

HIGH COURT OF MEGHALAYA
SHILLONG
The Higher Judicial Services Examination
Paper III

Maximum Marks: 100

Time Allowed: Two Hours

Note: Answer all questions. Write the correct response to each of the sub-parts of question 3 and 6.

1. Jurisprudence and Legal Theory

Question no. 1

What are the different essentials of ownership? How is legal ownership different from equitable ownership, give an Illustration? **Marks: 10**

Question no. 2

The aim of social engineering according to Roscoe Pound is to build as sufficient a structure of society as possible which requires the satisfaction of the maximum wants with the minimum of friction and waste. Elucidate and highlight the three main interests which are to be protected by law to facilitate the task of social engineering.

Or

Critically evaluate Austin's theory that law is the command of the sovereign backed by sanction.

Marks: 10

Question no. 3

i) Who propounded this theory: "The principle according to which natural science describes its object is casualty, the principle according to which the science of law describes its object is normativity".

A) Henry Maine

B) Savigny

C) Hans Kelson

D) Bentham

Marks: 2

ii) The finder of a things has good title to that thing against all except the true owner. This principle is known as:

E) Grundnorm

F) Res nullius

G) Constructive Possession

H) Possession and attornment

Marks: 2

iii) Ownership of a house, a table or a machine is called corporal ownership. Ownership of a copyright, a patent or trade mark is called:

I) Trust Ownership

J) Beneficial Ownership

K) Equitable Ownership

L) Incorporal Ownership

Marks: 2

iv) Judges are not bound to follow them, they have the force of persuasive precedents, they may help the cause of the reform of law and they are known as

M) Obiter dicta

N) Ratio decidendi

O) Decisions sub silentio

P) Decisions per incuriam

Marks: 2

v) The outstanding fact of the society is the interdependence of the people, this principle in legal theory is known as

Q) Principle of Utilitarianism

R) Principle of Social Solidarity

S) Folks Guist

T) Principle of Sociology

Marks: 2

11. The Constitution of India

Question .no.4

Explain the test of 'instrumentality of the State' as laid down by the Supreme Court in **R.D.Shetty v. IAAI, AIR 1979 SC 1628**. How far do you agree with the view that Judiciary in respect of its 'judicial functions' should be subject to the discipline of fundamental rights? Support your answer with cogent reasons.
Marks: 10

Question .no.5

What do you understand by the 'Doctrine of Basic Structure of the Constitution'? How did the Supreme Court apply this doctrine while invalidating the National Judicial Appointments Commission in **SCARA v. Union of India AIR 2015?**

Or

"The right of privacy is a fundamental right. It is a right which protects the inner sphere of the individual from interference from both State, and non-State actors and allows the individuals to make autonomous life choices." Elucidate the statement in the light of the law laid down in **Justice Puttuswamy v Union of India AIR 2017 SC**.
Marks: 10

Question .no.6

i) Which one of the following has not been held by the Supreme Court to be violative of Article 21 of the Constitution?

U) Inordinate delay in disposal of mercy petition

V) Extending suspension of an employee

W) issuance of death warrant by a sessions court within six days after confirmation of death sentence by the High Court as well as the Supreme Court

X) Rejection of an anticipatory bail application

Marks: 2

ii) In **Board of Control for Cricket in India V. Cricket Association of Bihar AIR 2015 SC 3194**, the Supreme Court held BCCI is:

Y) not a state under Article 12 but amenable to writ jurisdiction under Article 226

Z) is a state and amenable to writ jurisdiction under Article 32 and Article 226

AA) is a state and amenable to writ jurisdiction under Article 32 only

BB) not a state and not amenable to any writ jurisdiction

Marks: 2

iii) Right to free and compulsory education is guaranteed under:

CC) Article 14

DD) Article 21

EE) Article 21- A

FF) Article 16

Marks: 2

iv) Which of the following fundamental rights can be suspended during the proclamation of National Emergency?

GG) Article 19

HH) Article 20

II) Article 21

JJ) Article 22

Marks: 2

V) In which of the following judgments did the Supreme Court invalidate Section 377 of the Indian Penal Code?

