

Bar Entrance Exam Book [Written]

Mahamud Wazed

LL.B. (Hons), LL.M. (NUB)

Advocate

Supreme Court of Bangladesh

Part-IV

Penal Code, 1860

GROUP-C

Answer one questions out of two.

Marks 15 x 1= 15

Penal Code, 1860

Chapter-1

Intro & Punishment

Judicial Service Exam Past Questions

1. What are the different kinds of punishment to which offenders are liable under the Penal Code? What is the object of punishment? For offences under which sections death sentence may be awarded?] [3rd & 11th BJS]
2. Define Offence. What is meant by Intention and Motive? When motive is considered relevant? [3rd BJS]
3. a) State the amount of fine where no sum is expressed, in reference to the relevant provision of law.
b) What would be the effect of imposition of imprisonment in default of payment of fine, if the fine is fully paid, answer mentioning the relevant provision of law? [11th BJS]
4. What are the distinctions between attempt and preparation to commit a crime? In what cases preparation to commit an offence itself is an offence under the Penal code? Give your answer with illustrations. [7th BJS]
5. 'The presence of deterrent punishments and absence of reformatory punishments in the Penal code are apparent.' Do you support this view? Justify your reply with reference to relevant law.] [5th BJS]

Solution of Judicial Service Exam Past Questions

1. What are the different kinds of punishment to which offenders are liable under the Penal Code? What is the object of punishment? For offences under which sections death sentence may be awarded?] [3rd & 11th BJS]

Ans to the Question No-1

Punishments

- In criminal law, any pain, penalty, suffering, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him, or for his omission of a duty enjoined by law.

Different kinds of punishment

According to section 53 of the Penal Code, 1860 provided 5 types of punishment-

1. Death;
2. Imprisonment for life;
3. Imprisonment, which is of two descriptions, namely:-
 - ✓ Rigorous, that is, with hard labour;
 - ✓ Simple;
4. Forfeiture of property;
5. Fine.

What is the object of punishment?

Punishment has following recognized purposes:

- **Deterrent:** Punishment is primarily said to be deterrent when its object is to show the futility of crime and to teach the wrongdoer. According to this theory, the object of punishment is to show that crime is never profitable to the offender. The idea behind this punishment is to inflict exemplary sentence on the offender. It is just to create fear in the minds of the offender so that they think thrice before committing any wrongful act. It is a game of fear psychology only to deter the offender from committing crime. However, this theory of punishment fails to achieve its goal when it comes to hard-core criminals because they have no fear of punishment.
- **Preventive Theory:** If on one end the aim of deterrent theory is to create fear and to put an end to the crime, on the other end is the preventive theory which aims at preventing crime by disabling the criminal, for example, by inflicting death penalty on the criminal or by confining him in prison.
- **Reformative Theory:** According to this theory, a crime is usually committed as the result of conflict between the character and motive of the criminal. It prevents future crime by altering a defendant's behavior. Examples of rehabilitation include educational and vocational programs, treatment center placement, and counseling.
- **Retributive Theory:** Basically retribution means that the wrongdoer pays for his wrongdoing. According to this theory, an evil should be returned for evil and an eye for an eye and a tooth for a tooth which is deemed to be rule of natural justice.
- **Restitution:** Restitution prevents crime by punishing the defendant financially.

Sections regarding death sentence

There are following 10 sections provides death sentence for offences:

- **S.121:** Waging or attempting to wage war, or abetting waging of war, against Bangladesh.
- **S.132: Abetment of mutiny, if mutiny is committed in consequence thereof.**
- **S.194:** Giving or fabricating false evidence with intent to procure conviction of capital offence; if innocent person be thereby convicted and executed.
- **S.302:** Murder.
- **S.303:** Punishment for murder by life-convict
- **S.305:** Abetment of suicide of child or insane person
- **S.307:** Attempt to murder Attempts by life-convicts and caused hurt.
- **S.326A:** Voluntarily causing grievous hurt in respect of either eyes, head or face by means of corrosive substance, etc.
- **S.364A:** Kidnapping or abducting a person under the age of ten.
- **S. 396:** Dacoity with murder

2. Define Offence. What is meant by Intention and Motive? When motive is considered relevant? **[3rd BJS]**

Ans to the Question No-2

Offence:

- An act or behaviour prohibited by criminal law and therefore punishable by law. According to section 40 of the Penal Code, 1860 the word "offence" denotes a thing made punishable by the Penal Code.
- According to section 4(1) (o) of the Code of Criminal Procedure, 1898 "offence" means any act or omission made punishable by any law for the time being in force.

Intention:

- In criminal law, the intention is defined as the deliberate objective that leads a person to commit a crime, forbidden by the law, or that may result in an unlawful outcome. The use of specific means that resulted in the commission of a crime expresses the intention of the suspect.
- In finer terms, intention describes the will or plan of an individual. So, when an action is performed intentionally, it implies the willingness or aim of a person to do so and not an accident or mistake, where he/she is completely known about the consequences, of the act. That is why intention is the primary element to affix the culpability.

- No matter whether the act is committed with a good intent or a bad one. If a person does something purposefully and consciously, which is prohibited by the law, it will amount to criminal liability.

Motive:

- Motive can be described as the underlying objective behind the commission of an act, that drives a person's intent. In short, it is the inducement, i.e. the reason, which impels the accused to engage in criminal activity.

When motive is considered relevant?

- The motive behind a criminal offence is regarded as irrelevant, in ascertaining an individual's guilt, because it only clarifies the accused reasons, for acting or refrained from acting in a specific manner. However, it is required for police investigation and other stages of the case. Though the prosecution is not bound to prove motive for the crime, absence of any motive is a factor which may be considered in determining the guilt of the accused. But if the actual evidence as to the commission of the crime is believed, then no question of motive remains to be established. Motive becomes relevant at some instances, such as-
- In the case of "Criminal Attempt", it is the motive that makes the act wrongful though the act was not itself wrongful.
- Motive is relevant in the cases where a particular intent forms part of the definition of the offence. In cases of defamation and malicious prosecution, the motive is relevant.
- According to Evidence Act, 1872 Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.
- Vijender v. State of Delhi (1997) 6 SCC 171– The Supreme Court has held that when the links are missing, despite a strong motive, the conviction can not be sustained. The motive in itself is nothing unless the presence of some incriminating circumstances.

3. a) State the amount of fine where no sum is expressed, in reference to the relevant provision of law.

b) What would be the effect of imposition of imprisonment in default of payment of fine, if the fine is fully paid, answer mentioning the relevant provision of law? [11th BJS]

Ans to the Question No-3(a)

State the amount of fine where no sum is expressed:

- A fine is fixed with due regard to circumstances of the case in which it is imposed and the condition of life of the offender. But according to section 63 of the Penal Code, 1860, where no sum is expressed to which a fine may extend, the amount of fines to which the offender is liable is unlimited, shall not be excessive. So, when the legislature has not fixed any upper limit for the quantum of fine in respect of a

particular offence, the court has freedom to fix any amount but then the court must see that the fine imposed is not excessively high or repulsively low.

Ans to the Question No-3(b)

Effect of imposition of imprisonment in default of payment of fine, if the fine is fully paid:

- According to section 68 of the Penal Code, 1860 the imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.
- But according to section 69 of the Code if, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

4. What are the distinctions between attempt and preparation to commit a crime? In what cases preparation to commit an offence itself is an offence under the Penal code? Give your answer with illustrations. **[7th BJS]**

Ans to the Question No-4

There are 4 stages to this crime:

- Intention.
- Preparation.
- Attempt.
- Commission of the crime.

Intention describes the will or plan of an individual. Preparations are usually harmless acts. An attempt has been seen as the direct movement to commit the crime after the preparation has been done. An attempt can also be defined as an intentional preparation action. If a man has done an intentional act to seek a certain objection i.e- the completion of the crime, and if that objective fails due to some reason that is independent of his own will, then it is said that man has attempted to commit the crime. In order for a crime to constitute an attempt, there must be:

1. Intent to commit the crime.
2. Act towards the accomplishment of the crime.
3. Failure of that act.

An act will be considered accomplishment on the basis of two things- the means to make sure the act is seen into completion must be adapted and it must be beyond preparation. Section 511 talks about the general nature of the crime and Section 307 talks about the particular nature.

Offences in which ATTEMPT is punishable

- ✓ S-307: Attempt to murder

- ✓ S-308: Attempt to commit culpable homicide
- ✓ S-309: Attempt to commit suicide
- ✓ S-393: Attempt to commit robbery
- ✓ S-398: Attempt to commit robbery or dacoity when armed with deadly weapon
- ✓ S-511: Punishment for attempting to commit offences punishable with imprisonment for life or imprisonment

Distinctions between attempt and preparation to commit a crime

There are following distinctions between attempt and preparation to commit a crime:

- 1. Preparation is the procurement of the means of attempting the crime while the attempt is the direct movement towards committing the crime after the commencement.
- 2. Preparations are not punishable but attempts are punishable.
- 3. Preparation is the second stage of the commission of crime. Whereas Attempt is the third stage of the commission of crime.

