</u> ↳ territory, population, government, sovereignty. 3. Abides by <u>stability, will, and commitment</u> 4. <u>Long term</u> gains - ↳ Diplomatic relations. 5. <u>Arantazu Mendicose</u> explains impacts - ↳ Full diplomatic immunity. </td></tr></table>	De Facto Recognition	De Jure Recognition	1. <u>Temporary</u> 2. State may not satisfy <u>Article 1</u> of <u>Montevideo Convention</u>. 3. May lack <u>stability, commitment</u>, or will to abide by international rules. 4. For <u>short term</u> goals - ↳ trade, national protection 5. <u>Luther vs Sager</u> explains impacts - ↳ cannot participate in	1. <u>Permanent</u> in nature. 2. Satisfies <u>Montevideo</u> ↳ territory, population, government, sovereignty. 3. Abides by <u>stability, will, and commitment</u> 4. <u>Long term</u> gains - ↳ Diplomatic relations. 5. <u>Arantazu Mendicose</u> explains impacts - ↳ Full diplomatic immunity.	
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- general international conventions or open treaties -
- ↳ No ICJ locus standi.
 - ↳ Cannot demand causes of its nationals or property in 3rd state
- ↳ Active member of conventions.
 - ↳ Can approach ICJ
 - ↳ Can sue for its nationals and immovable property in recognised state.

Reducing Differences

1. Even in de facto recognition, most of rights and liabilities of recognised state in international sphere remain -
 - ↳ customary rules (ICPR)
 - ↳ Humanitarian laws (Geneva)
 - ↳ General immunity.
2. Bank of Ethiopia v/s Bank of Egypt held that de facto state has effective control over territory.
3. Most differences remain only in domestic sphere regarding diplomatic offices and political relations.

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Q100	According to <u>Article 26 of Vienna Convention on law of treaties</u>, parties to a treaty must perform the duties (<u>bound to</u>) in <u>good faith</u>. <u>North Atlantic Fisheries case</u> explained the concept behind the maxim <u>pacta sunt servanda</u> — 1. It is based on <u>sanctity of contracts</u>. 2. Binding nature of a contract is the very foundation of <u>a social community</u>. 3. It helps maintain the increase collaboration between <u>states and private entities</u>. 4. Based on <u>law of nature</u>. 5. Based on will of the states being <u>voluntarily limited</u>. <u>Reservation to genocide case</u> explained the meaning of <u>good faith</u> (as parts need to follow it) —	

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	1. <u>Article 27 of VCLT, 1969</u> states that states cannot use domestic law to violate pact. 2. <u>Article 46 of VCLT</u>: No state can show inability to perform a pact citing <u>incompetence</u> due to municipal law <u>unless</u> the condition was not known and forms essential part of contract. 3. <u>Article 47</u> suggests that representative cannot use non-application of <u>reservations</u> for avoiding contract unless other states were informed. <u>Exceptions to Pacta Sunt Servanda</u> 1. A <u>new state</u> may not follow political contracts of old state. 2. <u>Ceded territory</u> may be freed from old treaties. 3. <u>Rebus Sic Stantibus</u> - can avoid if circumstances changed. 4. <u>Unequal contracts</u>. 5. <u>Customary law</u> has its own binding value. Pacta sunt servanda thus, helps in maintaining legal stability in the world.	

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Q 1(d)

Inland waters refers to the water bodies apportioned to the land territory of a state within the low water tide boundary.

As per Article 5 of UNCLOS, a line joining the low water tide points forms the baseline.

It is considered a part of territorial sovereignty of state. Includes rivers, lakes, etc. But as per Article 2(3) of UNCLOS, sovereignty over territory is subject to customs and rules of international law.

Significance for Riparian States

1. Complete jurisdiction.
2. Complete control over resources - explore and exploit.

3. Corfu channel case held that inland waters are an exception to the

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	<u>rule of innocent passage</u> (not allowed). 4. Foreign merchant ships - exercise full jurisdiction over them if they pass through in land waters. ↳ <u>Article III</u> (Hot pursuit) - allowed until vessel reaches territorial waters of others. 5. <u>Warships</u> : Limited Jurisdiction as considered part of other state. ↳ If violate laws, can <u>compel them to leave waters</u>. 6. <u>R vs Anderson</u> case held that in cases of <u>state vessels</u> or non-commercial ships, <u>concurrent jurisdiction</u> exercised by coastal state, flag state, state of nationality. 7. Can <u>seize, arrest</u> foreign merchant ship/crew in case of violations of local rules. 8. Can <u>restrict movement</u> / <u>cabotage</u> completely in internal waters. Thus, true sovereignty can be exercised by states in internal waters.	