KK) Navtej Singh Johar v. Union of India V

LL) Shayara Bano v. Union of India

MM) Yusuf Abdul Aziz v. State of Maharashtra

NN) Joseph Shine V. Union of India

Marks: 2

111. Judgment writing

Question no.7. Answer to each sub- part shall be precise and in not more than forty words each

i) Highlight the four essential contents which a judgment in a civil case should contain

Marks: 4

ii) What information should a judge convey after pronouncing its judgment in a civil case in which a party is not represented by a pleader?

Marks: 4

iii) what is the time limit within which a judgment should be delivered after hearing the arguments in a civil case?

Marks: 4

iv) What can a judge change in a judgment after it is pronounced?

Marks: 3

Question no.8. Write the judgment in the following case in the paper book supplied.

Marks: 25

Ramesh Pawar was murdered at about 10.00 p.m. on 3rd February, 2016, While the deceased and his wife P.W.1 –Mera were guarding their Jaggery crop growing in their field. The prosecution story is that the accused- Anil Galkwad accompanied by Surinder Galkwad (accused No.2) and Shivkumar Galkwad (accused No.3) were walking past the field of the deceased when dog owned by the deceased started barking at them...

Angered by the barking of the animal, the accused is alleged to have hit the dog with the iron pipe that he was carrying in his hand. The deceased objected to the accused beating the dog, whereupon the accused started abusing the former and told him to keep quite or else he too would to be beaten like a dog. The exchange of hot words, it appears, led to a scuffle between the deceased and the accused persons in the course whereof, while accused No.2 and 3 beat the deceased with fist and kicks, the accused No.1 hit the deceased with the iron pipe on the head. On account of the injury inflicted upon him, the deceased fell upon the ground, whereupon all the three accused persons ran away from the spot.

The incident was witnessed by the wife of the deceased, P.W.I- Mera and by P.W.5-Ramesh Pawar who was also present on the field nearby at the time of the occurrence. The deceased was carried on motorcycle to the hospital of one Dr Dubey in the Taluka from where he was shifted to District hospital for further treatment. Two days after the occurrence when the condition of the deceased became precarious, P.W.1 -Mera filed a complaint at the police station- X on 5th February, 2016 on the basis whereby Crime No.25 of 2016 under Sections 326.,504 and 323 read with section 34 of the I.P.C was registered by the police. Investigation of the case was taken by P.W.G- Police Sub Inspector Pramanand who recorded the panchnama of the scene of the crime and arrested the accused persons. The deceased eventually succumbed to his injuries on 7th February, 2016 whereupon Section 302 read with Section 34 of the I.P.C was added to the case.

Post-mortem examination of the deceased revealed a contusion behind the right ear, a contusion of the right arm, and an abrasion on the right ankle joint. Internal examination, however showed that the deceased had sustained an internal injury to the temporal and occipital region under the scalp and a fracture on the base of the skull. Blood clots were noted in the brain tissue and the base of the skull, besides internal bleeding. According to the doctor, the death was caused by the injury to the head. After completion of the investigation that included seizure of the alleged weapon used by the appellant, the police filed a charge sheet before the Judicial Magistrate, who committed the appellant and co-accused to face the trail for the offence of murder punishable under Section 302 read with Section 34 of the I.P.C before Sessions Court. Before the Sessions Court the accused and his co-accused pleaded not guilty and claimed a trail. The prosecution examined as many as six witnesses including P.W.1 -Mera, the widow of the deceased and P.W.5- Ramesh Pawar, both of whom were presented as eye witnesses to the occurrence. The remaining witnesses included P.W.3-Dr. Arun who

had conducted the post-mortem and P.W.G- Police Sub- Inspector Parmanand. The evidence further revealed that the death of her husband had crippled the family of the widow economically. The evidence also showed that the accused was economically sound had no previous grudge against the deceased had no previous criminal record and that the weapon used by him was a rod and not lethal, nor did the accused give a second blow after the deceased fell to the ground.