Cases in which preparation to commit an offence itself is an offence under the Penal Code:

- It is near impossible to prove that preparation was done in order to commit that crime, and even if the preparation was done with mischief in mind, one might have changed his mind on the way. If preparation is made punishable then offences in the statutes would increase by tenfold. Mere preparation does not cause harm or does not raise alarm in society.

Offences in which PREPARATION is punishable:

- ✓ S-399: Making preparation for dacoity
- ✓ S-122: Collecting arms, etc, with intention of waging war against Bangladesh

5. 'The presence of deterrent punishments and absence of reformatory punishments in the Penal code are apparent.' Do you support this view? Justify your reply with reference to relevant law.] **[5th BJS]**

Ans to the Question No-5

Punishments

- In criminal law, any pain, penalty, suffering, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him, or for his omission of a duty enjoined by law.
- Punishment has following recognized purposes:
- **Deterrent:** Punishment is primarily said to be deterrent when its object is to show the futility of crime and to teach the wrongdoer. According to this theory, the object of punishment is to show that crime is never profitable to the offender. The idea behind this punishment is to inflict exemplary sentence on the offender. It is just to create fear in the minds of the offender so that they think thrice before committing any

wrongful act. It is a game of fear psychology only to deter the offender from committing crime. However, this theory of punishment fails to achieve its goal when it comes to hard-core criminals because they have no fear of punishment.

- **Preventive Theory:** If on one end the aim of deterrent theory is to create fear and to put an end to the crime, on the other end is the preventive theory which aims at preventing crime by disabling the criminal, for example, by inflicting death penalty on the criminal or by confining him in prison.
- **Reformative Theory:** According to this theory, a crime is usually committed as the result of conflict between the character and motive of the criminal. It prevents future crime by altering a defendant's behavior. Examples of rehabilitation include educational and vocational programs, treatment center placement, and counseling.
- **Retributive Theory:** Basically retribution means that the wrongdoer pays for his wrongdoing. According to this theory, an evil should be returned for evil and an eye for an eye and a tooth for a tooth which is deemed to be rule of natural justice.
- According to section 53 of the Penal Code, 1860 provided 5 types of punishment-
 - 1. Death;
 - 2. Imprisonment for life;
 - 3. Imprisonment, which is of two descriptions, namely:-
 - Rigorous, that is, with hard labour;
 - Simple;
 - 4. Forfeiture of property;
 - 5. Fine.
- After considering the above discussion we can say the presence of deterrent punishments and absence of reformative punishments in the Penal code are apparent. Therefore I support this view.

Chapter-2

General Exception

Judicial Service Exam Past Questions

1. 'No person can be penalized only for commission of an offence unless it is coupled with mens rea'- Explain this proposition with reference to a few provisions of the Penal Code. **[5th BJS]**

2. For which aged person there is legal provision for deeming not to have committed any offence even though he/she commits the same? Is there any exception to this? Answer stating relevant section of the Act. **[13th BJS]**

3. a) 'Nothing is an offence which is done in the exercise of the right of private defence'. Describe the exceptions and extent to which this right may be exercised against the provision laid down in section 96 of the Penal Code.

b) Narrate the circumstances where the right of private defence of the person and property extends to causing death of the assailant. **[14th, 10th BJS] [8th BJS] / [4th BJS]**

4. a) 'An act intent constitutes an offence'. Explain the statement with reference to acts that are exempted from criminal liability in view of relevant provisions of the Penal Code.

b) 'Z' comes to a surgeon under painful complain who operation on 'Z' in good faith for 'Z's benefit knowing that the operation is likely to cause the death of 'Z', but not intending to cause 'Z's death. 'Z' dies after the operation. Can the surgeon be charged for the death of Z? Explain. **[9th BJS]**

5. What are the general exceptions? If a plea is taken that the action is covered one of the general exceptions, burden of proof lies on whom?

A doctor on good faith informs his patient that he may not survive. The patient died of shock after hearing this. The doctor knows that the information might cause death of his patient. Has the doctor committed any offence? Give your answer with reference to the relevant section of the Penal Code. **[3rd BJS]**

6. a) "The right of self-defence cannot, being a defensive right, be pleaded or availed as pretext for vindictive, aggressive or retributive purpose of offence." Discuss mentioning the limit of exercising of right of private self-defence under the provisions of the Penal Code, 1860. **[17th BJS Exam-2024]**

b) Can a person abetting the commission of an offence be liable to be punished even though the offence is not committed? [17th BJS Exam-2024]

c) A is attacked by mob who attempt to murder him. Some young children are also mingled with the mob. A opens fire which causes one child's death. Ascertain the criminal liability of A with reference to the relevant provisions of law. [17th BJS Exam-2024]

Advocateship Exam Past Questions

1. What is the right of private defence? To what extent such right of private defence is available? Discuss with illustration. [Bar Exam-2012, 2008]

2. a) How far the right of private defence of a person's body and property extends? Discuss in detail.

b) Y attacks X with a sharp chapatti. X in order to save him fires at Y from his revolver which strikes the body of Y. Thereafter X fires again for a single time and Y dies in consequence. Will X get the benefit of right of private defence in the stated event? [Bar Exam-2021]

3. Under what circumstances act done by a person in good faith believing himself to be 'bound by law' or 'justified by law' be considered sufficient defence against charge of criminal offence? [Bar Exam-2023] [18th BJS, 2025]

Solution of Judicial Service Exam Past Questions

1. 'No person can be penalized only for commission of an offence unless it is coupled with mens rea' - Explain this proposition with reference to a few provisions of the Penal Code. [5th BJS]

Ans to the Question No-1

Introduction:

The principle of mens rea is fundamental in criminal law. It means a guilty mind or wrongful intention behind an act.

Maxim:

The legal maxim "**actus non facit reum nisi mens sit rea**" means that an act alone does not constitute a crime unless done with a guilty mind.

Mens Rea in the Penal Code:

Several provisions under the Penal Code, 1860, incorporate mens rea explicitly:

- **Section 378** – Theft must be committed **dishonestly**.
- **Section 415** – Cheating requires **intent to deceive**.
- **Section 302** – Murder must be committed with **intention or knowledge**.
- **Section 441** – Criminal trespass involves **intent to insult or commit an offence**.

These sections show that **intention, knowledge, or dishonesty** are essential mental elements.

Exceptions (General Exceptions – Chapter IV):

There are circumstances where mens rea is absent, hence no offence is constituted:

- **Section 80** – Acts done by accident or misfortune without criminal intent.
- **Section 81** – Acts done without intent to prevent greater harm.
- **Section 84** – Acts by persons of **unsound mind**.
- **Section 85** – Acts by persons **involuntarily intoxicated**.
- **Section 93** – Harm caused by communications made in **good faith** for benefit.

Strict Liability:

Some offences (e.g., public nuisance, violation of orders) do not require mens rea and are punishable regardless of intent.

Conclusion:

Thus, **mens rea is a vital component** of most crimes. Without it, criminal liability generally does not arise, except where law expressly provides otherwise.

2. For which aged person there is legal provision for deeming not to have committed any offence even though he/she commits the same? Is there any exception to this? Answer stating relevant section of the Act. **[13th BJS]**

Ans to the Question No-2

- Mens rea (guilty intention) or knowledge is an essential ingredient of a crime. So without mens rea or criminal knowledge, no crime may be committed. For that reasons the law exempts the Minors (of a particular age) from criminal liability. They are supposed not to have a guilty intention or they act without criminal

knowledge. An infant under nine years of age is presumed to be without malice which is a very important factor is a crime. He is by presumption of law doli in capax and cannot be endowed with any discretion. He cannot distinguish right from wrong.

- Section 82 of the Penal Code, 1860, provides that nothing is an offence which is done by a child under nine years of age.

Exceptions:

- Under section 83, a child above nine years of age and under twelve is liable, if he has attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.
- But where the accused is above nine years of age and under twelve is not liable, if he has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.

3. a) 'Nothing is an offence which is done in the exercise of the right of private defence'. Describe the exceptions and extent to which this right may be exercised against the provision laid down in section 96 of the Penal Code.

b) Narrate the circumstances where the right of private defence of the person and property extends to causing death of the assailant. [14th, 10th BJS] [8th BJS] / [4th BJS]

Ans to the Question No-3(a)

Right of Private Defence:

The right of private defence is available to every citizen of the country. It is a right which is inherent in an individual and can be used for protection from bodily harm and harm to property, to the extent as regulated by and defined in the laws of the country. Sections 96 to 106 of the Penal Code, 1860.

It is the natural instinct of a man to defend his body and his possession against any imminent danger. The law of private defence is neither a written law nor a law taught to us, we have imbibed this from the nature itself.

Section 96 of the Penal Code states that nothing is an offence which is done in the exercise of the right of private defence. Section 97 allow us that to defend-

- ✓ our own body, and the body of any other person and
- ✓ the property, whether moveable or immovable,

Section 98 talks about private defence against the acts of a person with an unsound mind and says that an act which would have been an offence otherwise will not be the same by reason of youth, want of maturity of understanding, unsoundness of mind or intoxication or acts done under misconception

Restrictions on private defence

According to section 99 no right of Private defence -

- ✓ against the acts, which does not reasonably cause the apprehension of death or of grievous hurt, of a public servant acting in good faith under colour of his office.
- ✓ against the acts, which does not reasonably cause the apprehension of death or of grievous hurt, of the those acting under the authority or direction.
- ✓ where there is sufficient time for recourse to public authorities;
- ✓ The quantum of harm of that may be caused shall in no case be in excesses.

