

**ROYAL CIVIL SERVICE COMMISSION
BHUTAN CIVIL SERVICE EXAMINATION (BCSE) 2018
EXAMINATION CATEGORY: TECHNICAL**

PAPER II: GENERAL SUBJECT KNOWLEDGE PAPER FOR LAW

Date	: 6 October 2018
Total Marks	: 100
Writing Time	: 90 minutes (1.5 hours)
Reading Time	: 15 Minutes (prior to writing time)

GENERAL INSTRUCTIONS:

1. Write your Registration Number clearly and correctly on the Answer Booklet.
2. The first 15 minutes is being provided to check the number of pages of Question Paper, printing errors, clarify doubts and to read the instructions. You are NOT permitted to write during this time.
3. This paper consists of **TWO Parts: Part I & Part II**
Part I consists of 70 multiple choice questions of 1 (one) mark each, and
Part II consists of 10 short answer questions of 3 (three) marks each.
4. All questions are COMPULSORY.
5. All answers should be written on the Answer Booklet provided to you. Candidates are not allowed to write anything on the question paper. If required, ask for additional Answer Booklet.
6. All answers should be written with correct numbering of Part and Question Number in the Answer Booklet provided to you. Note that any answer written without indicating the correct Part and Question Number will NOT be evaluated and no marks will be awarded.
7. Begin each Section and Part in a fresh page of the Answer Booklet.
8. You are not permitted to tear off any sheet(s) of the Answer Booklet as well as the Question Paper.
9. Use of any other paper including paper for rough work is not permitted.
10. **You are required to hand over the Answer Booklet to the Invigilator before leaving the examination hall.**
11. This paper has **13 printed pages**, including this instruction page.

GOOD LUCK

Part I

Multiple Choice Questions (70 marks)

Choose the correct answer and write down the letter of your chosen answer in the Answer Booklet against the question number e.g. 71 (a). Each question carries ONE mark. Any double writing, smudgy answers or writing more than one choice shall not be evaluated.

1. Bentham divided the study of law into two parts; Expositorial approach and Censorial approach. His censorial approach is the examination of law
 - a) as it ought to be.
 - b) as it is.
 - c) as the command of sovereign.
 - d) as historical development.

2. According to Austin, law is the command of sovereign with three distinctive elements. These three elements are:
 - a) Rigid, complex and formal.
 - b) Command, right and obligation.
 - c) Divine, natural and operative.
 - d) Command, duty and sanction.

3. Who defined 'jurisprudence as the formal science of positive law'?
 - a) Holland
 - b) Bentham
 - c) Blackstone
 - d) Salmond

4. The school of jurisprudence whose exponents give greater importance on the functional aspect of the law rather than its abstract contents is:
 - a) Sociological school of jurisprudence
 - b) Analytical school of jurisprudence
 - c) Philosophical school of jurisprudence
 - d) Historical school of jurisprudence

5. According to Hobbes, peace is the first law of nature because of which of the following situations?
 - a) The social contract cannot be entered into unless there is peace.
 - b) Peace is possible only after war.
 - c) Law cannot achieve peace.
 - d) Without peace everyone has a right to everything- including another's life.

6. Which statement is closest to characterizing the principal difference between the positions adopted by Hobbes and Locke?
 - a) They differ in respect of their account of life before the social contract.
 - b) They disagree the role of law in society.

- c) They adopt different attitudes towards the role of the courts in maintaining orders.
d) They have opposing views about the nature of contractual obligations.
7. Which proposition below may be characterized as the most powerful refutation by Hart of Lord Devlin's argument?
- a) Homosexual acts cause public outrage.
b) Society has no right to preserve its moral and social cohesion through the criminal law.
c) The law is anachronistic.
d) The courts are the best place to resolve moral question such as those concerning homosexuality and prostitution.
8. Which statement best describes the relationship between law and morality among non-positivist legal theorists?
- a) Morality is generally in advance of the law.
b) The law is inextricably bound up with morals.
c) There is no relationship between law and morality.
d) Law is always in advance of moral ideas.
9. Who propounded Social Contract Theory of political legitimacy?
- a) Thomas Hobbes
b) John Locke
c) Jean Jacques Rousseau
d) All of the above
10. Which is the least accurate description of legal positivism?
- a) It perceives law as commands.
b) It regards a legal order as a closed logical system.
c) It espouses the view that there is no necessary connection between morality and law.
d) It regards morals and law as inseparable.
11. Which proposition below can be characterized as the most powerful refutation of Bentham's argument in support of codification?
- a) The law is too complex to be codified.
b) Codification ossifies the law.
c) Bentham fails to take account of the criminal law.
d) Significant portions of the law are already codified.
12. Why is Bentham's account of sovereignty generally considered more sophisticated and more acceptable than Austin's?
- a) Because Bentham recognizes the possibility of limiting the sovereign's power.
b) Because Bentham's Utilitarianism redeems his account of sovereignty.
c) Because Austin overlooks the significance of morality.
d) Because Austin incorporates power-conferring rules into his concept of the sovereign's commands.