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Q1 (e)		

Rebus sic stantibus discusses one of the methods of termination or withdrawal of a treaty.

According to the maxim, if fundamental characteristics / situation change, pacta sunt servanda can be overlooked.

Article 62 of VCLT, 1969 states -

1. A fundamental change in situation not foreseen at the time of signing, may not lead to termination or withdrawal of treaty unless -
 - ↳ it impacts the very basis of consent of states, AND
 - ↳ it has substantial impact on obligations of states.
2. Fundamental change may not lead to termination or withdrawal if -
 - ↳ it leads to changes in boundary,
 - ↳ the impact is due to fault of

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	the state alleging changes. 3. The above situation can also lead to suspensions. As per <u>Fisheries Jurisdiction case</u>, reitensic statutes is a part of <u>customary international law</u>. Further, in <u>Nationality Decrees case</u> France held that <u>perpetual treaties</u> are always subject to changes and French occupation of Morocco led to termination of Anglo-French treaty. It was held in <u>Grabcikova Nagimarovs Project case</u> that any change must be substantial in nature. <u>Impact</u> • <u>Article 70</u>: Termination leads to no further legal obligations; existing validity of past acts. • <u>Article 72</u>: Suspension leads to halt of legal liabilities. The maxim thus, enables states adapt to dynamic international scenarios.	5/1

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Q2(a)

Jus cogens refers to peremptory norm of international character which binds all subjects of international law. As per Article 53 of Vienna Convention on Law of Treaties, it has a strong binding value and can render treaties void if violated. ✓

Jus cogens is operationalised by -

- ↳ Creation of peremptory norm.
- ↳ States consider themselves to be bound by it.

Principles of Jus cogens

1. As per Nicaragua vs USA, jus cogens has acquired character of customary law. It held that training of rebels (contra) by USA amounted to use of force (non use of force is jus cogens).

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	2. <u>Creation of jus cogens</u> - ↳ By general norms ↳ By general treaties which are multilateral in nature. ↳ <u>Article 66</u> of VCLT states that if any new norm creation (Article 64) is not acceptable to parties, if <u>12 months</u> pass the matter whether <u>new jus cogens</u> exists can be <u>referred to ICJ</u>. 3. <u>Theorist MC Nair</u> has stated that it is difficult to define. 4. Further, it is considered <u>above normal laws</u>, akin to public policy which cannot be violated. <u>Examples of Jus cogens</u> 1. <u>Humanitarian Laws</u> existed before Geneva Convention 1949. ↳ Humane treatment of <u>De hors combat</u> and principle of differentiation (non-combatants)	I.L.A P.L.V.P Strong

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	has been held to be <u>jus cogens</u> by <u>Eritrea - Ethiopia Claims Comm.</u> 2. <u>Piracy, Slavery be prohibited</u> ↳ In <u>Re Taku Gensium</u> case held that these are universal crimes. 3. <u>Human Rights</u> ↳ ICC, while conviction of <u>Dominic Ongwen</u> (Ugandan leader) held violation of child rights violates <u>right to life (jus cogens)</u> 4. <u>Non-use of force</u> / → → → De Facto IAS <u>Significance in International Law</u> 1. Violation of <u>jus cogens</u> considered grave <u>breach of law</u>. 2. <u>Prima facie burden of proof</u> lies on the accused. 3. Proof of violation can render a treaty <u>void</u> (<u>Article 53 VCLT</u>). 4. As per <u>Article 64</u> if a <u>new perem-</u>	

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	<u>primary norm</u> of international character comes up, its violation can lead to <u>termination of treaties</u>. 5. <u>Consequences of termination (Article 71)</u> ↳ If violate Article 53, treaty <u>void ab initio</u>. Parties to try to <u>restore original position</u> and follow norms from future. ↳ If violate Article 64, treaty becomes void - • No future rights or liabilities. • Past bonafide acts not invalid. Thus, <i>jus cogens</i> acts as a way to fill legal loopholes and provides a means for states to align their municipal laws to international goals.	al

