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UPSC law optional question papers - 2011

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Paper-I

Section - A

1. Answer the following (each answer should be in about 150 words):— 15×4=60

(a) Constituent power to frame the constitution and the constituent power to amend the constitution have different connotation and scope. Explain. (15 MARKS)

(b) “The Judiciary by usurping the powers of the other two organs of the Government in certain matter has diluted the theory of separation of powers.” Do you agree? Examine critically? (15MARKS)

(c) Do local bodies enjoy autonomy in performing their role in the field of economic development and social justice? Explain. (15 MARKS)

(d) The Governor of a State holds office during the ‘pleasure’ of the President of India. Can he be removed by the President any time without any reason? Examine in the context of the position of the Governor under the Indian Constitution. (15 MARKS)

2. (a) ‘Equality is a dynamic concept with many aspects and dimensions, and it cannot be cribbed, cabined or confined within traditional and doctrinaire limits.’ Explain, how the judiciary has widened the scope of the right to equality by various decision. (30 MARKS)

(b) Right to life has been extended to a clean human environment by the Courts in India. Discuss the development of law in this regard. (30 MARKS)

3. (a) The decision of the Supreme Court of India in ADM, Jabalpur v.S. Shukla, according to Dr. Upendra Baxi, “made the darkness of emergency completely dark”. Do you think that the Constitution (44th Amendment) Act 1978 removed this darkness and provided for better protection of the Fundamental Rights? Explain. (30 MARKS)

(b) Examine whether the Election Commission of India has succeeded in performing the two responsibilities entrusted to it under Art. 324 of the Constitution of India? What steps would you suggest to ensure the preparation of correct electoral rolls? (30 MARKS)

4. Write critical notes on the following:— 20×3=60

(a) Doctrine of Prospective Overruling. (20 MARKS)

(b) Duties of the Prime Minister regarding furnishing of information to the President. (20 MARKS)

(c) Secularism. (20 MARKS)

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Section B

5. Answer the following (each answer should be in about 150 words): $15 \times 4 = 60$

(a) One extreme view is that International Law is a system without sanctions. However, it is not quite true that there are no forcible means of compelling a state to comply with International Law.

b) 'The Universal Declaration of Human Rights is comprehensive and has to some extent affected the content of national laws, being expressly invoked by tribunals, yet it is not a legal instrument and some of its provisions could hardly be said to represent legal rules. Some of its provision either constitute general principles of law or represent element considerations of humanity. Perhaps its greatest significance is that it provides an authoritative guide, produced by the General Assembly, to the interpretation of the provisions in the Charter.' Comment and discuss the importance of the Universal Declaration of Human Rights.

(c) The Stockholm Conference of 1972 on the human environment served to identify those areas in which rules of International environment law, acceptable to international community as a whole can be laid down, and as well as those areas in which the formation of environmental rules must encounter insurmountable obstacles. Discuss the principles of international environment law proclaimed in the Stockholm Declaration. (d) What is international terrorism? Discuss various actions taken by the United Nations to eliminate the causes underlying international terrorism.

6. (a) "The distinction between 'dejure/defacto recognition' and 'recognition as the dejure and defacto government' is insubstantial, more especially as the question is one of intention and the legal consequences thereof in the particular case. If there is a distinction it does not seem to matter legally." Comment and discuss the distinction between the two.

(b) "Vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the freedom to the sea, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them." Give a critical appraisal of this principle in the light of the case law and views of the International Law Commission.

7. (a) "The principle of State being obliged to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered" is generally bashed aside by the tendencies of the nation-states of being reticence to submit disputes to independent, impartial adjudication, particularly not accepting in advance the compulsory jurisdiction of an independent judicial body." Explain the statement with reference at least to one such conflict existing in the world and also prepare a module for promoting negotiations among nations, using new opportunities created by globalisation.

(b) "Extradition as a rule is effected by bipartite treaty. There is, therefore, no duty to extradite in the absence of a treaty. Further, the extradition treaties normally relate only to serious crimes and impose the same obligation on both the parties concerned." Give your opinion on the correctness of this statement with reference to the existing position under the International Law. Also critically examine this practice in the light of ever increasing individual movements for trade and service to suggest necessary modifications in law.

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8. (a) The four Geneva Conventions of 1949 for the protection of war victims cover the wounded and sick and land warfare; the wounded, sic and ship-wrecked in warfare at sea; prisoners of war; and civilians. Discuss these protections.
- (b) 'The United Nations is capable of legal development in accordance with the needs and circumstances. The Uniting for Peace Resolution, 1950 is its example.' Discuss the validity of this resolution.