To what extent such right of private defence is available

Sections 100, 101, 103, and 104 deal with to what extent such right of private defence is available.

Ans to the Question No-3(b)

When the right of private defence of the body extends to causing death:

Section 100 mentions six situations where 'private defence of body' causing death does not amount to an offence. They are the following:

Firstly: Apprehension of Death

- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault.

Secondly: Apprehension of Grievous Hurt

- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault.

Thirdly: Apprehension of Rape

- An assault with the intention of committing rape.

Fourthly: Apprehension of Unnatural Lust

- An assault with the intention of gratifying unnatural lust.

Fifthly: Apprehension of kidnapping or abducting

- An assault with the intention of kidnapping or abducting.

Sixthly: Apprehension of confining

- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Section 101 also makes it clear that the right to private defence is not only limited to the six scenarios enumerated above but also covers within its ambit all other harms caused while exercising the right to private defence. However, such cases are hit by the restrictions mentioned under Section 99. Section 102 makes it clear that the right to private defence lasts as long as the apprehension of danger to one's life and it continues as long as such, apprehension of danger to the body continues.

When the right of private defence of property extends to causing death

Section 103 provides for the situations where the right of private defence serves as an exception to the offence in case of danger to one's property and they are following:

Firstly

- Robbery;

Secondly

- House-breaking by night;

Thirdly

- Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property;

Fourthly

- Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised;

Section 104 states that if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

4. a) 'An act intent constitutes an offence'. Explain the statement with reference to acts that are exempted from criminal liability in view of relevant provisions of the Penal Code.

b) 'Z' comes to a surgeon under painful complaint who operation on 'Z' in good faith for 'Z's benefit knowing that the operation is likely to cause the death of 'Z', but not intending to cause 'Z's death. 'Z' dies after the operation. Can the surgeon be charged for the death of Z? Explain. [9th BJS]

Ans to the Question no-4(a)

An act intent constitutes an offence:

The fundamental principle of penal liability is based on a Latin maxim "Actus non facit reum nisi mens sit rea" which means "The Act and the Intent must concur to constitute a crime". In simple words, it means an act done by a person will not be considered as a crime unless it is done with a guilty mind. Exception to Mens rea is the "Strict Liability offences" in which punishments are provided even when the act is done without a guilty intent.

In Penal Code under chapter IV General Exceptions are enumerated which contains conditions when the actions occur but the person is not in a state that they can have any kind of guilty intention to do it.

Basically in that chapter the section contains conditions in which a prohibited action has taken place but the person doing it cannot possibly have Mens Rea i.e., a guilty intent to commit such crime. There are various conditions in which a person is not unable to have mens rea such as when a person is-

- Of unsound mind.
- Involuntarily intoxicated.
- Minor.
- Working in good faith.
- Bound by their occupation.
- Mistaken by facts etc.
- **According to section 80 nothing is an offence which is done by-accident or misfortune, and without any criminal intention or knowledge** in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.
- **According to section 81 act likely to cause harm, but done without criminal intent and to prevent other harm is no offence.**
- **According to section 84 nothing is an offence which is done by a person of unsound mind.**
- **According to section 85 nothing is an offence which is done by a person who is involuntary intoxicated.**
- **According to section 93** No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Ans to the Question no-4(b)

Fact Analysis:

- 'Z' comes to a surgeon under painful complain who operation on 'Z' in good faith for 'Z's benefit knowing that the operation is likely to cause the death of 'Z', but not intending to cause 'Z's death. 'Z' dies after the operation.

Issue:

- Can the surgeon be charged for the death of Z?

Legal Analysis and Decision:

- According to section 88 of the Penal Code, 1860 nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.
- In the present case, surgeon did operation on Z in good faith for Z's benefit. Thus the surgeon has not committed any offence in view of law embodied in section 88 of the Penal Code, 1860. Surgeon must take consent from Z, otherwise he will be liable for Z's death.

5. What are the general exceptions? / Describe 'General Exceptions' as enshrined in the Penal Code, 1860. **[Bar Exam-2022]**

If a plea is taken that the action is covered one of the general exceptions, burden of proof lies on whom?

A doctor on good faith informs his patient that he may not survive. The patient died of shock after hearing this. The doctor knows that the information might cause death of his patient. Has the doctor committed any offence? Give your answer with reference to the relevant section of the Penal Code.] **[3rd BJS]**

Ans to the Question No-5

What are the general exceptions?

Chapter IV of the Penal Code deals with the general exceptions to criminal liability. There are various kinds of acts (exceptions) done under the circumstances mentioned in Sections 76 to 106 which will not amount to offences under Penal Code.

These exceptions are:

- Act done by a person bound, or by mistake of fact believing himself bound, by law [S-76]
- Act of judge when acting judicially [S-77]
- Act done pursuant to the judgment or order of Court [S-78:]
- Act done by a person justified, or by mistake of fact believing himself justified, by law [S-79]
- Accident in doing a lawful act [S-80]
- Act likely to cause harm, but done without criminal intent and to prevent other harm [S-81]
- Act of a child under nine years of age [S-82]
- Act of a child above nine and under twelve of immature understanding [S-83:]
- Act of a person of unsound mind [S-84]
- Act of a person incapable of judgment by reason of intoxication caused against his will [S-85]
- Offence requiring a particular intent or knowledge committed by one who is intoxicated. [S-86]
- Act not intended and not known to be likely to cause death or grievous hurt, done by consent. [S-87]
- Act not intended to cause death, done by consent in good faith for person's benefit. [S-88]
- Act done in good faith for benefit of child or insane person, by or by consent of guardian. [S-89]

- Act done in good faith for benefit of a person without consent: is not an offence. [S-92]
- Communication made in good faith: is not an offence. [S-93]
- Act to which a person is compelled by threats: is not an offence. [S-94]

Burden of proof lies on whom

- The person who is accused of committing the offence has the responsibility of proving that he/she was struck under different circumstances or within special provision or exception provided under general exceptions chapter of the Penal Code, 1860.
- According to section 105 of the Evidence Act, 1872 when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.
- For instance, an insane person, if accused, has to prove and establish by any means that he/she is not mentally sound or he had no mens rea to commit that crime. According to section 80, nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in doing of a lawful act in a lawful manner by lawful means and with proper care and caution. The burden of proving all the conditions mentioned above is on the accused who wishes to bring his case within the purview of section 80.

Ans of Fact

Fact Analysis:

- A doctor on good faith informs his patient that he may not survive. The patient died of shock after hearing this. The doctor knows that the information might cause death of his patient.

Issue:

- Has the doctor committed any offence?

Legal Analysis and Decision:

- According to section 93 of the Penal Code, 1860 No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.
- In the given problem, a doctor on good faith informs his patient that he may not survive. The patient died of shock after hearing this. Thus the doctor has not committed any offence in view of law embodied in section 93 of the Penal Code, 1860.

6. a) "The right of self-defence cannot, being a defensive right, be pleaded or availed as pretext for vindictive, aggressive or retributive purpose of offence." Discuss mentioning the limit of exercising of right of private self-defence under the provisions of the Penal Code, 1860. **[17th BJS Exam-2024]**

b) Can a person abetting the commission of an offence be liable to be punished even though the offence is not committed? **[17th BJS Exam-2024]**

c) A is attacked by mob who attempt to murder him. Some young children are also mingled with the mob. A opens fire which causes one child's death. Ascertain the criminal liability of A with reference to the relevant provisions of law. **[17th BJS Exam-2024]**

Ans to the Qs No. 6(a)

Introduction:

The right of private defence is a natural and legal right available to every individual to protect their body and property from unlawful aggression. However, it is a right to defend, not to attack, and must be exercised in good faith, within the limits prescribed by law.

Relevant provisions of the penal code, 1860:

- Sections 96 to 106 of the Penal Code, 1860, deal with the law relating to private defence.
- Section 96: Declares that nothing is an offence which is done in the exercise of the right of private defence.

Limits of exercising the right of private defence:

The right is not unlimited, and certain conditions and limits apply:

1. Against unlawful aggression only:
 - There must be reasonable apprehension of danger to body or property.
 - No right of private defence arises against lawful acts by public servants (Section 99).
2. Proportionality of force used:
 - The force used must be proportionate to the threat faced.
 - The right does not extend to causing more harm than necessary for defence.
3. No right of retribution or revenge:
 - The right ends when the threat ceases. It cannot be used to punish or retaliate.
 - Section 97 allows defence of body and property, but not for taking revenge.
4. No private defence when protection is available through public authorities:
 - As per Section 99, when there is time to have recourse to public authority, the right cannot be exercised.
5. Causing death is allowed only in specific circumstances (Section 100 & 103):
 - Example: When there is threat of grievous hurt, death, rape, or kidnapping, causing death in private defence is justified.

Conclusion:

The right of private defence is a shield, not a sword. It is available only against unlawful aggression, and must be exercised in good faith, proportionately, and within the limits prescribed under Sections 96 to 106 of the Penal Code. It cannot be invoked to justify vindictive or aggressive acts after the danger has passed.

