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21 (10) PINL 10-3 (OP)

2023

PRIVATE INTERNATIONAL LAW

Paper : 10-3

Full Marks : 80

Time : Three hours

The figures in the margin indicate full marks for the questions.

1. Fill in the blanks with appropriate answers given in the brackets: $1 \times 10 = 10$

(i) The Hague Conference on Private International Law was first convened in the year _____. (1983/1893)

(ii) Conflict of laws is that part of _____ law which only comes into play when a dispute has a connection of some kind with one or more foreign legal systems. (municipal/international)

Contd.

(iii) The general rule on recognition and enforcement of foreign awards is that the English Court will enforce a foreign judgement if _____.

(that court was a competent court/that court is competent or incompetent does not matter)

(iv) Private international law, unlike public international law, is very much a part of the _____ law of a country.

(international/domestic)

(v) In the case of _____ the court observed that in no uncertain terms that an English Court will refuse to apply a law which outrages its sense of justice and decency.

(Collier vs. Rivaz 1841/Re Fuld's Estate 1968)

(vi) An English Court has jurisdiction if the _____ voluntarily submits to the jurisdiction of that court.

(plaintiff/defendant)

(vii) At common law, the claimant has _____ recourse to enforce the foreign award. (several/only one)

(viii) The *lex loci delicti commissi* generally applies to _____ state torts. (single/multiple)

(ix) At common law, _____ means that the parties to a contract are entitled to make a selection of the system of law to govern their contract.

(legal autonomy/party autonomy)

(x) The rule of _____ actionability, according to which a tort committed abroad was actionable in England. (single/double)

2. Write short notes on the following :

2×5=10

(i) Nature and scope of private international law

(ii) Proof of foreign law

(iii) Sovereign and diplomatic rights

- (iv) Theories and methodologies applied in private international law
- (v) The progressive unification of the rules of private international law

3. Critically examine the development of the concept of 'habitual residence' as a connecting factor in private international law. 12

Or

Compare and contrast the domicile of origin with the domicile of choice.

4. Any inability of the court to enforce the decree in rem is no reason for refusing the plaintiff such right and means of enforcement as equity can afford him. [Richard West and Partners (Inverness) Ltd. vs. Dick (1969)]. Critically examine the operation of equity on private international law in this context. 12

Or

In modern law, it is quite unnecessary complication to have different conflict rules for intestate succession to movables and immovables [Dicey and Morris, Conflict of Laws, 12th Edn., 1993]. Examine the Hague convention on the law applicable to succession to the estates of deceased persons in India.

5. Those who can afford to travel abroad may have their foreign divorces recognised, whereas those who cannot afford to make the journey are left with limping marriages. Discuss the above observation in the context of divorce proceedings conducted under religious laws commenced in India and concluded abroad. 12

Or

How the English Private International Law has changed since Hyde vs. Hyde was decided 1866? Discuss the recognition of polygamous marriages and its limitations under private international law.

6. Distinguish the theory of double renvoi from the theory of simple or partial renvoi. Comment on the total renvoi doctrine as applied in Indian courts. 6+6=12

Or

Laws do not remain stagnant. Hence, although conflict rules may refer to a particular system of law, the problem still remains that changes may have occurred to the connecting factor or to the lex causal itself. Elaborate. 12

7. Discuss the rules of jurisdiction and the international competency of the foreign court. What are the defences to the recognition and enforcement of foreign judgments and international arbitral awards? 6+6=12

Or

Critically examine the circumstances in which an English Court would refuse to recognise and subsequently enforce a judgment of a foreign court under the Conventions on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, 1968.