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Q 2 (b)	Article 38 of ICJ Charter provides evidence for positive international law. It states "customs, as evidence of general practices <u>accepted as law</u>". <u>As a source in International Law</u> Starke has stated that <u>usage leads to customs</u>. Usage is referred to practices followed by certain states in certain circumstances out of <u>courtesy</u>, <u>convenience</u> the <u>violation of which leads to no sanction</u>. When usage acquires a <u>legal character</u>, custom is created. But custom does not always follow usage. <u>Steps involved</u> → <u>material test</u> (Time, generality) ✓ → <u>Psychological test</u> (<u>opinio juris</u>) ✓	

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	- Usage for decent amount of time But <u>long time not needed</u> <u>Eg</u> <u>Outer Space Treaty</u> created in 1967, only 8 years after Sputnik. <u>Uniformity and consistency in performance.</u> (<u>Nicaragua vs USA</u>) held that <u>substantial uniformity</u> is enough. <u>Generality of performance.</u> <u>West Rand Gold mining case</u> held there was no general practice of new ruler liable for goods lost earlier. <u>Brierly</u> stated that <u>opinio juris</u> leads to binding factor - states consider being bound. <u>Protest, acquiescence</u> can lead to new customs. <u>Role of Customary law</u> - Positivists consider it as original source of law. - Dynamic in nature. - Represents need of community - Binding in nature. - Predictable.	

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	<u>Customary Law influencing Treaties</u> 1. Avoiding attacks on <u>non-combatants</u> and <u>de-hors combat</u> was included in <u>Common Article 3 of Geneva Convention 1949</u>. 2. <u>Right to life, against torture, freedom</u> are customary (held in <u>Barcelona Traction case</u>) found in <u>UDHR, ICCPR</u>. 3. <u>Jus cogens, pacta sunt servanda</u> are found in <u>Vienna Convention on Law of Treaties 1969</u>. 4. Recently <u>Billy Et Al v Australia</u> the <u>UNHRC</u> held that <u>intergenerational equity</u> is customary, and nations to follow <u>Paris Deal 2015</u> effectively. There, have also been cases where <u>Treaties influenced customs</u>, example <u>North Sea Continental Shelf case</u> held that <u>Articles 1-3 of Continental Shelf Convention, 1958</u> had <u>norm creating character</u>.	

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Q2(c)

It is believed that the declaration by ~~USA President Harry Truman~~ that ~~nations used to exercise jurisdiction over its associated sea areas~~ resulted in ~~dilution of~~ freedom of high seas by contiguous zone, EEZ, and continental shelf.

EEZ

1. Article ~~55, 57~~ define boundary from territorial waters to a distance of 200 nm from baseline.

2. ~~Libyan Arab Jamahiriya case held it to be part of customary law.~~

3. Considered extension of limited sovereignty of coastal state

High Seas

1. Article 86 defines it as water body excluding EEZ, contiguous zone, territorial water.

2. ~~Anglo Norwegian Fisheries case held it to be universal and customary unless limited by protest, acquiescence.~~

3. Article 89 states it is not subject to sovereignty.

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	4. Not automatic right, <u>needs to be claimed</u>. 5. <u>Landlocked states</u> have limited rights. 6. <u>Delimitation</u> ↳ By agreement ↳ By equity ↳ <u>Gulf of Maine Case (Canada vs USA)</u> held equitable distance rule is good	4. <u>Automatically available</u> to all nations. 5. <u>Landlocked states</u> have <u>equal rights</u>. 6. Concept of delimitation does not arise. <u>But</u> <u>Article 7 of UNCLOS</u> held if <u>straight baseline method</u> encloses erstwhile high seas, then need to give rights to other states. <u>(Qatar vs Bahrain)</u>
	<u>Freedoms and Rights in EEZ</u> 1. <u>Article 56 of UNCLOS</u> ↳ Freedom to explore, exploit, conserve, manage resources ↳ Natural resources, living or not ↳ sea water, sea bed, sub soil	

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	↳ includes energy creation ↳ Install architecture, islands ↳ conserve nature. 2. <u>Article 60(2)</u>: States can apply customs rules over artificial islands and installations. 3. <u>Article 111</u>: Hot pursuit if violate EEZ rules. <u>Freedoms and Rights in High Seas</u> 1. <u>Article 88</u>: Only for peaceful uses 2. <u>Articles 116-125</u>: Need to conserve resources; due regard to other nations. 3. <u>Article 87</u>: ↳ Lay cables underground ↳ freedom of navigation ↳ Research ↳ Installations for peaceful purposes. 4. <u>Jurisdiction</u> ↳ <u>Article 97</u>: Over flag state which commits crime. ↳ <u>Article 95, 96</u>: Warships have complete immunity. <u>Grotius</u> has held that seas should enable <u>Mare liberum</u> i.e. enough freedoms.	

