Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

6th July - 12th July, 2026

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1.Negligence Is Not Fraud: Writ Lies Against the Caution-Listing of an Advocate

Topic 1 · Constitutional Law — Writ Jurisdiction (Art. 226) & Art. 19(1)(g)

Ajay Vijh v. Indian Banks Association (2026) The Supreme Court held that a **writ petition under Article 226 is maintainable against the Indian Banks Association** even though the IBA is not 'State' under Article 12, because the words **"any person or authority" in Article 226 are wider than Article 12** and the **functional test** governs — following *Andi Mukta* and *Zee Telefilms*. A Bench of Justice P.S. Narasimha and Justice Alok Aradhe was considering an advocate whose name had been placed on the banks' **Caution List** for alleged deficiencies in a title-search report.

The Caution List — "Third Party Entities Involved in Fraud" — has a **statutory basis in RBI directions issued under Section 35-A of the Banking Regulation Act, 1949**, and operates as an **industry-wide adverse accreditation** that directly impacts the advocate's **right to practise under Article 19(1)(g)**; its consequences are therefore public-law consequences amenable to judicial review.

On the merits, the Court held that the mechanism is confined to **fraud, which imports mens rea**: mere **negligence or an erroneous legal opinion cannot be elevated to fraud**, so the appellant's inclusion solely for negligent title verification was **without jurisdiction** and his name was directed to be removed. A bank remains free to **de-empanel** an advocate as a contractual measure, but it cannot make a public declaration of his incompetence to the entire banking industry.

The Court further held that allegations of **professional misconduct or negligence of an advocate fall within the exclusive disciplinary jurisdiction of the Bar Councils** under the Advocates Act, 1961 (*Supreme Court Bar Association v. Union of India*; *M.V. Dabholkar*) — banks must route grievances to the Bar Council rather than create parallel blacklisting structures. Invoking the principle that **peers must**

regulate peers as a facet of the independence of the Bar, the Court directed the Bar Council of India to undertake a **performance audit of its disciplinary machinery** and to institutionalise **continuing legal education**, listing the matter for further monitoring.

2.Mens Rea in a Statutory Offence: 'Knowledge' Means More Than What One Sees

Topic 2 · Law of Crimes — Mens Rea & Statutory Offences; Criminal Omission

AAA v. Linda Sema (2026) The construction of **mens rea words in statutory offences** was at the heart of this decision: what does **"has knowledge that such an offence has been committed"** mean in Section 19(1) of the POCSO Act, breach of which is itself an **offence of criminal omission** punishable under Section 21 of that Act and **Section 176 IPC** (omission to furnish information to a public servant)? A Bench of Justice Manoj Misra and Justice K.V. Viswanathan held that 'knowledge' is **not confined to direct, sensory perception**: it **includes awareness founded on receipt of credible information**, and information received **directly from the victim child** is deemed credible.

The term 'knowledge' is defined neither in the POCSO Act nor in the IPC, CrPC or the General Clauses Act; the Court therefore gave it a **purposive, contextual construction**, drawing the classical distinction between **'knowledge' and the lower threshold of 'reason to believe'** in Section 26 IPC (*A.S. Krishnan*). On this construction, a recipient of a child's complaint cannot substitute a private **'verification exercise'** for reporting: **investigation must follow reporting, not precede it**, else evidence disappears and the object of the statute is defeated.

The **actus reus here is a pure omission** — the statute converts silence into crime. Applying the standard at the discharge stage (*grave suspicion*, no mini-trial — *Amit Kapoor*), the Court **set aside the discharge of the school headmistress** — to whom the minor victim's complaint had travelled and who, after checking the child, suppressed the matter — and directed that she face trial under **Section 21 read with Section 19(1) POCSO and Section 176 IPC.**

The judgment equally marks the **limits of constructive criminal liability**: teachers who had received no complaint from the victim were rightly discharged; the minor informees are expressly **exempt under Section 21(3)**; and the counts of **criminal conspiracy (Section 120-B)** and **causing disappearance of evidence (Section 201 IPC)** failed because no agreement and no **positive act** of destruction were alleged — omission alone does not satisfy Section 201. The ruling thus calibrates mens rea, omission liability and conspiracy in one statutory scheme.

