SAMPLE MODEL ANSWERS

Q. Is the President of India a mere Constitutional head? Is he bound to accept the advice of the Council of Ministers? Discuss the position of President of India in light of Constitutional provisions. (15)

Answer Approach:

- *Introduction*: Describe the position of President of India as provided by the Constitution in not more than two lines. (30-40 words)
- *Main Body*: You are required to explain the Constitutional position of President vis-à-vis the Council of Ministers.
- *Conclusion*: Write the present position and conclude with a statement which highlights the essence of the entire answer.

Answer Framework:

Introduction:

The President is the head of the State (Art 52) and is the symbol of unity and integrity of the nation.

Main Body:

Firstly enumerate the three articles relevant to explain the Constitutional position of the President →A.53, A.74 and A. 75(3).

No provision in the Constitution makes the President answerable to the Legislature. Thus, it would have been meaningless to make the CoM answerable for the policy and administration of the Union to the House of the People, unless they are recognised to possess the authority to finally decide the affairs of government. Therefore, the real directing force is the Cabinet and not the President.

Cite the case of Ram Jawaya Kapur v. St. of Punjab → write the 3-4 points relating to the above paragraph.

You can also cite UN Rao v. Indira Gandhi → it is obligatory on the President to have a CoM.

Thereafter discuss about the President being bound by the advice of the CoM enjoying the confidence of the LS which if he chooses to ignore, he can be impeached for violating the Constitution. Discuss the position prior to and after the 42nd CAA, and also after the 44th CAA.

Cite the case of SP Gupta v. President of India (Judges Transfer Case) → advice can't be questioned in Court but the materials on the basis of which such advice was given can be scrutinised by the courts.

Discuss about the right of the President to be consulted and right to warn and encourage the CoM – through advice and criticism President can influence the decisions of Cabinet – such influence is purely of an advisory character.

Conclusion:

The primary duty of the President is to preserve, protect and defend the Constitution and the law of India as made part of his oath and his unique constitutional position helps him to carry out this duty of his effectively.

Q. Discuss the position of "individual" under International Law.

Answer Approach:

- *Introduction* → Briefly explain the various theories related to individuals as subjects of international law.
- *Main Body* → With the help of various illustrations and case laws, explain the position of individual under international law.
- *Conclusion* → Conclude by stating the present position and end on a balanced note.

Answer Framework:

Introduction:

There are various theories on subjects of International law. One theory states that only States are subjects of International Law and to reconcile exceptions such as pirates, slaves etc. it recognizes individuals as merely objects of International Law. Whereas second theory states that ultimately individuals are the subjects of International Law as only individuals compose a State and that municipal law applies to individuals intermediately whereas International law

applies to them immediately. But in present times, many treaties give direct rights to individuals such as in 1965 Convention on the settlement of Investment Dispute between States and Nationals of other States.

Main Body:

In recent times, third view has gained ground as per which individuals are the subjects of International law and many rights and duties are imposed on individuals directly under International Law. Some of them being following:-

i. Pirates are considered as enemies of mankind under International law and therefore there is an obligation on individuals not to commit piracy otherwise they can be apprehended and punished by any State.
ii. Harmful acts of individuals:- Individuals should not be involved in such acts as may prove detrimental for the good relation among states.
iii. Foreigners:- Under International Law State has duty to give foreigners those rights which it confers upon its own citizens.
iv. War Criminals:- War Criminals can be punished under International Law as crimes committed by individuals, and only by punishing them International law can be enforced.
v. Espionage is a crime under International Law and therefore spies when apprehended can be punished under International Law.
vi. Some treaties gave individuals rights, e.g. treaty of Versailles allowed individual to file suit against Germany for damages or compensation.
vii. UN has given much significance to rights of individuals as the UN charter begins with "People of the United Nations". UDHR 1948 enumerates in detail human rights and fundamental freedoms of individuals.
viii. European Court on Human Right gives right to individuals to directly approach the court if there human rights is violated by their own State.