Paper-II

Section A

1. Answer any three of the following (each answer should be in about 200 words): 20×3=60

- (a) Distinguish common intention from abetment and criminal conspiracy. (20 MARKS)
- (b) "Under the Indian Penal Code there is no right of private defence in which there is time to have recourse to the protection of public authorities." Examine (20 MARKS)
- (c) Defence of 'Volenti-non-fit injuria' is not available when the rescuer is injured in an act of recurring" Discuss. (20 MARKS)
- (d) Discuss the principle of Res-ipsa-Loquitur. Refer to recent cases. (20 MARKS)

2. (a) "In order to constitute a public nuisance there must be an act or an illegal omission, and it is not necessary that the act should be illegal." Explain the offence of public nuisance with the help of decided cases. (20 MARKS)

(b) 'A' and 'B' were both security guards posted outside the home of senior army officer, Mr. X. They often used to exchange hot words with each other in context to the other. On the day of Holi festival both of them had a verbal exchange due to the act that both wanted to go to home early for festival, that led to altercation between the two, both of them instantaneously aimed their revolvers at each other respectively. 'C' who was also on duty with them intervened and pacified both of them. Both 'B' noted that 'A' had lowered his revolver, he immediately fired at 'A' and killed him. On being tried 'B' was awarded death sentence. However, on appeal the High Court acquitted 'B' on the pleas of self-defence. The State intends to go in for appeal in the Supreme Court against the decision of the High Court. Advise in the light of the case law on the subject. (20 MARKS)

(c) Discuss the law relating to criminal intimidation. Refer to case law. In what was is extortion different from criminal intimidation? (20 MARKS)

3. (a) What test has the Supreme Court prescribe to understand 'the rarest of the rare cases theory' while inflicting capital punishment? Can one argue that capital punishment in any case in against human right jurisprudence? (20 MARKS)

(b) Do you find it is necessary to convict the accused both under section 304-B and Section 498-A of penal Code? Refer to recent cases. (20 MARKS)



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(c) Mr. A, a chronic heart-patient was drawn into a political debate and in the course of arguments his adversary looked at him fiercely and said that people like him should be hit till they are dead” Hearing this ‘A’ suffers a heart attack and dies on the spot. Discuss the liability of his adversary. Argue for the State also. (20 MARKS)

(d) ‘A’ a minor girl leaves her parents House because of ill treatment and lives with ‘B’ her friend. Can he (B) be prosecuted for kidnapping? (20 MARKS)

4. (a) The editor of a weekly published a series of articles directed against the business of the plaintiff alleging how the wealth of the vast empire was build up by having recourse to the unlawful and questionable means involving tax-evasion, import-export rackets, foreign exchange violations and how the investigations into the operations of the organisation were bogged down. In an action for defamation, the defendant put up the defence of fair comment on a matter of public interest. The plaintiff brought evidence to show that the defendant had to tender an apology to the plaintiff in an earlier defamation case and that he present publication was motivated by malice. Discuss the defence of fair comment in the light of the facts of the case. (20 MARKS)

(b) We must use our property so as not to cause discomfort to another’s use of property. Yet a temporary discomfort is not actionable. Explain the law. (20 MARKS)

(c) Discuss the liability of hospitals under the consumer protection Act, 1986. Refer to decided case also. (20 MARKS)

Section B

5. (a) On breach of contract only such loss can be recovered as was in the contemplation of both the parties at the time of entering into the contract. Discuss. (12.5 MARKS)

(b) The very object of taking a surety is defeated, if the creditor is required to postpone his remedies against the surety. Expand the laity of the suety. (12.5 MARKS)

(c) What do you understand by a Promissory Note? Discuss. (12.5 MARKS)

(d) Mere cessation of trading does not result in dissolution of a partnership. Rights and liabilities need to be settled between the partners. Explain. (12.5 MARKS)

6. (a) The competition Act is designed to prevent monopolies and unfair trade practices against smaller competitors and consuming public elucidate. (20 MARKS)

(b) Public interest Litigation has been a significant tool in protecting the environment Discuss with the help of cases. (25 MARKS)

7. (a) An impartial and independent conciliator assists the parties in resolving their dispute amicably. Discuss the provisions of law relating to conciliation. (25 MARKS)

(b) Distinguish between ‘Foreign Award’ and the enforcement of ‘Foreign Award’ with the help of case law. (25 MARKS)

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8. (a) Examine the legal recognition of 'Digital Signature' and explain the procedure for its registration under the information Technology Act. (25 MARKS)

(b) The principle of passing off' in an action has been extended to the use of 'false trade description. Explain the conditions for two successful passing off action and the defenses available to the opposite party. (25 MARKS)

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