3.Administrative, Not Legislative: An Executive Scheme Cannot Override a Statute

Topic 3 · Administrative Law — Classification of Administrative Action; Delegated Legislation

British Motor Car Company (1939) Ltd. v. Hindustan Commercial Bank Ltd. (2026) Whether an act of the administration is **legislative or administrative in character** determines its rank in the hierarchy of norms — and this case turned entirely on that classification. The Supreme Court held that a scheme of amalgamation framed by the Reserve Bank under **Section 45 of the Banking Regulation Act, 1949 is an administrative act, not legislation**, and therefore **cannot override a statute** — here, Section 14(1)(b) of the Delhi Rent Control Act, 1958. The Bench comprised Justice Sanjay Karol and Justice N. Kotiswar Singh.

The Court applied the settled test from *Cynamide India*, adopted for Section 45 schemes in *K.I. Shephard*: a **legislative act lays down a general rule of conduct; an administrative act applies power to a particular case**. A Section 45 scheme merely amalgamates two named banks — the application of statutory power to a specific situation. By contrast, schemes under **Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980** have been held **legislative** (*New Bank of India Employees' Union*); the Court held the two provisions are **not pari materia**, so the analogy failed.

The classification decided the case: since the scheme was not 'law', the tenancy consequences of the amalgamation fell to be tested under the Rent Act. Section 14(1)(b) turns on a **factual situation** — transfer

of tenancy and possession without the landlord's written consent — and **draws no distinction between voluntary and involuntary transfers** (*Singer India*, three Judges). On amalgamation the tenant bank **ceased to exist in law** (*Saraswati Industrial Syndicate*) and its possession vested in Punjab National Bank without consent: both ingredients stood satisfied, applying the *Jagan Nath v. Chander Bhan* test of 'parting with possession'.

The eviction decree was restored, with possession to be delivered by 31 January 2027 on the usual undertaking. The principle is a general one in administrative law: **subordinate executive action — however wide the statutory power under which it is taken — occupies a plane below the statute**, and rights conferred by the legislature can be displaced only by the legislature.

4.He Who Alleges a Custom Must Prove It: Tribal Succession and the Ghardamad

Topic 4 · Family Law & Jurisprudence — Custom as a Source of Law

Bejla Oraon v. Kali Das Oraon (2026) In a suit over agricultural property governed by the **customary law of the Oraon tribe of Chotanagpur**, the Supreme Court reversed the concurrent judgments of three courts and decreed the plaintiff's suit, restating the entire law on the **pleading and proof of custom**. The Bench comprised Justice Sanjay Karol and Justice N. Kotiswar Singh; the contest was whether an uncle-in-law could adopt his niece's husband as ***ghardamad*** (house son-in-law) so as to pass his property to him.

The Court restated the essentials of a valid custom — it must be **immemorial, reasonable, certain and continuous** — and the governing rules of proof: **he who alleges a custom must prove it**, and prove that he is governed by it; proof is by long usage and by **general evidence of members of the community under Section 48 of the Evidence Act**; a custom **once judicially recognised need not be proved afresh**, and a custom once judicially disallowed cannot be revived.

On the evidence, only the custom that a *ghardamad* acquires rights in his **father-in-law's** property stood established; it was nowhere proved that an **uncle-in-law** could confer that status. Under the acknowledged account of Oraon custom in S.C. Roy's *The Oraons of Chotanagpur*, in the absence of a male issue, an adopted son or a duly adopted *ghardamad*, the property devolves on the **nearest male agnate** — here, the plaintiff's line.

The High Court's approach — that since no **bar** against such an adoption was shown, the custom could be assumed — inverted the burden of proof: the **absence of a prohibition is not proof of a custom**. The Court also reiterated the settled framework under **Article 136** for disturbing concurrent findings of fact where the conclusion is perverse or based on no evidence (*Ramachandran v. Vijayan*), and observed that a lease deed confers no title and partition presupposes co-sharers.