In the Lawless case, the European Court of Human Rights held that an individual is as much a subject of international law as a State is.

In the Danish Railways Official case, it was held that there is nothing in international law to prevent individuals from acquiring directly rights under a treaty provided that this is the intention of the contracting parties.

States are becoming increasingly realistic in acknowledging the position of the individual in the legal order. Individual has become subject of International Law. Individuals don't have the same status as a State but are nonetheless capable of asserting their rights before some international tribunals although lacking procedural capacity.

Conclusion:

Thus gradually individuals are occupying place of importance under International Law. They are no more objects of International Law, rather are its subjects. It cannot however be denied that even today States are the main subjects of International Law and the bulk of International Law deals with the rights and duties of States.

Q. "Damnum sine injuria and injuria sine damnum are two different principles of law." Comment. (15)

Answer Approach:

- *Introduction:* Start by discussing about legal damage as one of the essentials of a tort and then explain how it is related to the two maxims.
- *Main Body:* Discuss the meaning and essence of both the maxims in detail and try to write at least two case laws or one case law and one illustration under each.
- *Conclusion:* Conclude by stating the purpose of the two maxims from practical application point of view.

Answer framework:

Introduction:

One of the essentials of a tort is legal damage, i.e. violation of legal right. Unless there is violation of legal right, an action under the law of torts cannot lie. When there is violation of a legal right, it is actionable even without the proof of any damage(injuria sine damnum).

But when there is no violation of a legal right, no action lies even though damage may have been caused to the plaintiff(damnum sine injuria).

Main Body:

Injuria sine damnum:

It means violation of a legal right without causing any damage. Since there is violation of a legal right, it can be actionable even without any corresponding damage being caused. In other words it becomes actionable per se, i.e., actionable without the proof of any damage.

This concept tries to further strengthen the fundamental principle and basis of torts that is *ubi jus ibi remedium*(where there is a right there must be a remedy).

- ***Ashby v. White*** – returning officer doesn't allow plaintiff to cast vote. Even though plaintiff's candidate wins the election(no damage), the RO was still held liable as it was because of him that the legal right(right to cast vote) of the plaintiff was violated.
- ***Bhim Singh v. State of J&K*** – The plaintiff, an MLA of J&K, was temporarily stopped from attending the assembly session. He was deprived of his constitutional right to attend the Assembly session. There was also violation of fundamental right to personal liberty guaranteed under Article 21. His claim for damages was allowed.

Damnum sine injuria:

It means causing of damage without the infringement of a legal right. Unless there is infringement of a legal right, mere causing of damage is not actionable. Thus cases of damnum sine injuria are not actionable per se.

The essence is that till the time defendant is doing an act, no matter how injurious to the plaintiff, within his legally exercisable right, he would not be held liable.

- ***Gloucester Grammar School*** – setting up of a rival school by the defendant(not a violation of legal right of plaintiff) was not actionable even though plaintiffs suffered loss(damage) because of competition.
- ***Mogul Steamship Co. v. McGregor Grow & Co.*** – when a number of steamships combined to oust the plaintiff from business(damage), the defendants were not held liable as there was no violation of any legal right(no legal injury).

Conclusion:

Thus on one hand, 'damnum sine injuria' deflates the purpose of any frivolous litigation and on the other hand 'injuria sine damnum' would stand by the plaintiff and safeguars his rights.

Q. The defendant establishes a flour mill in the heart of a city adjacent to the plaintiff's house, in a residential area. Running of the mill causes vibrations to the house and unpleasant noise. The plaintiff sues the defendant and claims damages and injunction. The defendant argues that he has a freedom to establish his own trade and business and that his flour mill is also beneficial to a large number of residents in the area. Decide. (20)

Answer Approach:

In such fact based questions, try to follow a structure:

- State brief facts in the beginning.
- Then analyse those facts against the applicability or non-applicability of the ingredients of the particular tort.
- While advancing arguments, try to place reliance on case laws if you are able to recall any with similar facts.
- Conclude with your decision.