Ans to the Qs No. 6(b)

Yes, a person who abets the commission of an offence can be held liable and punished even if the offence is not ultimately committed, under certain circumstances. This is expressly provided in the **Penal Code, 1860.**

Explanation 2 of Section 108 stated that - to constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

According to section 115 If the offence abetted is **not committed**, the abettor is still **punishable** with:

- **Imprisonment up to 7 years, and Fine, if the abetted offence is punishable with death or life imprisonment.**

According to section 116 whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Therefore, a person who abets the commission of an offence **can be criminally liable and punished even though the offence is not committed**, as abetment is treated as an **independent offence** under Sections **108, 115, and 116** of the Penal Code, 1860.

Ans to the Qs No. 6(c)

Legal Analysis:**1. Right of Private Defence of the Body (Section 96 & 97):**

- Every person has the right to **protect their body** against any offence affecting human life.
- Here, **A is attacked by a mob intending to murder him**, thus creating a **reasonable apprehension of death**.

2. Right Extends to Causing Death (Section 100):

- A may lawfully cause **death of the assailants** to defend himself against **grievous hurt or death**.
- Since the attack is **life-threatening**, **lethal force is justified** under Section 100.

3. Harm to Innocent Persons (Section 106):

- Section 106 covers cases where **right of private defence cannot be exercised without risk of harm to innocent persons**.
- It states:
“If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender causes harm to an innocent person, he shall be excused.”
- In this case, **young children were mingled with the mob**. A opened fire to **protect himself**, and **unintentionally killed a child**.
- Therefore, A’s act falls under **Section 106**, and he is **not criminally liable** for the unintended death of the child, provided:
 - The force was necessary,
 - There was **no safer alternative**, and
 - The death of the child was **accidental** and not deliberate.

Conclusion:

- In the given scenario, **A acted under the right of private defence** as per **Sections 100 and 106** of the Penal Code, 1860. Since the death of the child occurred **accidentally** while A was defending himself from a **life-threatening mob attack**, A is **not criminally liable** for the child’s death.

Solution of Advocateship Exam Past Questions

1. What is the right of private defence? To what extent such right of private defence is available? Discuss with illustration. [Bar Exam-2012, 2008]

Ans to the question no-1

Right of Private Defence:

The right of private defence is available to every citizen of the country. It is a right which is inherent in an individual and can be used for protection from bodily harm and harm to property, to the extent as regulated by and defined in the laws of the country. Sections 96 to 106 of the Penal Code, 1860.

It is the natural instinct of a man to defend his body and his possession against any imminent danger. The law of private defence is neither a written law nor a law taught to us, we have imbibed this from the nature itself.

Section 96 of the Penal Code states that nothing is an offence which is done in the exercise of the right of private defence.

Section 97 allow us that to defend-

- ✓ our own body, and the body of any other person and
- ✓ the property, whether moveable or immovable,

Section 98 talks about private defence against the acts of a person with an unsound mind and says that an act which would have been an offence otherwise will not be the same by reason of youth, want of maturity of understanding, unsoundness of mind or intoxication or acts done under misconception

To what extent such right of private defence is available

Sections 100, 101, 103, and 104 deal with to what extent such right of private defence is available.

When the right of private defence of the body extends to causing death:

Section 100 mentions six situations where 'private defence of body' causing death does not amount to an offence. They are the following:

Firstly: Apprehension of Death

- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault.

Secondly: Apprehension of Grievous Hurt

- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault.

Thirdly: Apprehension of Rape

- An assault with the intention of committing rape.

Fourthly: Apprehension of Unnatural Lust

- An assault with the intention of gratifying unnatural lust.

Fifthly: Apprehension of kidnapping or abducting

- An assault with the intention of kidnapping or abducting.

Sixthly: Apprehension of confining

- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Section 101 also makes it clear that the right to private defence is not only limited to the six scenarios enumerated above but also covers within its ambit all other harms caused while exercising the right to private defence. However, such cases are hit by the restrictions mentioned under Section 99. Section 102 makes it clear that the right to private defence lasts as long as the apprehension of danger to one's life and it continues as long as such, apprehension of danger to the body continues.

When the right of private defence of property extends to causing death

Section 103 provides for the situations where the right of private defence serves as an exception to the offence in case of danger to one's property and they are following:

Firstly

- Robbery;

Secondly

- House-breaking by night;

Thirdly

- Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property;

Fourthly

- Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised;

Section 104 states that if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Section 105 provides that the right of private defence of property commences when a reasonable apprehension of danger to the property commences and it continues till the recovery of property.

Restrictions on private defence:

According to section 99 no right of Private defence -

- ✓ against the acts, which does not reasonably cause the apprehension of death or of grievous hurt, of a public servant acting in good faith under colour of his office.
- ✓ against the acts, which does not reasonably cause the apprehension of death or of grievous hurt, of the those acting under the authority or direction.
- ✓ where there is sufficient time for recourse to public authorities;

- ✓ The quantum of harm of that may be caused shall in no case be in excesses.

2. a) How far the right of private defence of a person's body and property extends? Discuss in detail.

b) Y attacks X with a sharp chapatti. X in order to save him fires at Y from his revolver which strikes the body of Y. Thereafter X fires again for a single time and Y dies in consequence. Will X get the benefit of right of private defence in the stated event? [Bar Exam-2021]

Ans to the Question no-2(a)

Repeat Questions.

Ans to the Question no-2(b)

Fact:

- Y attacks X with a sharp chapatti. X in order to save him fires at Y from his revolver which strikes the body of Y. Thereafter X fires again for a single time and Y dies in consequence.

Issue:

- Whether X can claim his right of private defence in this regard or not?

Legal Analysis:

- According to Section 97 every person has a right, subject to the restrictions contained in section 99, to defend his own body, and the body of any other person against any offence affecting the human body and the property of himself or of any other person.
- Even section 100 says that the right of private defence of the body extends under the restriction mentioned in section 99 to the voluntary causing death to the assailant.
- Section 99 sets out the restrictions that the right of the private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of Defence.
- From the given problem we can find out that if X died by the first shot should X would not be liable for any offence as section 96 clearly states that nothing is an offence which is done in the exercise of the right of private defence.
- But second shot by X exceeds the necessity to prevent Y from doing more harm because Y lost his power to do any harm after first shot.

- In this situation though X may claim his right to prove private defence under 100 but section 100 must be applied in the confirmation of section 99.
- Therefore X is not entitled to claim any right to private defence in this regard.

3. Under what circumstances act done by a person in good faith believing himself to be 'bound by law' or 'justified by law' be considered sufficient defence against charge of criminal offence? **[Bar Exam-2023] [18th BJS, 2025]**

Ans. to the Qs. No-3

Act done by a person bound by law, or by mistake of fact believing himself bound by law:

- According to section 76 of the Penal Code, 1860 nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations:

- A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

Act done by a person justified, or by any mistake of fact believing himself justified by law:

- According to section 79 of the Penal Code, 1860 nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration:

- A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Therefore, analyzing Sections 76 and 79 of the Penal Code, it is evident that any act performed by a person who is either legally bound or under the belief, in good faith, that it is mandated by law, will be considered a sufficient defense against charges of a criminal offense.

Chapter-3

Joint Liability [Common Intention & Common Object]

Judicial Service Exam Past Questions

1. What is meant by 'common intention' and 'common object'? Differentiate between 'common intention' and 'common object' in the light of relevant sections. [7th, 11th & 12th BJS, 11th BJS]

2. a) 'Unless common intention and participation are both present, section 34 of the Penal Code cannot be applied'. Justify the statement.

Discuss the rule of '**common intention**' and '**common object**' in making a person liable for an offence not directly committed by him. **[Bar-2020]**

b) 'X' and 'Y' agree to murder 'Z' by severally and at different times giving him small dose of poison. 'X' and 'Y' administer the poison according to the agreement with intent to murder 'Z'. 'Z' dies from the effect of several doses of poison so administered to him. Can 'X' and 'Y' be liable for causing the death of 'Z'? If so, why? **[9th BJS]**

3. a) What do you mean by 'abetment'? Who is an 'abettor'? What shall be the liability of an abettor, when one act abetted but different act done? What are the difference between Abetment and Criminal Conspiracy?

b) A, B and C conspire to poison Z to cause his death. As a part of such conspiracy. Gives money to B to procure poison. Procuring the poison B delivers it to C for administering the same to Z. Administering such poison C causes the death of Z. Explain the liabilities of A, B and C for the death of Z. **[8th BJS]**

4. Define unlawful assembly. What penalties may be imposed on a member of an unlawful assembly? **[5th BJS]**

5. (a) What do you understand by 'affray'? What are the ingredients of rioting?

(b) When an assembly turns to an unlawful assembly? What is the punishment for being a member of an unlawful assembly?

