

SAMPLE EXAMINATION PAPER – LEGAL STUDIES

Question 1 – Explain the meaning and the nature of law (10 marks)

Marking scheme:

Coherence of answer - 2 marks

Correct terminology – 2 marks

Any six key technical issues mentioned from the following:

- 1 a prescription whereby the State requires conformity with a particular conduct and provides for the imposition of a solution to a conflict
 - 2 the law is used to regulate the behaviour of persons in any society and generally backs up this regulation with official State sanctions, mainly through the police force and the courts
 - 3 law is a set of rules with each having different goals such as the protection of persons or property, safety, public health, environment, morality, and public order
 - 4 law has a pre-eminently protective function in that it recognises rights and imposes obligations
 - 5 the law is meant to serve the people and is binding upon the people
 - 6 the strength of the law lies in its being accepted and obeyed by the majority of the people in a State
 - 7 the State makes the law but there are restrictions upon law making. For instance, the law cannot bind a person to do the impossible or to do something against natural justice or against fundamental human rights
 - 8 a law is only valid if it is enacted with the legal power to legislate
 - 9 various legal philosophers have contributed to explaining the nature of law
 - 10 there are two legal philosophical schools of thought surrounding the nature of law debate: the Natural Law school of thought and the Positivist school of thought
- 1 mark each (max 6 marks).

Total = 10 marks

Question 2 – What do you understand by a legal system? (10 marks)

Marking scheme:

Coherence of answer - 2 marks

Correct terminology – 2 marks

Any six key technical issues mentioned from the following:

- 1 every state has its own legal system which determines the way in which the law is applied and which shapes the very development and function of law in that society
 - 2 legal systems are usually inspired by what is referred to as a ‘legal tradition’
 - 3 a legal family is a general categorisation of similar legal systems
 - 4 criteria for identifying the similarities and differences of various legal systems exist and include: the system’s historical background and development, the sources of that system, the modes of thought in legal matters, and the legal institution and ideology
 - 5 there are four main legal families: Civil Law, Common Law, Socialist Law and Muslim, Hindu and Jewish Law
 - 6 the Civil Law legal system derives from Roman Law as developed through French Law and the Law of the Knights of St John
 - 7 the Common Law legal tradition is inspired from England
 - 8 there are a number of differences between the Civil Law and the Common Law legal systems
 - 9 the Maltese legal system is a mixed legal system – composed of both civil law and common law legal systems
 - 10 the civil law legal system is based on a system of codification
- 1 mark each (max 6 marks).

Total = 10 marks

Question 3 – What is the legislative procedure followed for a Bill to become Law? (10 marks)

Marking scheme:

Coherence of answer - 1 mark

Correct terminology – 1 mark

All technical issues mentioned from the following:

- 1 once approved it is presented to Parliament, where a First Reading is held
 - 2 the First Reading is followed by a second reading
 - 3 the second reading is followed by Committee stage
 - 4 Committee stage is followed by the Report stage
 - 5 the Report Stage is followed by the Third Reading
 - 6 the Third Reading is followed by the President's assent
 - 7 the President's assent is followed by publication in 'The Malta Government Gazette'
 - 8 the Minister is empowered to bring the law into force (unless it is brought into force on the date of publication in 'The Malta Government Gazette')
- 1 mark each (8 marks).

Total = 10 marks

Question 4 – What do you consider to be the salient provisions of the Interpretation Act? (10 marks)

Marking scheme:

Coherence of answer - 2 marks

Correct terminology – 2 marks

Any six key technical issues mentioned from the following:

- 1 it is clear and capable of being perfectly understood so that everybody can regulate their conduct accordingly
 - 2 interpretation can be of three kinds: doctrinal, authentic and judicial
 - 3 establishes the date of entry into force of a law, whether primary or subsidiary
 - 4 concerns the exercise of powers and duties bestowed upon the public administration
 - 5 empowers the Government of the day, through a Minister, in writing, to change certain decisions taken by the public administration
 - 6 there are, however, certain decisions which a Minister, even in writing, cannot change
 - 7 words used in primary laws have to be interpreted in the same way in subsidiary laws
 - 8 subsidiary legislation has to be laid on the Table of the House of Representatives and is subject to an annulment procedure
 - 9 it allows for the possibility to enact laws in one of the two official languages
 - 10 it allows the publications of official acts and documents in electronic format
- 1 mark each (max 6 marks).