13. Why does a Marxist account of law reject individual rights?
- a) Because they are inconsistent with State control.
 - b) Because they are an expression of a capitalist economy and are unnecessary in a socialist society.
 - c) Because the concept of right is philosophically unsound.
 - d) Because Marx, Engels and Lenin failed to provide a coherent analysis of rights.
14. What is the central feature of John Rawls' social contract account of justice set forth in his Theory of Justice?
- a) Original Position
 - b) Legal position
 - c) Social position
 - d) Artificial position
15. Which statement below is least consistent with the argument that judges in an unjust legal system ought to resign?
- a) Judges are under a duty to act justly.
 - b) Since they also prop up the unjust system, lawyers should also resign.
 - c) If a moral judge resigns, he or she may be replaced by a less moral judge.
 - d) Judges do not make law, hence they cannot be held responsible for applying unjust legislation.
16. Which of the following is not a theory of punishment?
- a) Preventive theory
 - b) Distributive theory
 - c) Reformative theory
 - d) Retributive theory
17. All of the following are forms of punishment, **EXCEPT**:
- a) Capital punishment
 - b) Confinement
 - c) Retention
 - d) Deportation
18. Which statement below best represents Durkheim's view of the function of punishment?
- a) Vengeance
 - b) Rehabilitation
 - c) Desert
 - d) Deterrence
19. Which proposition below is the most inconsistent with a consequential justification of punishment?
- a) Punishment protects security.
 - b) Punishment is a cost-effective method by which to prevent or reduce crime.

- c) Punishment protects safety.
d) Punishment should fit the crime.
20. To claim that one has a *prima facie* duty to obey the law is to assert that:
- a) One is under a duty to obey the law without exception, regardless of its content.
b) There is no duty to obey the law to which one has not agreed.
c) The duty applies only to those who are directly affected by the law in question.
d) The obligation arises independently of the precise legal provision involved unless there are grounds to justify a specific exception.
21. Statutes are the _____.
- a) Formal sources of law
b) Material sources of law
c) Primary sources of law
d) Secondary sources of law
22. Which of the following is least accurate about the secondary sources of law?
- a) It is not the law.
b) It analyzes the law.
c) It explains the law.
d) It is the law.
23. Which of the following is/are the source/s of International law?
- a) Treaties
b) General principles of law
c) International customs
d) All of the above
24. Article 21.3 of the Constitution of Bhutan states that “the Supreme Court shall be a court of record.” Which statement below describes the term “court of record” most accurately?
- a) A court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court.
b) A court of record is a court the records of which are admitted to be of evidentiary value before any court but they can be questioned on ground of limitation period.
c) A court of record is a court whose hearing must be recorded in camera.
d) A court of record is a court that maintains the case records of the entire courts in the country.
25. The term “Bill of Rights” is associated with:
- a) The Constitution of India
b) The Constitution of Australia
c) The Constitution of the United States of America
d) The unwritten Constitution of the United Kingdom

26. Which of the following factors contributed significantly to the revival of natural law in the 20th century?
- The international recognition of human rights after WW-II.
 - The rise of fascism.
 - The depression of 1930s.
 - The Bolshevik revolution.
27. The International Law principle which requires all the signatories to uphold the treaty is:
- Pacta de non petendo*
 - Pacta Sunt Servenda*
 - De Lege Ferenda*
 - Jus Cogens*
28. The meaning of '*Lex iniusta non est lex*' is:
- The law is not valid unless it is formally enacted.
 - An unjust law is not law.
 - Law has legal priority over morality.
 - No one is above the law.
29. The term "*Rule of Law*" means:
- Supremacy of Parliament
 - Supremacy of Judiciary
 - Supremacy of law
 - Interpretation of law
30. Doctrine of *locus standi* means:
- Writ can be filed by any person.
 - Right of a person to file the writ petition.
 - Power of courts to adjudicate the writ petition.
 - Jurisdiction of the court.
31. Assertion (A): Custom is a rule of conduct, obligatory on part of those who are within its sphere, established by long usage and practice.
Reason (R): Rule of conduct is obligatory in any established sphere.
- Both (A) and (R) are true and (R) is the correct explanation of (A)
 - Both (A) and (R) are true but (R) is not the correct explanation of (A)
 - (A) is true but (R) is false
 - (A) is false but (R) is true
32. *Jus Cogens* means:
- Peremptory norm of international law.
 - Norm of international law.
 - Peremptory norm which does not permit derogation.
 - Norm of customary law.