(c) 'X' files an ejahar alleging that seven accused persons, forming an unlawful assembly, started cutting paddy in his land. 'Y' and ten other persons, all of whom equipped with weapons, attacked 'X' after he (X) resisted. Charge was then brought against all of them under sections 143, 147 and 148 of the Penal Code, 1860. During trial, it was proved that the first group, which consisted of seven people, was employed by the rest ten accused persons to cut paddy. They all were found guilty and the Court sentenced all of them under the aforesaid sections. Justify the conviction. **[15th BJS]**

Advocateship Exam Past Questions

1. Distinguish between 'common intention' and 'common object' with example citing the relevant provisions of law. **[Bar Exam-2017, 2014, 2011, 2009]**

Or

Discuss in detail the role of common intention and common object making a person criminally liable for an offence not directly committed by him. **[Bar Exam-2008]**

2. A, B, C, D, E and F with the common object of taking forcible possession of a piece of land belonging to X formed an unlawful assembly and being armed with deadly weapons such as lathis, fala, dagger etc went to the above land in execution of their common object. X and his men opposed the aggressors when a violent quarrel ensued between the parties. In the midst of the scuffle A gave a lathi blow on the head of X causing a fatal bleeding injury where upon X fell on the ground and F gave a fala blow on his left leg of X causing a simple injury. X died on the spot. In the melee, B gave a fala blow to X younger son Y causing grievous injury on his abdomen and C gave a lathi blow on the right wrist of Y causing grievous injury. Y luckily survived the injuries after being treated in the hospital for 45 days. D gave a dao blow on the head of Z causing a simple injury. In the course of free fight A, B and F sustained swelling injuries.

Under what sections of what relevant law you would frame charges against the above six accused persons in the light of their overt acts and collective actions? Give reasons in support of your answer. **[Bar Exam-2006]**

3. (a) What do you mean by abetment of an offence? Under what provisions of law abatement is punishable and what is the quantum of punishment prescribed for it?

(b) A, B and C conspire to poison Z. In pursuance of the conspiracy, A gave money to B to procure poison. After procuring the poison, B delivered it to C in that he may administer the poison to Z. C in the absence of A and B by administering the poison causes Z's death. Explain the liability of A, B and C for causing the death of Z in the facts of the case. **[Bar Exam-2017, 2011, 2008, 2006]**

4. What do you mean by Abetment? Is it a separate punishable offence? What is the punishment prescribed for the offence of abetment? **[Bar Exam-2009]**

5. A, B, C, D and F entered into a house of X armed with deadly weapons. A and B hold the hands of X and C gave a blow with sharp cutting weapon causing serious injury to X and X died on spot. How you will implicate F in the said offence. Explain with reference to relevant law. **[Bar Exam-2006]**

6. a) When an assembly is deemed to be an unlawful assembly? What are the distinction between unlawful assembly and rioting?

b) X, a thief, flees from the custody of police. Police officer Y fires at X to halt him which strikes Z's leg and he dies. Has police officer Y committed any offence? Put your argument forward in support of your answer. **[Bar Exam-2021]**

7. Unless common intention and participation are both present Section 34 of the penal code 1860 cannot be applied- justify the statement. Enrich your answer by elucidating the role of common intention and common object in making a person liable for an offence not directly committed by him. [Bar Exam-2020]

Solution of Judicial Service Exam Past Questions

1. What is meant by 'common intention' and 'common object'? Differentiate between 'common intention' and 'common object' in the light of relevant sections. [7th, 11th & 12th BJS, 11th BJS]

Ans to the Question No-1

Common Intention

- **Section 34 of the Penal Code, 1860** deals with Common intention. **According to section 34 of the Penal Code, 1860** when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.
- This section is intended to meet a case in which it may be difficult to distinguish between the acts of individual members of a party who act in furtherance of common intention of all or to prove exactly what part was played by each of them.

Common Object

- Section 149 of the Penal Code, 1860 deals with the common object. According to section 149 if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Distinction between 34 & 149.

The main differences between the two sections are as follows:

1. Offence

- Section 34 does not create any specific offence but only lays down the principle of joint criminal liability. Whereas s.149 creates specific offence and being a member of an unlawful assembly is itself a crime, which is punishable under s.143.

2.Provisions

- 'Common intention' used in S.34 is not defined anywhere in PC, while 'common object' in s.149 must be one of the five ingredients defined in S. 141 of **Penal Code, 1860**.

3. Prior meeting

- Common intention requires a prior meeting of mind and unity of intention and overt act has been done in furtherance of the common intention of all.
- Whereas a common object may be formed without a prior meeting of mind when the common object of the members of the unlawful assembly is one but the intention of participants is different.

4. Members

- For invoking S.34 it is sufficient that two or more persons were involved.
- However, there have to be a minimum of five persons to impose S.149.

5. Participation

- The crucial factor of S.34 is 'participation'
- while there is no need of active participation in S.149 of PC.

2. a) 'Unless common intention and participation are both present, section 34 of the Penal Code cannot be applied'. Justify the statement. /

Discuss the rule of '**common intention**' and '**common object**' in making a person liable for an offence not directly committed by him. [Bar-2020]

b) 'X' and 'Y' agree to murder 'Z' by severally and at different times giving him small dose of poison. 'X' and 'Y' administer the poison according to the agreement with intent to murder 'Z'. 'Z' dies from the effect of several doses of poison so administered to him. Can 'X' and 'Y' be liable for causing the death of 'Z'? If so, why? [9th BJS]

Ans to the Question No-2(a)**Common Intention**

- **Section 34 of the Penal Code, 1860** deals with Common intention. According to **section 34 of the Penal Code, 1860** when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.
- This section is intended to meet a case in which it may be difficult to distinguish between the acts of individual members of a party who act in furtherance of common intention of all or to prove exactly what part was played by each of them.

Common Object

- **Section 149 of the Penal Code, 1860** deals with the common object. According to **section 149** if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

There should be participation in some way or other in the commission of the act- the persons cannot be held liable if they have decided what to do and then they have not done that thing, every person who is a part of the group should do something so as to participate in the commission of the act.

Both **common intention** and **common object** expand the scope of liability to ensure that all individuals contributing to a criminal act or purpose can be held accountable. While **common intention** emphasizes pre-planned participation, **common object** focuses on group dynamics and the purpose of an unlawful assembly. Together, they reflect the law's effort to address collective criminal behavior effectively.

Ans to the Question No- 2(b)

Issues:

Can 'X' and 'Y' be liable for causing the death of 'Z'?

Legal Analysis and Decision:

- According to section 37 of the Penal Code, 1860 when an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.
- Here X and Y intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

3. a) What do you mean by 'abetment'? Who is an 'abettor'? What shall be the liability of an abettor, when one act abetted but different act done? What are the difference between Abetment and Criminal Conspiracy?

b) A, B and C conspire to poison Z to cause his death. As a part of such conspiracy. Gives money to B to procure poison. Procuring the poison B delivers it to C for administering the same to Z. Administering such poison C causes the death of Z. Explain the liabilities of A, B and C for the death of Z. [8th BJS]

Ans to the Question No-3(a)

Abetment:

Sometimes, indirectly participating in committing an offence itself may also become a punishable offence. In such crimes, the offenders do not directly involve themselves in the offence. However, their abetment can become punishable in itself. These offences relate to Section 107, PC under the chapter of abetment.

To explain the concept of abetment, the word 'abet' should be given a deep scrutiny. In general use, it means to aid, advance, assist, help and promote. In the case of **Sanju v. State of Madhya Pradesh, (2002) 5 SCC 371** the honorable Supreme court defined 'abet' as meaning to aid, to assist or to give aid, to command, to procure, or to counsel, to countenance, to encourage, or encourage or to set another one to commit. According to section 107 of the Penal Code, 1860 a person abets the doing of a thing, who-

- **Firstly:** Instigates any person to do that thing; or
- **Secondly:** Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
- **Thirdly:** Intentionally aids, by any act or illegal omission, the doing of that thing. In **Ashraf Ali Vs. State, 9 DLR 41** held that the intentional aiding of the doing of a thing by omission constitutes abetment.

Essential Elements

A person abets the doing of a thing when

- he *instigates* any person to do that thing; or
- *engages* with one or more other persons in any conspiracy for the doing of that thing; or
- *intentionally aids*, by act or illegal omission, the doing of that thing. These things are the essentials of abetment as a complete crime.

Illustration

- A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Is it a separate punishable offence

- The offence of abetment is a substantive one and the conviction of an abettor is, therefore, in no way dependent on the conviction of the principal. Section 109 is by itself creative of an offence though it is punishable in the context of the other offence. When a person is charged with the abetment of an offence, it is normally linked with an offence which has been proved.

Abettor

- According to section 108 of the Penal Code, 1860 A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

What shall be the liability of an abettor, when one act abetted but different act done:

- According to section 111 of the Penal Code, 1860 when an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it.
- Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.
- Example: A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Difference between Abetment and Criminal Conspiracy

The following points highlight the difference between abetment and criminal conspiracy:

1. The number of persons committing an offence varies in an abetment and a conspiracy. In an abetment, one person influences, provokes another to commit an illegal act whereas in a conspiracy two or more persons enter into an agreement to commit that offence.
2. The offence of conspiracy is substantive whereas abetment is not on its own a substantive offence.
3. Abetment is defined under Section 107 of the Penal Code 1860. Whereas criminal conspiracy is defined under Section 120-A of the Penal Code, 1860.
4. To be tried for abetment, the person must have committed the act of aiding or instigating, or helping the principal offender. But, in the case of a conspiracy, it is irrespective of the commission of the offence. The prosecution can try a person for having the agreement and the knowledge of the act.
5. The parties to a conspiracy are called conspirators. But in the case of abetment, there are two persons called the abettor and the principal offender.
6. Abettor is not a principal offender whereas a conspirator (accused) is a principal offender.
7. Abetment can be done in three ways whereas conspiracy is a method of abetment.
8. It can be said that abetment is the genus, whereas conspiracy is a species.
9. The concept of criminal conspiracy has a wider jurisdiction in most cases than of abetment.