Answer framework:

Introduction:

According to the facts of the given problem, running of a flour mill by the defendant caused vibrations to the plaintiff's house and also made unpleasant noises. The plaintiff has thus sued the defendant and has claimed damages and injunction. These facts need to be examined with respect to the ingredients of the tort of nuisance.

The torts of nuisance has three essential ingredients:-

1. Unreasonable interference
2. Interference with the use or enjoyment of land
3. Damage to the plaintiff.

The facts point out that the vibrations and unpleasant noise caused by the flour mill were an unreasonable interference to the enjoyment of land by the plaintiff as because of these, the plaintiff use to lose his peace. This would have gradually affected the plaintiff's health and in this manner, he suffered damage.

To further prove this point, reliance can be placed on the case of ***Radhey Shyam vs. Gur Prasad*** which had similar facts. Therein it was held that the noise and vibrations seriously interfered with the physical comfort of the plaintiff and thus it amounted to nuisance.

The argument that the defendant has a freedom to establish his own trade and business can be countered by highlighting the fact that this right is not an absolute right under Article 19(1)(g) but is instead qualified by some restrictions under Article 19(6) of the Constitution.

The second argument that the flour mill is beneficial to a large number of residents in the area also doesn't hold well because this is an ineffectual defence for the tort of nuisance. If such a defence were to be allowed then no public utility undertaking could ever be held liable for the unlawful interference with the rights of individuals.

To further prove this point, reliance can be placed on the case of ***Shelfer vs. City of London Electric Company***, in which the work carried on by the defendants during the construction of an electric powerhouse caused violent vibrations to the plaintiff's house. The plea of public good by the defendant was rejected and an injunction was passed against them.

Thus it can be inferred that since all the ingredients of tort of nuisance are fulfilled and all the arguments of the defendant are refuted, the defendant can be held liable for nuisance and directed to pay damages to the plaintiff.

Also since the injury of the plaintiff can't be adequately compensated by the damages alone, and since the working of the flour mill will continue to cause unreasonable interference it is necessary to pass an injunction against the defendant.

Q. Examine the issue of abolition of death penalty in the context of various theories of punishment. (15)

Answer Approach:

Introduction: Write about the object of punishment. Explain why sentencing justice is facet of social justice.

Main Body: Explain various theories of punishment together with position of death penalty in India.

Conclusion: Conclude with the actual position of death penalty in India without removal of the same from the statute.

Answer Framework:

Introduction:

The object of punishment is the prevention of crime, and every punishment is intended to have double effect, viz. to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the community from committing similar crimes. Sentencing justice is facet of social justice therefore, sentence should make the guilty conscious of the fact that offence committed was not only against his interest but also against the interest of the society.

Main Body:

Theories of Punishment:

Deterrent theory →according to this theory punishment is awarded to deter people from committing the crime. People fear to commit offence because it will render them to suffer. Fear of punishment puts a check not only on criminal from committing further crime, but also on all other likeminded persons.

Retributive Theory→ this theory is based on an eye for an eye and tooth for a tooth. It is based upon the primitive nature of vengeance against the wrong doer. The theory is supported by Kant and Salmond. However, this theory has lost relevance in modern times.

Preventive theory→this theory aims at preventing the crime by disabling the criminal. In order to prevent the repetition of the crime, the offenders are punished with death. E.g. death penalty for murder. This theory is criticised as infliction of harsh punishment is a relic of past and regressive time.

Reformative theory→ this theory aims at reforming the criminals. It says that crime is a mental disease, therefore instead of awarding the criminal with severe punishment state has to rehabilitate them.

The society has no sympathy for a murderer who by killing a person violates the principle of reverence of life on which stands the humanitarian edifice. Death penalty is awarded to prevent the killer for future security. However, the theories of punishment do not offer any reason for continuation of death penalty.

Deterrent theory has failed miserably in light of high number of murder and other grievous crimes punishable with death penalty, still being committed.

Preventive theory does not hold ground either as even the punishment of life imprisonment would prevent the convicted person from committing the crime again.