5.Ghana–Togo Maritime Boundary Moves to an ITLOS Special Chamber

Topic 5 · Law of the Sea

On 6 July 2026, the President of the **Special Chamber of the International Tribunal for the Law of the Sea** fixed the time-limits for written pleadings in the *Dispute concerning delimitation of the maritime boundary between Ghana and Togo in the Gulf of Guinea* (**Case No. 36**) — the first procedural order in the newest maritime delimitation case in West Africa. After twelve failed rounds of negotiation, Ghana had instituted **arbitration under Annex VII of UNCLOS** in February 2026; in June the parties agreed to **transfer the proceedings to a Special Chamber under Article 15(2) of the ITLOS Statute**, the same forum-conversion route used in *Ghana/Côte d'Ivoire*.

The applicable law is the delimitation regime of **UNCLOS**: **Article 15** (territorial sea), and **Articles 74 and 83**, which require delimitation of the exclusive economic zone and continental shelf by agreement on the basis of international law "to achieve an **equitable solution**." **Article 287 and Annex VII** supply compulsory arbitration as the default forum where no common choice of procedure exists — the springboard from which the parties moved to the Special Chamber by consent.

Ghana asserts a long-observed **'customary maritime boundary line'** — a tacit-agreement, equidistance-based line that protects its producing oil blocks — mirroring the theory it advanced against Côte d'Ivoire. Togo rejects that line, contending that it is **'shelf-locked' by a markedly concave coastline**, disputing the baseline coordinates, and pressing for an **equitable adjustment of equidistance** on relevant-circumstances grounds; it has also complained of naval activity in the disputed area, engaging the **non-aggravation obligations in Articles 74(3) and 83(3).**

Core legal tension: the stability of a tacitly agreed equidistance line against the claim of a geographically disadvantaged State to equitable correction under Articles 74 and 83 of UNCLOS.

6.Pricing the Wrong: ILC Takes Up Compensation for Internationally Wrongful Acts

Topic 6 · State Responsibility

On 7 July 2026, at the second part of its 77th session in Geneva, the **International Law Commission** took up its newest topic: Special Rapporteur **Mārtiņš Paparinskis introduced his First Report on 'Compensation for the damage caused by internationally wrongful acts' (A/CN.4/793)**, and the Commission debated it through the week. The UN Secretary-General addressed the Commission on 6 July.

The legal framework is the law of **State responsibility**: under the **Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)**, a responsible State is under an obligation of **full reparation (Article 31)**, of which **compensation under Article 36** covers all **"financially assessable damage"** not made good by restitution — the standard descending from the *Chorzów Factory* case. The topic has ripened because international courts are now regularly quantifying damages, from the ICJ's compensation judgment in ***DRC v. Uganda* (2022)** to the environmental-damage award in ***Certain Activities (Costa Rica v. Nicaragua)* (2018).**

The debate exposed the fault-line in codifying quantification: one view holds that the now-abundant practice of the ICJ, ITLOS, investment tribunals and human-rights courts calls for **harmonised principles of valuation, causation and interest**; the other cautions that quantification is irreducibly **fact-specific**, that valuation methodologies such as discounted cash flow remain contested between capital-exporting and developing States, and that hard rules could disturb ARSIWA's settled equilibrium.

Core legal tension: whether 'full reparation' under ARSIWA can be operationalised into general rules of valuation without upsetting the balance the Articles strike between the wrongdoing State and the injured State.

Weekly Focus

Mineral Area Development Authority v. M/s Steel Authority of India, [2024] 7 S.C.R. 1549 : 2024 INSC 554

Facts: For over three decades, the States' power to levy imposts on mining stood clouded by conflicting precedent: a seven-Judge Bench in *India Cement (1990)* had observed that **royalty is a tax**, while a five-Judge Bench in *Kesoram (2004)* treated that observation as a typographical error and held royalty is **not** a tax. The true nature of **royalty payable under Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957**, and the scope of the States' taxing powers over mines and minerals, were referred to a **nine-Judge Bench**, which decided the reference on 25 July 2024.

Question of Law: Is royalty under **Section 9 of the MMDR Act** in the nature of a **tax**? What is the scope of **Entry 50 List II** (taxes on mineral rights "subject to any limitations imposed by Parliament by law relating to mineral development") and has the MMDR Act imposed any such limitation? And does **Entry 49 List II** (taxes on lands and buildings) permit the States to tax **mineral-bearing land**, using the mineral value or royalty as the measure?