Ans to the Question No-3(b)

Fact:

- A, B and C conspire to poison Z to cause his death. As a part of such conspiracy. Gives money to B to procure poison. Procuring the poison B delivers it to C for administering the same to Z. Administering such poison C causes the death of Z. Explain the liabilities of A, B and C for the death of Z.

The liabilities of A, B and C for the death of Z.

Here C is guilty of murder as principal offender. A and B are guilty of abetting that offence by conspiracy, and is liable to the punishment for murder as an abettor. According to section 108 of the Penal Code, 1860 a person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

And also explanation -1 of the section 108 states that the abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

So C is liable under section 302 of the Penal Code, 1860.

A & B are liable under sections 302/109 of the Penal Code, 1860.

4. Define unlawful assembly. What penalties may be imposed on a member of an unlawful assembly?] **[5th BJS]**

Ans to the Question No-4

Unlawful assembly.

The term 'Unlawful Assembly' has been defined under section 141 of the Penal Code, 1860 as an assembly of five or more persons having a common object to perform an omission or offence. Section 141, means an assembly of 5 or more persons if the common object of the assembly is-

1. To overawe by using criminal force or show criminal force, to Central or any State Government or Parliament or any State Legislature or any public servant; or
2. To oppose the performance of any law or legal process; or
3. To carry out any mischief or criminal trespass or any other offense; or
4. By use of criminal force takes possession of any property or deprives any person of the right to the way or the use of water or any incorporeal right; or
5. The use or show of criminal force compels any person to do any illegal act.

Essentials to constitute an Unlawful Assembly:

To constitute an unlawful assembly the following 3 conditions must co-exist:-

- There must be an assembly of five persons.
- The assembly must have a common object and
- The common object must be to commit one of the five illegal objects specified in the section.

Section 142 of the Penal Code states that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

‘An assembly, which was lawful to start with, became unlawful the moment one of the members called on the others to assault the victim and his associates, and in response to his invitation all the members of the assembly started to chase the victim while he was running.’

Section 149 of the Penal Code, 1860 states that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Punishment for Unlawful Assembly:

- Under Section 143 of the Penal Code, 1860 whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
- Under Section 144 of the Penal Code, 1860 whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- Under Section 145 of the Penal Code, 1860 whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

5. (a) What do you understand by 'affray'? What are the ingredients of rioting?

(b) When an assembly turns to an unlawful assembly? What is the punishment for being a member of an unlawful assembly?

(c) 'X' files an ejahar alleging that seven accused persons, forming an unlawful assembly, started cutting paddy in his land. 'Y' and ten other persons, all of whom equipped with weapons, attacked 'X' after he (X) resisted. Charge was then brought against all of them under sections 143, 147 and 148 of the Penal Code, 1860. During trial, it was proved that the first group, which consisted of seven people, was employed by the rest ten accused persons to cut paddy. They all were found guilty and the Court sentenced all of them under the aforesaid sections. Justify the conviction. **[15th BJS]**

Ans to the qs no 5(a)

Affray:

According to sec-159 the Penal Code, 1860 when two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

Ingredients of Affray:

An affray consists of the following:

- fighting by two or more persons
- the fighting must take place in a public place
- such fighting must also result in disturbance of the public peace

According to sec-160 the Penal Code, 1860 whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred taka, or with both.

Rioting:

Rioting is an unlawful assembly in a particular form of activity. An unlawful assembly in a state of violence becomes a rioting. It is an aggravated form of being a member of an unlawful assembly. According to sec-146 the Penal Code, 1860, whenever force or violence is used by an unlawful assembly or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly every member of such assembly is guilty of the offence of rioting.

Ingredients of Rioting:

The essential ingredients that constitute the offence of rioting are:

- i) that the accused persons being five or more in number formed an unlawful assembly;
- ii) that they were animated by a common object;
- iii) that force or violence was used by the unlawful assembly or any member of it; and
- iv) that such force was used in prosecution of the common object.

Punishment

- Rioting is punishable with imprisonment of either description upto 2 years or with fine or with both under section 147 the Penal Code, 1860.

Ans to the qs no 5(b)

When an assembly turns to an unlawful assembly:

According to section 141 of the Penal Code, 1860 an assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is:

- First.-To overawe by criminal force, or show of criminal force, Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or
- Second.-To resist the execution of any law, or of any legal process; or

- Third-To commit any mischief or criminal trespass, or other offence; or
- Fourth.-By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
- Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.
- According to Explanation of section 141 an assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Punishment for being a member of an unlawful assembly:

- According to section 143 of the Penal Code, 1860 whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Ans to the qs no 5(c)

Justification of the conviction:

- Charge was brought against 'Y' and ten other persons under sections 143, 147 and 148 of the Penal Code, 1860 were not legal. According to section 142 of the Penal Code, 1860 whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. During trial, it was proved that the first group, which consisted of seven people, was employed by the rest ten accused persons to cut paddy. If such 7 persons unaware about unlawful assembly, they will not be liable for the unlawful assembly. Even if they were being hired to take part in an unlawful assembly or riot; or to go armed, they will be liable under sections 158 of the Penal Code, 1860 not under sections 143,147,148.
- 'Y' and ten other persons, all of whom equipped with weapons, attacked 'X' after he (X) resisted hence they are liable under s.148 for rioting with. Therefore sentenced under sections 143, 147 and 148 were not justifiable by law.

Solution of Advocateship Exam Past Questions

1. Distinguish between 'common intention' and 'common object' with example citing the relevant provisions of law. **[Bar Exam-2017, 2014, 2011, 2009]**

Or

Discuss in detail the role of common intention and common object making a person criminally liable for an offence not directly committed by him. **[Bar Exam-2008]**

Ans to the question no-1**Common Intention:**

- **Section 34 of the Penal Code, 1860** deals with Common intention. **According to section 34 of the Penal Code, 1860** when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.
- Section 34 deals with a situation, where an offence requires a particular criminal intention or knowledge and is committed by several persons. Each of them who join the act with such knowledge or intention is liable in the same way as if it were done by him alone with that intention or knowledge. The liability of individuals under this circumstance is called Joint Liability.
- To constitute “common intention” within the meaning of sec-34, P.C., there must be a pre-arranged plan, a meeting of mind, an intention agreed upon by two or more persons as the intention of all such persons. Such plan may be made shortly or immediately before the commission of the crime.
- This section is intended to meet a case in which it may be difficult to distinguish between the acts of individual members of a party who act in furtherance of common intention of all or to prove exactly what part was played by each of them.
- **In Lieutenant Colonel Syed Farook Rahman Vs. State, 53 DLR 287** court held that it is established that the offence which resulted was committed in furtherance of the common intention of all the participants, the fact that any of them did not take part in the commission of that offence will not prevent his being held liable for the offence.

Object of the section:

- Section 34 is framed to meet cases in which it may be difficult to distinguish between the act individual members if a party, or to prove exactly what part was played by each of them. Sec-34 is only a rule of evidence, and does not create any substantive offence. It only lays down that if two or more persons intentionally commit an act jointly. In other words the very purpose of S. 34 is to create joint liability for those who indulge in organised common commission of crime.

Common Object:

- Section 149 of the Penal Code, 1860 deals with the common object. According to section 149 if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.
- **In Abed Ali Vs. Bangladesh, 36 DLR (AD) 234** held that mere membership of an unlawful assembly makes one liable under section 149. But in Babar Ali Vs.

State, 20 DLR (SC) 347 held that if some member of the unlawful assembly commit a more serious offence which was not the object of assembly, they can be convicted for offence of their individual acts in addition to punishment for offence done in pursuance of the common object.

Purpose of section 149:

- The object of this section is to make clear that an accused person whose case falls within its terms cannot put forward the defence that he did not with his own hand, commit the offence.

Distinction between 34 & 149.

The main differences between the two sections are as follows:

1. Offence

- Section 34 does not create any specific offence but only lays down the principle of joint criminal liability.
- Whereas s.149 creates specific offence and being a member of an unlawful assembly is itself a crime, which is punishable under s.143.

2.Provisions

- 'Common intention' used in S.34 is not defined anywhere in PC,
- While 'common object' in s.149 must be one of the five ingredients defined in S. 141 **of Penal Code, 1860.**

3. Prior meeting

- Common intention requires a prior meeting of mind and unity of intention and overt act has been done in furtherance of the common intention of all.
- Whereas a common object may be formed without a prior meeting of mind when the common object of the members of the unlawful assembly is one but the intention of participants is different.

4.Members

- For invoking S.34 it is sufficient that two or more persons were involved.
- However, there have to be a minimum of five persons to impose S.149.