33. Which of the following is not an example of vicarious liability?
- Liability of the principal for the tort of his agent.
 - Liability of partners for each others' tort.
 - Liability of the master for the tort of his servant.
 - Liability of the parents for the tort of their children.
34. Which one of the following defense to strict liability is based on the maxim, *volenti non fit injuria*?
- Consent of the plaintiff.
 - Act of God.
 - Act of third party.
 - Statutory authority.
35. When a court declares certain provisions of the Acts as invalid, it does not affect the validity of the rest of the provisions of the Act and continues to be in force. This principle is known as:
- Doctrine of prospective over ruling
 - Doctrine of severability
 - Doctrine of *estoppel*
 - Doctrine of *eclipse*
36. Which of the following is a principle of natural justice?
- No person shall be condemned unheard.
 - Judges should not accept bribes.
 - Lawyers owe duty to the court.
 - An accused must be presumed innocent until proved guilty.
37. Administrative Tribunals exercise:
- Purely administrative functions
 - Purely Judicial functions
 - Quasi administrative functions
 - Quasi judicial functions
38. A married man will be guilty of an adultery if he engages in sexual intercourse with:
- A divorced woman
 - An unmarried woman
 - A married woman
 - Any one of the above
39. The essentials of a valid contract is:
- Meeting of minds.
 - Meeting of parties.
 - Meeting to discuss considerations.
 - Meeting to discuss proposal and acceptance.

40. Doctrine of Separation of Powers was systematically formulated by:
- Plato
 - Aristotle
 - Dicey
 - Montesquieu
41. As per the Principles of Separation of Powers, status of ministers must be:
- Independent from the Executive and remain part of the Judiciary.
 - Independent from the Parliament and the Judiciary.
 - Independent from the Judiciary and remain part of the Parliament.
 - Subservient to the Judiciary and the Parliament.
42. The tendency of courts to rely on precedent when deciding cases of similar facts is:
- Ratio decidendi*
 - Stare decisis*
 - Concurring opinion
 - Advisory opinion
43. Which of the following is the form of delegated legislation?
- Acts
 - Rules and Regulations
 - Bills
 - Treaties
44. Courts often use internal and external aids to construction of statutes to resolve ambiguity, avoid absurdity, or to confirm ordinary meaning. Which of the following is not an internal aid to construction of statutes?
- Schedules
 - Headings
 - Parliamentary history
 - Long Title
45. The interpretation rule which states that where there is a list of two or more specific words, followed by more general words, the otherwise wide meaning of the general words is restricted to the same class (if any) as the specific words is:
- Noscitur a sociis*
 - Ejusdem generis*
 - Reddendo singula singulis*
 - Generalia specialibus non derogant*
46. Which of the following statements is least accurate about the principles of *res judicata*?
- The former suit must have been between the same parties.
 - The parties must have been litigating under the same title in the former suit.

- c) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either actually or constructively in the former suit.
- d) The matter directly and substantially in issue in the subsequent suit must have been decided in favour of the plaintiff by the court in the former suit.
47. Which of the following is a Civil Law State?
- a) Bangladesh
 - b) South Africa
 - c) Austria
 - d) Canada
48. The Constitution of Bhutan consists of:
- a) 34 Articles and Four Schedules
 - b) 35 Articles and Five Schedules
 - c) 34 Articles and Five Schedules
 - d) 35 Articles and Four Schedules
49. As per the Constitution of Bhutan, the form of Government shall be that of a:
- a) Democratic Constitutional Monarchy
 - b) Constitutional Democratic Monarchy
 - c) Constitutional Monarchy
 - d) Parliamentary Monarchy
50. As per the Constitution of Bhutan, which of the following is true?
- a) Buddhism is the State religion of Bhutan.
 - b) Dzongkha is the National Language of Bhutan.
 - c) The Druk Gyalpo is the guardian of the Constitution.
 - d) All of the above.
51. In order to regulate private money lending business in Bhutan, the Royal Monetary Authority came up with the Private Money Lending Rules and Regulations of Bhutan, 2016. According to this Rule, what is the maximum amount an authorized private money lender can lend to a single borrower?
- a) Nu. 90,000/-
 - b) Nu. 100,000/-
 - c) Nu. 500,000/-
 - d) Nu. 700,000/-
52. During the recently concluded Primary Round of Election to the Third National Assembly, 2018 the Bhutan Kuen-Nyam Party (BKP), one of the four registered Political Parties managed to secure only 9.78% of the total valid votes cast, thereby failing to secure the minimum 10% votes in order for it to
- a) be eligible to contest the 2023 Elections.
 - b) remain as a registered Political Party.