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Q3 (a)

The question of relationship between international law and municipal law comes up when they are not in congruence with each other, leading to confusion of which to apply.

International law primarily deals with rights and duties of subjects of international law globally, whereas municipal law deals with individuals who are citizens within the territory.

Theories of Relationship

1. Monist

↳ There is only one category of grundnorm i.e. law.

↳ Basis could be natural law

↳ International and domestic are both subsets of law and both can be applied in any situation.

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	→ <u>Kelsen</u> believes It^{law} tilts toward international law as individuals are ultimate beneficiaries. <u>Criticisms</u> → State practice does not follow this → More confusion which law to apply. 2. <u>Delegation Theory</u> → Extreme monist view → The <u>constitution of international law</u> exists which states need to decide <u>when</u> and <u>how</u> to apply. → Does not need incorporation in domestic law. <u>Criticism</u> Constitution of law is vague concept. 3. <u>Dualist theory</u> → Proponents : Oppenheim → IL and ML are separate and operate in separate fields.	

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	<u>IL</u> <u>ML</u> Source : Will of states Subjects: State + individual Principle: Pacta sunt servanda 1. Will of state 2. Individuals 3. State sovereign power implementation. <u>Criticism</u> ↳ Will of states is vague ↳ Forgoes customary law. ↳ Subjects of IL have expanded. 4. <u>Specific Adoption Theory</u> ↳ Extreme dualist view ↳ For IL to be applicable states need to transform into domestic law. <u>Criticism</u> Customs are always applicable. 5. <u>Harmonious construction</u> ↳ Apply both IL and ML by removing irregularities. <u>Application in India</u> 1. <u>Article 51(c)</u> of constitution states treaties and law needs to be applied r/w <u>Article 37</u> which	

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- makes it a duty.
2. Article 246, Schedule VII, Entry 1, Item 14 states treaties to be applied by Parliamentary law.
 ↳ Shiv Kumar Sharma vs UOI held that till law is made executive orders can be used.
 Further, law needed for -
 - Cession of territory
 - Usage of money
 - Impacting rights and duties of citizens.
 3. For customs, IL is incorporated unless contrary to domestic laws.
 4. For treaties, specific adoption is used.
 - ↳ Tolly George vs Bank of Cochin held Fugitive Offenders law did not exist in India, hence ~~no conviction~~.
 5. If IL, ML contradict, then ML prevails.
 6. If IL, ML do not contradict then Vishokha vs State held that harmonious construction be given; fill legal loopholes.
- Thus, Indian practice is a mixture of theories.

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Q 3 (b)

According to Article 2 of Vienna Convention on Succession of States (Treaties), succession refers to the transfer of responsibilities of a state to another in its matters of international law.

Succession of state can be universal or partial.

Consequences on Bilateral and Multi-lateral Treaties

Tinoco Arbitration case held that the concept of continuity of states is customary rule and efforts are always made to continue with treaties.

It provided for two concepts -

- ↳ Clean slate Principle
- ↳ Moving frontiers Rule.

1. Bilateral Treaties

- ↳ Can continue with consent

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	of both states. → After USSR, Russia - USA signed START (on nuclear reduction). → Political treaties on diplomacy and friendship do not continue. 2. <u>Multilateral Treaties</u> → New state is usually bound by it. → But state practice shows otherwise. <u>Effect on Treaty Obligations</u> 1. <u>Article 11 of VCST: Uti Possidetis</u>. → <u>Burkina Faso/Mali case</u> held that treaties on boundaries continue. 2. <u>Article 12 VCST: Treaties for benefit of foreign state continue.</u> → <u>Grabikova Nagymaros Project case</u> held that demilitarised zones, no-mans land to be succeeded. 3. <u>Political treaties <u>not</u> succeeded.</u> 4. <u>Article 15: Moving Frontiers Rule</u>. → USA occupation of Hawaii in 1898	→ Contro → Colour → 30

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	made USA treaties applicable i.e. when a state secedes and merges with another. 5. <u>Article 31</u>: Amalgamation: States to decide if treaty to succeed. 6. <u>Article 16</u>: <u>Clean slate</u>: <u>Decolonised</u> states are^{do} not succeed any treaty. Eg Pakistan separation from British India. 7. <u>Human rights treaties</u>: <u>Bosnia Genocide case</u> held that such treaties are customary rules, hence succeeded. <u>Membership of Intl Organisations</u> 1. In <u>merger/amalgamation</u> i.e. universal succession, the merged state gets automatic membership. 2. In other cases of secession, etc, membership needs to be claimed separately. Eg India one of the founding members of UN. Thus, rules exist so as to ensure minimal disruption in international sphere.	Core 2