Total = 10 marks

Question 5 – What are the functions of the Commission for the Administration of Justice? (20 marks)

Marking scheme:

Coherence of answer - 5 marks

Correct terminology – 5 marks

Any six key technical issues mentioned from the following:

- 1 the functions of the Commission for the Administration of Justice are laid down in the Constitution
 - 2 It supervises the workings of all the Superior and Inferior Courts
 - 3 it advises the Minister responsible for justice on any matter regarding the organisation of the administration of justice
 - 4 it advises the Prime Minister as to the appointments of Chief Justice, Judges and Magistrates
 - 5 draws up codes of ethics regulating the conduct of members of the judiciary
 - 6 draws the attention of any member of the judiciary on any matter which may be not conducive to an efficient and proper functioning of such court or which affects the trust conferred by their appointment or to any failure to abide by the code of ethics for the judiciary
 - 7 exercise discipline over advocates and legal procurators practising their profession
 - 8 draws up an annual report
 - 9 through its Committee on Advocates and Legal Procurators investigates the conduct of advocates and legal procurators
 - 10 investigates the removal of a member of the judiciary
- 1 mark each (max 10 marks).

Total = 20 marks

Question 6 – The Advocate and the Notary Public form part of the legal profession. What are their respective functions within the legal system? (20 marks)

Marking scheme:

Coherence of answer - 4 marks

Correct terminology – 4 marks

Any six key technical issues mentioned from the following:

- 1 both the advocate and the notary public, together with the legal procurator, form the legal profession
 - 2 the advocate, also called a lawyer, is an officer of the court who appears before a court. His or her primary loyalty is to the court
 - 3 although an officer of the court, the advocate is not a court employee
 - 4 the advocate gives advice and participates in court litigation on behalf of his/her client
 - 5 advocates also participate in alternative means of dispute resolution, again on behalf of their clients
 - 6 the notary public is a public officer
 - 7 notaries receive acts entered into between living persons and wills and are responsible for their custody. They also give true copies of these acts and wills
 - 8 the notary public cannot act as an advocate and as a notary at one and the same time
 - 9 the notary is responsible for the formal and substantive validity of deeds
 - 10 the notary is a professional in his or her own right and is bound by professional secrecy
- 2 marks each (max 12 marks).

Total = 20 marks

Question 7 – Discuss the jurisdiction of the Superior Courts of Civil Jurisdiction (20 marks)

Marking scheme:

Coherence of answer - 4 marks

Correct terminology – 4 marks

Any six key technical issues mentioned from the following:

1 the Civil Court, First Hall, has jurisdiction over causes involving questions of ownership of immovable property, or relating to easements, burdens or other rights annexed to such property, including any claim for the ejectment or eviction from immovable property, whether urban or rural, tenanted or occupied by persons residing or having their ordinary abode within the limits of the jurisdiction of such courts

2 the Civil Court, First Hall, also has jurisdiction in all constitutional matters and in matters relating to human rights

3 the Civil Court (Voluntary Jurisdiction Section) appoints and removes tutors, curators and other administrators, takes cognizance of applications made to it for the substitution of any executor, administrator, procurator or counsellor when appointed under a will or other instrument, where such person refused to accept office, had died, or was otherwise unable to perform the duties of his office, it also deals with matters such as interdiction and incapacitation

4 the Civil Court (Family Section) deals with matters related to the family such as separation, child abduction, parental authority, legitimation, adoption and divorce

5 the Civil Court, First Hall, has a commercial jurisdiction related to matters of a commercial nature such as shipping, banking, insurance, company law, etc

6 the Constitutional Court has original and final jurisdiction with regard to membership of the House of Representatives and suspension of the electoral process. The said court has an appellate jurisdiction in case of human rights and fundamental freedoms cases, interpretation of the Constitution, and the validity of laws