- c) be eligible to receive State Funding for the 2023 Elections.
d) have the same person as the Party President.
53. The Parliament of Bhutan comprises of:
- The National Assembly and the National Council.
 - The Druk Gyalpo, the National Assembly and the National Council.
 - The National Assembly, the National Council and the Local Government.
 - The National Assembly, the National Council and the Privy Council.
54. Under the Bhutanese law, a political party can be dissolved only by declaration of:
- The Druk Gyalpo
 - The Supreme Court
 - The Election Commission
 - The Parliament
55. Choosing a country in which to bring a legal case before courts because of most favourable laws of that country is termed as:
- Forum hopping
 - Forum propogantum
 - Forum shopping
 - Forum rei
56. Which statement best describes the term *universal suffrage*?
- The right of all adults to vote freely at elections.
 - The right of all adults to contest for elections.
 - The right of an accused person not to be subjected to any kind of suffering.
 - The right of an accused person to remain silent when questioned by the police.
57. If a court considered a precedent and decided its facts were different, therefore it was not applicable, the precedent is said to be:
- Distinguished
 - Overruled
 - Deferred
 - Dumped
58. A contract provision that allows a party to suspend or terminate the performance of its obligation on occurrence of certain event or events beyond his/her control is:
- Frustration clause
 - Termination clause
 - Force majeure clause
 - Sunset clause
59. Dual Sovereignty Doctrine is an exception to which of the following principles?
- Res Judicata*
 - Double jeopardy

- c) Due process
d) *Audi alteram partem*
60. The landmark decision of the House of Lords in the case *Donoghue v. Stevenson (1932)* also known as the 'snail in the bottle' case laid the foundation of the modern law of negligence, establishing general principles of the:
- a) Duty of care
b) Right of service
c) Duty of shopkeeper
d) Right of customer
61. Which of the following is not a rule of statutory interpretation?
- a) General Rule
b) Golden Rule
c) Literal Rule
d) Mischief Rule
62. Which of the following statements best describes the doctrine of *privity* of contract?
- a) Contract must be concluded only between two parties.
b) Neither party can sue the other under the contract of good will.
c) The contract cannot confer rights or impose obligations upon any person who is not a party to the contract.
d) The parties to the contract must fulfill the contractual obligations.
63. A branch of law, among other, that concerns with restrictive trade practice is:
- a) Corporate law
b) Contract law
c) Comparative law
d) Competition law
64. A decision is said to be *Per Incuriam* when it is given:
- a) Based on the precedent.
b) In ignorance of law or a binding authority.
c) Without hearing the other party.
d) Without jurisdiction.
65. Remarks made by the judge which does not necessarily form a part of the court's decision is:
- a) *Ratio decidendi*
b) Reserved opinion
c) Dissenting judgment
d) *Obiter dicta*
66. Which of the following is incorrectly matched?
- a) Arbitration = Award
b) Intellectual Property Law = Geographical Indication

- c) Common law = Inquisitorial system
 - d) Tort = Damages
67. Which of the following statements is least correct about the International Humanitarian Law (IHL)?
- a) IHL is a branch of International Human Rights Law.
 - b) IHL is the Laws of War.
 - c) IHL is the Laws of Armed Conflict.
 - d) IHL also protects *hors de combat*.
68. Which of the following may be tendered as affirmative defense to liability before the Court?
- a) Entrapment
 - b) Alibi
 - c) Duress
 - d) All of the above
69. In most of the jurisdiction, it is the constitutional right of an accused to be warned before being questioned by the authority about his/her rights and the ensuing obligations. This is termed as:
- a) Judicial warning
 - b) Melina warning
 - c) Miranda warning
 - d) Custodial warning
70. The Latin term *Amicus Curiae* means:
- a) A friend of the Court
 - b) A friend of the prosecutor
 - c) A friend of the accused
 - d) A friend of the witness

PART II – Short Answer Questions (30 marks)

Answer ALL 10 short answer questions. Each question carries 3 marks.

1. Write down at least three major differences between Civil Law and Common Law System. (3 marks)
2. List down at least six requisites of a Customary Law. (6x.5=3 marks)
3. Distinguish between Civil Law and Criminal Law. Give one example each. (2+2x.5=3 marks)
4. Give three conditions under which the past judgment is not binding as precedent? (3 marks)
5. What are the three essential elements that a plaintiff must prove in order to bring a successful claim in negligence? (3 marks)
6. Define declaratory theory of precedent. (3 marks)
7. List down at least six external aids to construction of Statutes. (6X.5=3 marks)
8. As per the Constitution of Bhutan, right to vote is a Fundamental Right. However, religious personalities such as Monks, *Gomchens and Anims* are not allowed to vote in any of the elections. Give your reasoning for such arrangement in our System. (3 marks)
9. Write at least three duties of a lawyer to the Court and briefly explain each of them. (3 marks)
10. In your opinion, discuss some of the unique features of the Constitution of Bhutan. (3 marks)

TASHI DELEK