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Q3(c)	Nationality refers to the legal relationship which gives rights and duties to subjects like state, corporations, individuals, international organisations in the global arena (<u>In Re Lynch case</u>). Nationality does <u>not</u> create a <u>right</u> in the individual, but in the state which espouses the cause of its nationals (<u>Paneyezys Saldutiskis case</u>). It is governed by <u>Hague Conference of 1930</u>. It provides for acquisition of nationality by— 1. <u>Automatic (birth)</u>. ↳ <u>Jus Sanguinis</u> (birth of national) ↳ <u>Jus Soli</u> (birth on territory) 2. <u>Naturalisation</u> ↳ <u>Nottenbohm case</u> held that <u>genuine link</u> is needed between person and state which can depend on duration of stay, culture, etc.	

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	3. <u>Resumption</u> ↳ Indian Citizenship Act, 1955 allows a minor to choose nationality on becoming major. 4. Subjugation 5. Getting government job 6. Marriage, adoption <u>Principles of Nationality</u> 1. Relation of subject with international law. 2. Determines civil and cultural rights. 3. <u>Ethnic</u> concept. 4. Nationality and citizenship may be different. 5. Gives rights like - ↳ Diplomatic (passport, protection) ↳ States can be asked for help ↳ Identity 6. <u>Duties</u> like - ↳ Conscription. ↳ State jurisdiction for crimes <u>Nationality</u> can be of one state. But international law does not	(Nahm)

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	disallow nationality of more than one state. <u>Double Nationality</u> 1. Can arise when - ↳ Women get married to a person of different nationality. ↳ Child having different nationality. ↳ Mixture of jus soli and sanguinis. 2. <u>Hague Convention Article 5</u>: states <u>third state</u> decides one nationality based on duration and connection. <u>Statelessness</u> 1. <u>UN Convention on Status of Stateless-ness 1954</u>, <u>Article 1</u> defines - ↳ when a person does not have any nationality. 2. According to <u>Stoek vs USA</u>, it can arise when - ↳ Discrimination <u>Eg Rohingya</u> ↳ Administrative & legal lapses. 3. Convention, 1954 provides for judicial, welfare, employment rights <u>v/A 12-35</u>. 4. <u>Convention on Reduction of Statelessness 1961</u> states marriage cannot remove nationality unless another is available.	9/2

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Q 5(a)	Succession usually refers to change of power/authority over a territory. <u>State succession</u> according to Article 2 of <u>Vienna Convention on Succession to Treaties</u>, refers to the replacement of one state from another in respect of international responsibility of it. <u>Government Succession</u> refers to the change in ruling party or form of government within a territory with minimal impacts on international community. <table border="1"><thead><tr><th>State Succession</th><th>Government Succession</th></tr></thead><tbody><tr><td>1. Involves changes in territory ↳ Pakistan - India from British India.</td><td>1. No changes in territory.</td></tr><tr><td>2. Name might change ↳ USSR to Russia</td><td>2. No name change.</td></tr><tr><td>3. Subjects may change</td><td>3. No new subjects.</td></tr><tr><td>4. Non continuity of state</td><td>4. <u>Tinoco Arbitration</u> held it involves continuity of states</td></tr></tbody></table>	State Succession	Government Succession	1. Involves changes in territory ↳ Pakistan - India from British India.	1. No changes in territory.	2. Name might change ↳ USSR to Russia	2. No name change.	3. Subjects may change	3. No new subjects.	4. Non continuity of state	4. <u>Tinoco Arbitration</u> held it involves continuity of states	
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	5. <u>Example -</u> Creation of PRC (China) 6. <u>Doctrines</u> ↳ <u>Tobar, Estrada</u> on constitutive and declaratory theories respectively. <u>Legal Effects of State Succession</u> Based on Vienna Convention on State Succession - 1. <u>Article 11</u> : <u>Uti possidit</u> : <u>Boundaries</u> continue. 2. <u>Article 12</u> : <u>Obligations and rights</u> of foreign entities continue. 3. <u>Treaties</u> : <u>Clean slate rule</u>. 4. <u>Cession and joining new state</u> : Old treaties end, new state treaties apply (<u>Article 15</u>). 5. <u>Article 16</u> : <u>Decolonisation</u> : <u>No</u> <u>treaty succession</u>. 7. <u>Public debts may succeed with</u> <u>agreement</u> <u>Legal Effect of Government Succession</u> <u>Negligible effect, unless succeed by</u> <u>illegal means</u> where <u>de facto</u> or <u>de jure</u> recognition may be given.	5. Example - General elections. 6. <u>Stimson Doctrine</u> (illegal govt. not to be recognised). <i>[Handwritten signature]</i> <i>[Large red 'S' mark]</i>