7 the Court of Appeal hears appeals from judgments of the Civil Court, First Hall and the Civil Court (Family Section) and of the Court of Magistrates

8 the Court of Appeal also hears appeals from decisions of various specialised tribunals such as the Small Claims Tribunal, the Rent Regulation Board, the Rural Leases Control Board, etc

9 the Court of Magistrates (Malta) hears claims against persons residing or having their ordinary abode in Malta where the claim is less than € 11,646.87c

10 the Court of Magistrates (Gozo) hears claims against persons residing or having their ordinary abode in Gozo or Comino where the claim is less than € 11,646.87c and has also a superior jurisdiction equivalent to the Civil Court but does not have the jurisdiction of the Civil Court, First Hall, sitting in its constitutional competence (it cannot hear matters of a constitutional nature and of a human rights nature)

- 2 marks each (max 12 marks).

Total = 20 marks

Question 8 – Malta has a system of tribunals. Discuss this statement and give examples of these tribunals by referring to their composition and jurisdiction. (20 marks)

Marking scheme:

Coherence of answer - 4 marks

Correct terminology – 4 marks

Any six key technical issues mentioned from the following:

1 a tribunal is a body, established by law, which is (i) independent of the public administration and decides cases independently and impartially as between the parties; (ii) it reaches a binding decision; (iii) its decisions are usually reached by a panel as opposed to one sole person; (iv) it adopts a procedure akin to a court of law, although usually, its procedures are flexible and simpler; (v) it has a permanent existence and deals with a particular class of cases

2 the Industrial Tribunal is one such tribunal. It is composed of a chairman and two other members. It has jurisdiction over trade disputes which have not been amicably settled except those involving public officers and in all cases of alleged unfair dismissals

3 the Rent Regulation Board is another tribunal. It has exclusive competence to decide on all matters relating to contracts of lease of urban property and of a residence and of commercial tenements. It consists of a chairman who is appointed from among the members of the judiciary by the President of Malta

4 the Agricultural Leases Control Board is composed of a chairman appointed by the Prime Minister from one or more sitting Magistrates and/or from advocates with at least seven years professional practice in Malta. The chairman is assisted by members of two panels, also appointed by the Prime Minister. One panel consists of warranted architects and civil engineers and another panel is composed of persons who are competent and knowledgeable in agricultural matters who may be appointed even from the public service. It takes cognizance of applications filed before it by a lessor who desires to alter a lessee's conditions.

5 the Competition and Consumer Appeals Tribunal has jurisdiction to hear and determine claims made by consumers where the value of the claim, exclusive of interests and costs, does not exceed €3,500 and where the claim relates to, arises out of or concerns, whether directly or indirectly, either the purchase or hire of goods by a consumer from a trader or the provision of services by a trader to a consumer. The tribunal is presided by a sole arbiter appointed by the Prime Minister from Maltese citizens over 30 years and who is an advocate who has practised the profession of advocate for at least five years

6 the Small Claims Tribunal has jurisdiction over claims not exceeding €3,494.06. The adjudicator, who sits alone, presides this tribunal. S/he is appointed by the President of Malta from amongst advocates who have practised the profession for a period of not less than seven years

7 the Administrative Review Tribunal takes cognizance of various functions of quasi-judicial tribunals who are no longer constituted. It enforces the principles of good administration. It is presided by a member of the judiciary or a retired member of the judiciary

8 Arbitrators are appointed by the parties to a dispute. Domestic arbitral awards are normally composed of one arbitrator (though, if the parties agree, it could be composed of three arbitrators) whilst in the case of international arbitrations it is composed of three arbitrators.

Arbitrators need not necessarily be advocates. Practically and dispute can be subjected to arbitration except for a handful of cases listed in the law

9 the Environment and Planning Review Tribunal is composed of three members: a person versed in environment or development planning who presides, an advocate and an architect. It hears appeals from decision taken by the Malta Environment and Planning Authority and the Environment and Planning Commission

- 2 marks each (max 12 marks).

Total = 20 marks