5. Participation

- The crucial factor of S.34 is 'participation'
- while there is no need of active participation in S.149 **of Penal Code, 1860..**

2. A,B,C,D,E and F with the common object of taking forcible possession of a piece of land belonging to X formed an unlawful assembly and being armed with deadly weapons such as lathis, fala, dagger etc went to the above land in execution of their common object. X and his men opposed the aggressors when a violent quarrel ensued between the parties. In the midst of the scuffle A gave a lathi blow on the head of X causing a fatal bleeding injury where upon X fell on the ground and F gave a fala blow on his left leg of X causing a simple injury. X died on the spot. In the melee, B gave a fala blow to X younger son Y causing grievous injury on his abdomen and C gave a lathi blow on the right wrist of Y causing grievous injury. Y luckily survived the injuries after being treated in the hospital for 45 days. D gave a dao blow on the head of Z causing a simple injury. In the course of free fight A, B and F sustained swelling injuries.

Under what sections of what relevant law you would frame charges against the above six accused persons in the light of their overt acts and collective actions? Give reasons in support of your answer. [Bar Exam-2006]

Ans to the question no-2

Fact in short:

- i. A,B,C,D,E and F with the common object of taking forcible possession of a piece of land belonging to X formed an unlawful assembly and being armed with deadly weapons such as lathis, fala, dagger etc went to the above land in execution of their common object.
- ii. X and his men opposed the aggressors when a violent quarrel ensued between the parties. In the midst of the scuffle A gave a lathi blow on the head of X causing a fatal bleeding injury where upon X fell on the ground and F gave a fala blow on his left leg of X causing a simple injury. X died on the spot.
- iii. In the melee, B gave a fala blow to X younger son Y causing grievous injury on his abdomen
- iv. and C gave a lathi blow on the right wrist of Y causing grievous injury. Y luckily survived the injuries after being treated in the hospital for 45 days.
- v. D gave a dao blow on the head of Z causing a simple injury.
- vi. In the course of free fight A, B and F sustained swelling injuries.

Issue:

- Under what sections of what relevant law you would frame charges against the above six accused persons in the light of their overt acts and collective actions?

Legal Reasoning & Decisions:

- **A,B,C,D,E and F may be liable for Unlawful assembly with deadly weapon under section 148 of the Penal Code, 1860.**

According to section 146 of the Penal Code, 1860 whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

According to section 148 of the Penal Code, 1860 rioting, armed with deadly weapon, he shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

In the above problem A,B,C,D,E and F with the common object of taking forcible possession of a piece of land belonging to X formed an unlawful assembly and attacked X and his men when a violent quarrel ensued between the parties by deadly weapons such as lathis, fala, dagger etc went to the above land in execution of their common object. So they all are liable under section 148 of the Penal Code, 1860 for rioting with deadly weapon. **They may be charged under section 148 of the Penal Code, 1860.**

- **X and his men opposed the aggressors when a violent quarrel ensued between the parties. In the midst of the scuffle A gave a lathi blow on the head of X causing a fatal bleeding injury where upon X fell on the ground and F gave a fala blow on his left leg of X causing a simple injury. X died on the spot. A and F may be liable for Murder under section 302 of the Penal Code, 1860.**
- **Exception 4 to Section 300**, suggesting a **sudden quarrel**. **BUT** this is not a private sudden fight. The accused came **armed, with a pre-conceived common object** to take forcible possession of land — that excludes the benefit of **Exception 4 to Section 300**. So, **Section 302 (murder)** is more appropriate for A (fatal blow) and F (participated with a deadly weapon).
- **B and C may be liable for Grievous hurt under section 326 of the Penal Code, 1860.**

According to section 320 of the Penal Code, 1860 any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits. According to section 326 of the Penal Code, 1860 whoever, voluntarily causes grievous hurt by dangerous weapons or means, he shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In the above problem In the melee, B gave a fala blow to X younger son Y causing grievous injury on his abdomen and C gave a lathi blow on the right wrist of Y causing grievous injury. Y luckily survived the injuries after being treated in the hospital for 45 days which constitute voluntarily grievous hurt. **So B and C**

liable for Grievous hurt under section 326. They may be charged under section 326 of the Penal Code, 1860.

- **B and C may be liable for voluntarily causing hurt under section 323 of the Penal Code, 1860.**

According to section 323 of the Penal Code, 1860 whoever, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both. In the above problem D gave a dao blow on the head of Z causing a simple injury. So **B and C may be liable for voluntarily causing hurt under section 323. They may be charged under section 323 of the Penal Code, 1860.**

- **Joint Liability:**

According to section 149 of the Penal Code, 1860 if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly all member of the same assembly, is guilty of that offence. Therefore if A,B,C,D,E and F all have knowledge that such offences may be committed committed by any member of an unlawful assembly in prosecution of the common object of that assembly, then are liable under sections 304/323/326/148/149 of the Penal Code, 1860.

Hence **they all may be charged under section 302/323/326/148/149 of Penal Code, 1860.**

3. (a) What do you mean by abetment of an offence? Under what provisions of law abatement is punishable and what is the quantum of punishment prescribed for it?

(b) A, B and C conspire to poison Z. In pursuance of the conspiracy, A gave money to B to procure poison. After procuring the poison, B delivered it to C in that he may administer the poison to Z. C in the absence of A and B by administering the poison causes Z's death. Explain the liability of A, B and C for causing the death of Z in the facts of the case. **[Bar Exam-2017, 2011, 2008, 2006]**

Ans to the question no-3(a)

Abetment of an offence:

Sometimes, indirectly participating in committing an offence itself may also become a punishable offence. In such crimes, the offenders do not directly involve themselves in the offence. However, their abetment can become punishable in itself. These offences relate to Section 107, **of the Penal Code, 1860.**

To explain the concept of abetment, the word 'abet' should be given a deep scrutiny. In general use, it means to aid, advance, assist, help and promote. In the case of **Sanju v. State of Madhya Pradesh, (2002) 5 SCC 371** the honorable Supreme court defined 'abet' as meaning to aid, to assist or to give aid, to command, to procure, or to counsel, to countenance, to encourage, or encourage or to set another one to commit. According to section 107 of the Penal Code, 1860 a person abets the doing of a thing, who-

- **Firstly:**Instigates any person to do that thing; or
- **Secondly:**Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
- **Thirdly:**Intentionally aids, by any act or illegal omission, the doing of that thing.In **Ashraf Ali Vs. State, 9 DLR 41** held that the intentional aiding of the doing of a thing by omission constitutes abetment.

Essential Elements

A person abets the doing of a thing when

1. he ***instigates*** any person to do that thing; or
2. ***engages*** with one or more other persons in any conspiracy for the doing of that thing; or
3. ***intentionally aids***, by act or illegal omission, the doing of that thing. These things are the essentials of abetment as a complete crime.

Illustration

- A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Punishment for Abetment:

Sections 109 to 120 deal with Punishment for Abetment, as follows:

1. According to section 109 of the Penal Code, 1860 whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
2. According to section 110 of the Penal Code, 1860 punishment of abetment if person abetted does act with different intention from that of abettor, he shall be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.
3. According to section 111 of the Penal Code, 1860 when an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it.
4. According to section 112 of the Penal Code, 1860 if the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.
5. According to section 113 of the Penal Code, 1860 when an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different

effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

6. According to section 115 of the Penal Code, 1860 Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

7. According to section 116 of the Penal Code, 1860 Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

8. According to section 117 of the Penal Code, 1860 whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

9. According to section 118 of the Penal Code, 1860 whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design, shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

10. According to section 119 of the Penal Code, 1860 whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant

to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

11. According to section 120 of the Penal Code, 1860 whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

Ans to the question no-3(b)

Issue:

- What are the liability of A, B and C for causing the death of Z in the facts of the case?

Legal Reasoning & Decisions:

- According to section 107 abetment of offence can be done when one or more other person engages in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy.
- A, B and C conspire to poison Z. In pursuance of the conspiracy, A gave money to B to procure poison. After procuring the poison, B delivered it to C in that he may administer the poison to Z. Here C is guilty of murder. A and B are guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.
- Therefore,
 - ✓ A and B can be liable to be punished under section 302/109 of the Penal Code, 1860.
 - ✓ C can be liable to be punished under section 302 of the Penal Code, 1860.

4. What do you mean by Abetment? Is it a separate punishable offence? What is the punishment prescribed for the offence of abetment? **[Bar Exam-2009]**

Ans to the question no-4

What do you mean by Abetment:

- Sometimes, indirectly participating in committing an offence itself may also become a punishable offence. In such crimes, the offenders do not directly involve themselves in the offence. However, their abetment can become punishable in itself. These offences relate to Section 107, PC under the chapter of abetment.
- To explain the concept of abetment, the word 'abet' should be given a deep scrutiny. In general use, it means to aid, advance, assist, help and promote. In the case of **Sanju v. State of Madhya Pradesh, (2002) 5 SCC 371** the honorable Supreme court defined 'abet' as meaning to aid, to assist or to give aid, to command, to procure, or to counsel, to countenance, to encourage, or encourage

or to set another one to commit. According to section 107 of the Penal Code, 1860 a person abets the doing of a thing, who-

Firstly.

Instigates any person to do that thing; or

Secondly

Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly:

Intentionally aids, by any act or illegal omission, the doing of that thing.