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NOTE (56)	Jurisdiction of a state determines the extent of control over its subjects in the international law. Types of Jurisdiction Domestic Legislative, executive, judicial Civil Criminal Territorial Jurisdiction 1. A subject <u>on the territory</u> of a state has provides jurisdiction. 2. Territory includes <u>land</u> and <u>air</u> over it and territorial <u>waters</u> (limited jurisdiction beyond it). 3. <u>KTM S Abdul Kader vs UOI</u> held that this jurisdiction arises by virtue of <u>state sovereignty</u>. 4. Types of territorial jurisdiction ↳ <u>Subjective</u>: when crime	

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	commenced in country but culminated outside. → <u>Convention on Illicit Drugs</u> provides territorial jurisdiction. → <u>Objective</u>: crime committed outside but impact in the territory. 5. ICJ in <u>Cyprus vs Turkey</u> held that territorial jurisdiction is <u>not absolute</u>. → <u>Humanitarian laws</u> apply universally. <u>Limits on Territorial Jurisdiction</u> 1. <u>Vienna Convention on Diplomatic Relations, 1961</u> → <u>Diplomatic agents</u> have immunity from arrest, ^(official) premises violation, have diplomatic bag etc. → <u>Ex Parte Pinochet case</u> held that <u>sovereigns</u> have <u>absolute</u> immunity from criminal and civil personal acts. → <u>Jose Gestiouis</u> (non-sovereign acts) have <u>no</u> immunity.	

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Note
Q 5(c)

Asylum refers to the active shelter and protection provided to seeker of another state on request, making them a refugee.

UDHR Article 14 provides for right to seek Asylum, but there is no duty on state.

The case Columbia vs Peru discuss the types of asylum -

- ↳ Territorial (on state territory)
- ↳ extra territorial (embassies)

As per 1967 Int'l Declaration on Asylum, refoulement is to be avoided unless the person is accused of war crime, or terrorism.

Asylum provides protection to seekers (Kundiram Chakura case) whereas extradition ends this protection.

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Extradition refers to the surrender of a criminal offender, on request by a competent state (treaty or otherwise) on request to give effect to the maxim aut dedere aut punire.

Principles needed -

↳ Reciprocity (law exists)

↳ Criminality (not political, military)

↳ Eg Re Caston case where UK refused extradition of Swiss national for killing minister.

↳ competence to try.

↳ Double criminality

↳ S. 31 of Indian Extradition Act

↳ Speciality (Daya Singh Liberia case held that cannot try for hurt if extradited for murder).

Thus, extradition removes protection if any provided by asylum.

It is possible extradition is refused without granting asylum (Eg - deport)

or no asylum when extradition process is pending.

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Q5(d)

According to Article 2 of VCLT, 1969, ratification is a process involving international and open acceptance of a treaty by the state. It is achieved by head of the state signing the agreement after its representative.

Principles of Ratification

1. It is not retrospective in nature.
2. Mauritanis Palestine Concessions case held that -
 - ↳ Ratification is not compulsory.
 - ↳ Depends on intent of parties.
 - ↳ If not intended, treaty comes into force on signing.
 - ↳ If intended then, treaty comes into force only on ratification.
 - ↳ Multilateral treaties may need specific number of ratifications.

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	3. <u>Article 14 of VCLT</u> → Ratification is done when - ↳ Party <u>voluntarily</u> ratifies. ↳ Treaty <u>expressly</u> demands. ↳ <u>Implied</u> in discussions. ↳ It is a <u>condition</u> for coming into force. 4. Ratification helps in - ↳ Gaining public opinion. ↳ managing municipal law. ↳ Detailed discussion by state. ↳ Legitimacy of process. <u>Consequences of Non-Ratification</u> 1. It is <u>not</u> compulsory. 2. <u>No reason</u> needed for non-ratification. 3. Depends on <u>sweet will</u> and <u>intention</u> of parties. 4. Usually no time limit exists for ratification. 5. Still, <u>Article 18 of VCLT</u> suggests states not to defeat <u>purpose</u>. 6. <u>UNSC</u> can <u>compel</u> a state to ratify if a <u>security oriented</u> treaty is unable to operate due to lack of ratification.	<i>Imp</i> <i>VI 2</i>

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Q 5(c)

International Moon Treaty was signed in 1979 and adheres to providing functional sovereignty to nations above their airspace and beyond.