Decision: By a majority of **8:1**, speaking through Chandrachud, CJI, the Court held that **royalty is not a tax**: it is a **contractual consideration** paid by the mining lessee to the lessor for enjoyment of mineral rights, and its recovery as arrears under the statute does not convert it into a compulsory exaction. The **power to tax mineral rights vests in the State legislatures**; Parliament has no competence to tax mineral rights under **Entry 54 List I**, a general non-taxing entry, and cannot resort to residuary power since the field is enumerated in Entry 50 List II. The **MMDR Act as it stands imposes no limitation** within the meaning of Entry 50 List II. Justice B.V. Nagarathna dissented, holding royalty to be a tax within **Article 366(28)** and the States denuded by the MMDR Act.

Ratio: Entries 49 and 50 of List II are distinct fields: mineral-bearing land falls within 'lands' under Entry 49, and the **yield of the land — mineral produce or royalty — may be adopted as the measure of the tax**; limitations imposed by Parliament under Entry 50 do not travel to Entry 49, and *Goodricke* was clarified to that extent. The observation in *India Cement* that royalty is a tax was held to be incorrect, resolving the conflict with *Kesoram*.

Legal Significance: The decision is a landmark of **fiscal federalism**: it affirms that the States are **sovereign within the taxing fields assigned to them**, that a general regulatory entry in the Union List cannot subsume an enumerated State taxing power, and that the constitutional court must interpret the distribution of powers so that the States are not subordinated to the Union in the fields exclusively reserved to them.

PYQ Solution

"A custom, to be valid, must be immemorial, certain and reasonable." Examine the essentials of a valid custom as a source of law and the manner of its proof in Indian courts. (15 MARKS)

Custom is the **oldest source of law** — "coeval with the very birth of the community itself" (Paton). While **Austin** conceded custom the force of law only upon judicial or legislative recognition, **Savigny** located law in the *Volksgeist*, of which custom is the external evidence, and **Allen** described custom as "self-contained, self-sufficient and self-justified law", the court's function being **declaratory rather than constitutive.**

Essentials of a valid custom

1. **Antiquity:** In England a custom must date from **legal memory (1189)**; Indian law rejects this technical rule. In *Mt. Subhani v. Nawab (1941)*, the Privy Council held it is enough that the usage "has been **acted upon in practice for such a long period and with such invariability** as to show that it has, by common consent, been submitted to as the established governing rule" of the locality, family or class.
2. **Certainty:** The course of conduct on which the custom rests must be **proved with certainty**, not left vague — a court cannot enforce what it cannot define. A custom of remitting rent whose extent was unspecific was held void for **uncertainty as well as unreasonableness.**
3. **Reasonableness:** The custom must not offend **"artificial and legal reason warranted by authority of law"**; it suffices that **no good legal reason can be assigned against it.** A custom is not invalidated merely because its original rationale is later found wrong.
4. **Morality and public policy:** A custom **immoral or opposed to public policy** is unenforceable — as in *Mathura Naikin v. Esu Naikin*, which struck down the adoption of girls by dancing girls. The statutory definition in the **Hindu Marriage Act and Hindu Succession Act** codifies these requisites: a rule continuously and uniformly observed for a long time, certain, not unreasonable, and not opposed to public policy.

Proof: He who alleges a custom must prove it (*Abdul Hussein Khan v. Bibi Sona Dero*) — even in regions like Punjab where statute placed custom in the forefront, there is no presumption of its existence. Proof is by **general evidence of persons likely to know of it (Sections 48–49, Evidence Act)** and by entries in public records such as the *riwaz-i-am* (Section 35); a custom **repeatedly recognised by the courts acquires judicial notice** and need not be proved afresh. A custom cannot be extended by analogy or *a priori* reasoning — "theory and custom are antithesis."

Conclusion: A valid custom, once proved, **'ousts the general law'** (*Neelkisto Deb*), while the general law governs all that lies outside it. The essentials of antiquity, certainty, reasonableness and morality, coupled with strict proof, preserve the balance between respecting the lived law of communities and the courts' censorial power over usages repugnant to justice.

De Facto IAS