Even applying retributive theory for awarding death penalty does not hold ground as it is based upon the primitive nature of vengeance against the wrong doer and has lost relevance in modern times.

Therefore, reformative theory is the soundest theory and by applying this, one can only argue in favour of abolition of death penalty as it serves no purpose per se.

Lok Sabha in 1962 passed a resolution and the issue of death penalty was referred to Law Commission of India (LCI). LCI recommended against the abolition of death penalty. Then, SC had upheld the constitutionality of death penalty in ***Jagmohan Singh vs State***. However, with addition of Section 354 (3), it was mandated that judges have to state special reasons in the judgment for inflicting death penalty.

In ***Bachhan Singh vs. State of Punjab,*** SC held that death penalty should not be awarded except in rare of the rarest cases. Killing entire family of his own brother while they were

fast asleep or killing the very PM on whose security detail one is posted has been held to be rarest of the rare cases fit for the awarding of death penalty.

Conclusion:

Therefore, it can be said that without actually abolishing death penalty, judiciary has in practice reduced the awarding of death penalty to minimum possible cases. Law Commission in its 262nd report has recommended that the death penalty be abolished for all crimes other than terrorism related offences and waging war. Thus, this is a more nuanced and balanced approach to the issue of abolition of death penalty and we might get to see complete abolition of death penalty in India sooner than later.

Q. Examine how the maxim "*ex turpi causa non oritur actio*" has been incorporated in Indian contract act. (15)

Answer Approach:

- *Introduction:* Start with explaining the maxim. Mention the Section 23 which incorporates the maxim under the Indian Law.
- *Main Body:* Write about what the phrase public policy covers and give some examples. Discuss in detail the landmark case laws.
- *Conclusion:* Conclude by writing that the public policy needs to be expounded not expanded.

Answer framework:

Introduction:

The Latin maxim "ex turpi cause non oritur actio" means "from a dishonorable cause an action does not arise". This maxim has been incorporated in ICA under Sec. 23 which declares that any object or consideration of an agreement is unlawful if it opposed to the public policy. The basic reason for the doctrine of public policy is that the law will not enforce an agreement which seeks to defeat the public policy of the state.

Main Body:

The doctrine of public policy has nowhere been defined in the ICA but it has been identified depending on the facts of the particular case in many case laws. Public policy covers a very wide ground. It includes political, social or economic grounds for objection, outside the common scope of morality. Public policy is, in its nature, so uncertain and fluctuating, that it is difficult to determine its limits with any degree of exactness. Any agreement which tends to injurious to the public or is against public good is void as being contrary to public policy.

Justice Burrough in the case of ***Richardsan vs. Mallich*** said that public policy is an unruly horse and once you are astride it, you may never know where it will take you. The above statement was quoted in affirmation by Justice Subbarao in India in ***Gherulal Parakh vs. Mahadeo Das.***

Doctrine of public policy cannot be considered as always being same, and many things would be, and have been, held contrary to public policy which are not so held now or were in the past, respectively. The rule, no doubt, remains the same, but its application varies with the principles which for the time being guide the public opinion.

Although public policy cannot be defined with any degree of precision, the Courts have now laid down that the following types of contracts would be against public policy.

i. Contracts amounting to trading with an enemy.
ii. Contracts for stifling prosecution.
iii. Contracts in the nature of champerty and maintenance.
iv. Marriage brokerage contracts.
v. Contracts interfering with the course of justice.
vi. Contracts tending to create interest against duty.
vii. Contracts as regards to sale of public offices.
viii. Contracts tending to create monopolies
ix. Waiver of illegality.
x. Contracts between pleaders and clients.

Conclusion:

Cheshire and Fifoot have raised a word of caution in their book that "the judges must expound and not expand this particular branch of law". Thus, taking a cue from this, it can be said that this doctrine should be applied only when it is clear that incontestable harm has been done to the public, and that though it is possible to evolve new heads of public policy to meet exceptional situations in the fast changing world, it would be inadvisable to enlarge it.