Major Provisions

1. Non-appropriation:
No nation should claim a moon territory exclusively for itself.
2. Research:
 - ↳ Primary goal
 - ↳ Share information with other nations
 - ↳ Eg Chandrayaan II discovering water molecules.
3. Peaceful use of moon territory.
4. Avoiding weapons of mass destruction on or in orbit of moon.
5. Create International Regime of

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rules for conduct behaviour.

6. Resource use

- ↳ Non discrimination in sharing
- ↳ use for common good of mankind.

7. Jurisdiction of states exists over their equipment, bases.

7. Liability of flag state for their government and non-government activities.

Limitations

1. Non-regulation of private space flights.
2. Kessler syndrome to harm orbital equipment → liability issues.
3. Weapon tests.  Anti-Satellite Missiles.
4. Monopoly of developed nations over resources.
5. Geopolitics harm law creation.

~~Now~~ A new Unispace-III conference is needed to harmonise space related goals.

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Q 8 (a)

United Nations has its goals inscribed in Articles 1 and the ^{principles} ~~purposes~~ in Articles 2 of UN Charter. They mostly focus on providing for international peace & security.

Significance of UN in maintaining peace

As per ex Secretary General of UN, Kofi Annan Peace is not merely an absence of war of conflict and has multi-dimensional factors.

1. UNGA / GA 9-22 can initiate studies on socio-economic issues and give non-binding recommendations.
2. Acts as a deliberative chamber for issue resolution.
3. Platform developing nations.
▶ Powerful speech of Vanatu President on climate change.

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	4. <u>Reducing conflict by improving economic standards</u> ↳ According to WTO^{WB}, target of eliminating extreme poverty (<\$1.9 per day) for 40% population is nearing) ↳ WTO: <u>Global Trade</u> has increased <u>2.7 times</u> since 1995. 5. <u>Social issues (ECOSOC)</u> ↳ CEDAW for women ↳ CERD (racial discrimination) ↳ <u>Ukraine vs Russia (2024) ICJ</u> held that Russia violated CERD by providing improper education to Ukrainian children. 6. <u>Health</u>: ↳ <u>WHO-India Programme on TB</u>. 7. <u>UNSC Role</u>: Article 33 (peaceful settlement), Art. 36 (recommendations) <u>Significance of UN in maintaining Security</u> 1. <u>Under UNSC</u> ↳ Resolutions like 1267 sanctions against terrorism. ↳ <u>Chapter VI</u> - peaceful means	

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	like blockades, reprisals, etc. like negotiation, settlement → Tribunals → ICTY, ICTR → Chapter VII actions → Arms embargo against South Africa for apartheid policies → Collective security v/A 41 like UNSC sponsored use of force against Libya in 2011 Arab Spring. → R2P: Successful in Liberia, Sierra, etc. Help maintain ceasefire through peacekeeping missions - 2. <u>Under UNGA</u> → Resolution 377(V): United for Peace: Used when UNSC veto deadlock. Helps take even forceful actions when at least 1 permanent member agrees. → Can make security recommendations v/A 35.		

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	↳ <u>Suo moto</u> recommendations via <u>Articles 11, 14</u>. ↳ Committees: <u>Eg</u> 2005 Counter Terrorism Committee ↳ Elect <u>ICJ judges</u> on recommendation of UNSC. <u>Limitations of UN</u> 1. <u>UNSC</u> ↳ Veto deadlocks <u>Eg</u> Venezuela crisis could not be helped. ↳ Unequal representation. ↳ Peace keeping blinders <u>Eg</u> Rwanda - Hutus Tutsi genocide. ↳ A. 5 allows state action unilaterally (use of force) ↳ A. 2(7) limits (non-interference) 2. <u>UNGA</u> ↳ WTO, WB, IMF conditionalities and representation issue ↳ WTO Appeal dysfunctional. ↳ Difficult amendment. For UN to work efficiently, social, political, security, economic, all factors need to be given equal importance. <i>Use Article 20 to explain power</i>	

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Q 8.(b)

The concept of sovereign equality of states enables states to exercise domestic, civil, criminal, legislative, judicial and executive jurisdiction over subjects.

KTMS Abdul Kader vs UOI explained types of Jurisdiction

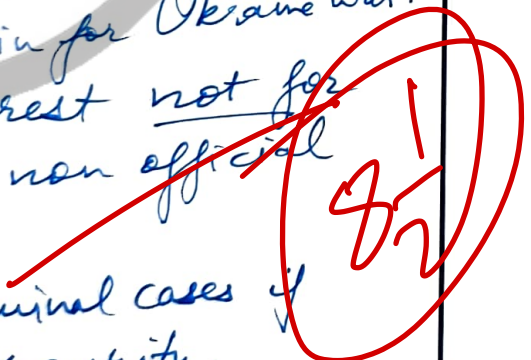
Territorial
Active Personality
Passive Personality
Protective
Effects Test
Universal

Immunities from these also exist

Diplomatic Immunity

1. Available to ambassadors, consulate staff, embassy officials.
2. It is exercise of sovereignty over national territory granting protections.
3. Columbia vs Peru has stated that such extra-territorial jurisdiction should be exercised with care

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	as it may impinge upon territorial sovereignty of others. 4. <u>Vienna Convention on Diplomatic Immunity</u> provides for rules. 5. The <u>Ex Parte Petroff</u> case held that diplomatic immunity is provided due to the very nature of the task performed. <u>Rules under International Law</u> 1. States have right to declare diplomats as <u>persona - non grata</u>. ↳ safely leave the country. 2. Cannot violate <u>premises</u> of officials. 3. <u>Diplomatic bag</u> i.e. open line of communication to officials to own country. 4. Safety of <u>belongings</u> and <u>family</u> members. 5. <u>Cannot arrest</u> for criminal acts arising out of official duties. 6. <u>Limited arrest</u> in case of	

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	civil crimes. 7. <u>Absolute immunity to sovereigns and head of state</u>. <u>Ex Parte Pinochet</u>: held that this is customary law. Protection from arrest even if personal criminal or civil crime. 8. <u>Jus Imperii</u>: Protection from sovereign acts. 9. Protection to warships. <u>Limitations on Diplomatic Immunity</u> 1. <u>Specialised organisations like ICC</u> can demand arrest (still no right on state) $\Rightarrow$ ICC calls for arrest of President Putin for Ukraine war. 2. Protection from arrest <u>not for</u> <u>jus gestionis</u> i.e. non official acts. 3. Can arrest for criminal cases if impacts <u>national security</u>. The concept of diplomatic immunity is ancient in origin and helps keep line of communication alive.	

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Q8(c)	Subjects of international law are the personalities possessing rights and duties in their interactions with other subjects. Status of a subject depends upon the <u>degree of personality</u> achieved depending upon the rights like right to participate in treaties, conferences, file suits in ICJ, etc. <u>Status of Individuals</u> 1. <u>Realist theory (Oppenheim)</u> ↳ States are the <u>primary subjects</u> ↳ Individuals are <u>objects</u> of international law. ↳ A-34³⁴ of ICJ charter refers only to states. <u>Criticism</u> 1. Does not explain individual criminal liability ↳ ICC conviction of Thomas Lubanga in 2012.	

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	2. Does not refer to individual protections Eg Geneva Conventions 1949 2. <u>Fictional Theory (Kelsen)</u> ↳ Individuals are the ultimate subject. ↳ <u>Mauramatis Palestine case</u> held states utilise their rights only for individuals. <u>Criticism</u> 1. Does not reflect state practice 2. Justice Philip C Jessup said both individuals are subjects. 3. <u>Functional Theory (Starke)</u> ↳ Previous theories cannot explain that both individuals and states have personality. ↳ States cannot cater to all rights of individuals. ↳ State practice Eg ICSID allows private parties to file cases.	

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Status of Individual and Human Rights1. Rights directly available to individuals

↳ UN charter uses "We the people."

↳ ICCPR (civil political rights)

↳ ICESCR (social, economic rights)

↳ Protection from war crimes

↳ ICT interim order on Israel
Palestine conflict (2024)

2. Procedures available

↳ Danzig Railway case held ECHR
allows direct complaint.

↳ Lawless case held human
rights are inherent in individuals.

↳ ICCPR Add-Protocol 1 allows
individual complaints -

↳ UN Administrative Tribunal
Case 1948: Employees filed
case and won.

3. Duties not to inflict harm on individuals

↳ Piracy, Kidnapping, genocide.

Thus, individuals are increasingly being
provided rights which improves their
locus standi vis a vis states.

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