In **Ashraf Ali Vs. State, 9 DLR 41** held that the intentional aiding of the doing of a thing by omission constitutes abetment.

Essential Elements

A person abets the doing of a thing when

- (1) he **instigates** any person to do that thing; or
- (2) **engages** with one or more other persons in any conspiracy for the doing of that thing; or
- (3) **intentionally aids**, by act or illegal omission, the doing of that thing. These things are the essentials of abetment as a complete crime.

Illustration:

- A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Is it a separate punishable offence:

- The offence of abetment is a substantive one and the conviction of an abettor is, therefore, in no way dependent on the conviction of the principal. Section 109 is by itself creative of an offence though it is punishable in the context of the other offence. When a person is charged with the abetment of an offence, it is normally linked with an offence which has been proved.

Punishment for Abetment:

Sections 109 to 120 deal with Punishment for Abetment, as follows:

1. According to section 109 of the Penal Code, 1860 whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
2. According to section 110 of the Penal Code, 1860 punishment of abetment if person abetted does act with different intention from that of abettor, he shall be punished with the punishment provided for the offence which would have been

committed if the act had been done with the intention or knowledge of the abettor and with no other.

3. According to section 111 of the Penal Code, 1860 when an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it.

4. According to section 112 of the Penal Code, 1860 if the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

5. According to section 113 of the Penal Code, 1860 when an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

6. According to section 115 of the Penal Code, 1860 Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

7. According to section 116 of the Penal Code, 1860 Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

8. According to section 117 of the Penal Code, 1860 whoever abets the commission of an offence by the public generally or by any number or class of

persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

9. According to section 118 of the Penal Code, 1860 whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design, shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

10. According to section 119 of the Penal Code, 1860 whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

11. According to section 120 of the Penal Code, 1860 whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

5. A, B, C, D and F entered into a house of X armed with deadly weapons. A and B hold the hands of X and C gave a blow with sharp cutting weapon causing serious injury to X and X died on spot. How you will implicate F in the said offence. Explain with reference to relevant law. **[Bar Exam-2006]**

Ans to the question no-5

Fact in short:

- A, B, C, D and F entered into a house of X armed with deadly weapons. A and B hold the hands of X and C gave a blow with sharp cutting weapon causing serious injury to X.

Issue:

- How F will implicate in the said offence?

Legal Reasoning & Decisions:

- According to section 141 of the Penal Code, 1860 an assembly of five or more persons is designated an "unlawful assembly," if the common object of the

persons composing that assembly is to commit offence. Section 142 sated that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. Section 149 of the Penal Code, 1860 deals with the common object. According to section 149 if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

- **In Abed Ali Vs. Bangladesh, 36 DLR (AD) 234** held that mere membership of an unlawful assembly makes one liable under section 149. But in **Babar Ali Vs. State, 20 DLR (SC) 347** held that if some member of the unlawful assembly commit a more serious offence which was not the object of assembly, they can be convicted for offence of their individual acts in addition to punishment for offence done in pursuance of the common object.
- After considering above discussion we can say that F is also liable with A,B,C, and D under sections 302/ 149 of the Penal Code equally because he was the member of this group.

6. a) When an assembly is deemed to be an unlawful assembly? What are the distinction between unlawful assembly and rioting?

b) X, a thief, flees from the custody of police. Police officer Y fires at X to halt him which strikes Z's leg and he dies. Has police officer Y committed any offence? Put your argument forward in support of your answer. **[Bar Exam-2021]**

Ans to the Question no-6(a)

Unlawful assembly

The term 'Unlawful Assembly' has been defined under section 141 of the Penal Code, 1860 as an assembly of five or more persons having a common object to perform an omission or offence. Section 141, means an assembly of 5 or more persons if the common object of the assembly is-

1. To overawe by using criminal force or show criminal force, to Central or any State Government or Parliament or any State Legislature or any public servant; or
2. To oppose the performance of any law or legal process; or
3. To carry out any mischief or criminal trespass or any other offense; or
4. By use of criminal force takes possession of any property or deprives any person of the right to the way or the use of water or any incorporeal right; or
5. The use or show of criminal force compels any person to do any illegal act.

Essentials to constitute an Unlawful Assembly:

To constitute an unlawful assembly the following 3 conditions must co-exist:-

- There must be an assembly of five persons.
- The assembly must have a common object and
- The common object must be to commit one of the five illegal objects specified in the section.

Section 142 of the Penal Code states that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

‘An assembly, which was lawful to start with, became unlawful the moment one of the members called on the others to assault the victim and his associates, and in response to his invitation all the members of the assembly started to chase the victim while he was running.’

Section 149 of the Penal Code, 1860 states that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Distinction between rioting and unlawful assembly

- Unlawful assembly is an assembly which constitutes five or more persons whereas whenever force or violence is used by an unlawful assembly, it becomes rioting.
- Section 141 defined unlawful assembly, whereas section 146 defined rioting.
- A riot is an unlawful assembly in particular state of activity, which activity is accompanied by the use of force or violence.
- It is only use of force that distinguishes rioting from an unlawful assembly. Two things are, therefore, necessary to convert an unlawful assembly into a riot, viz;
(a) the use of force or violence by an unlawful assembly or any member thereof; and
(b) Such force or violence being used in prosecution of the common object of such assembly.
- According to section 143 whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
- Whereas According to section 143 whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ans to the Question no-6(b)**Issue:**

- Whether Y has committed any crime or not?

Legal Analysis and Decision:

- According to exception number 3 of section 300 culpable homicide is not murder if the offender being a public servant exceeds the powers given to him by law and causes death in discharge of his duty as public servant. Focusing on the given fact, it is clear to us that to prevent a thief from escaping Y shoots at him and unfortunately Z dies by such shooting instead of X. Theft is not such a dangerous crime, for which one can kill another and which is not within the jurisdiction of public officer. Therefore Y is liable to be punished under section 304 of the Penal Code, 1860.

7. Unless common intention and participation are both present Section 34 of the penal code 1860 cannot be applied- justify the statement. Enrich your answer by elucidating the role of common intention and common object in making a person liable for an offence not directly committed by him. **[Bar Exam-2020]**

Ans to the Question no-7**Common Intention & Participations**

According to section 34 of the Penal Code when two or more persons commit any criminal act and with the intention of committing that criminal act, then each of them will be liable for that act as if the act is done by them individually.

There should be participation in some way or other in the commission of the act- the persons cannot be held liable if they have decided what to do and then they have not done that thing, every person who is a part of the group should do something so as to participate in the commission of the act.

The case of Barendra Kumar Ghosh v. King Emperor AIR 1925 PC 1 was one of the earliest cases where the court convicted another person for the act of another done in furtherance of common intention. The facts of the case are, a group of armed persons entered in the police station on 3rd August, 1923. They demanded money from the post master where he was counting the money. They fired from the pistol at the postmaster, due to which the postmaster died on the spot. All of the accused ran away without taking money. The Police was able to catch Barendra Kumar Ghosh who was standing outside the post office as a guard. Barendra's contention was that he was only standing as a guard but the Calcutta high court convicted him for murder under section 302 read with section 34 of Penal Code. When he appealed in the Privy Council, his appeal was rejected.

In Lieutenant Colonel Syed Farook Rahman Vs. State, 53 DLR 287 court held that it is established that the offence which resulted was committed in furtherance of the common intention of all the participants, the fact that any of them did not take part in the commission of that offence will not prevent his being held liable for the offence.

Role of common intention and common object in making a person liable for an offence not directly committed by him:

The Penal Code, 1860, states the concepts of common intention and common object to address the liability of individuals in criminal acts involving multiple participants. These concepts are fundamental in ensuring that all individuals involved in a collective criminal endeavor can be held accountable, even if they did not directly commit the criminal act. The distinction between common intention under Section 34 and common object under Section 149 is crucial for understanding their roles in assigning liability.

Common Intention (Section 34):

- Requires a pre-arranged plan and consensus among the several participants.
- Liability arises from the shared intention to commit a specific crime.
- All participants are equally liable as if each had committed the act individually.

Common Object (Section 149):

- Involves a group of five or more persons with a shared objective.
- The common object can evolve at any stage of the unlawful assembly.
- Members are liable for offenses committed in pursuit of the common object, regardless of direct involvement.

Role in Assigning Liability: Both sections aim to address scenarios where multiple individuals contribute to the commission of a crime, ensuring that all involved parties are held accountable.

Chapter-4

Taking Gratification, False Evidence

Judicial Service Exam Past Questions

- | |
|---|
| 1. Define the phrases giving false evidence and fabricating false evidence. Bring out a distinction between them. [7th BJS] [Bar Written Exam-2025] |
| 2. a) Any public servant taking gratifications other than legal remuneration in respect of an official act is an offence. Explain. |
| b) X is a public servant X's wife Y receives a present from a client with the motive for soliciting her husband X to do some illegal favor to the client. The public servant X abets his wife Y doing that favor. Do X, and Y commits any offence under the Penal code? If so what shall be the maximum sentence? Answer stating the relevant provisions. [7th BJS] |
| 3. a) When can a person be charged with the causing disappearance of evidence of an offence? Enumerate the different modes and scales of punishment for committing such offence attracting different types of punishments. |
| b) 'A' takes poison with intent to commit suicide; but fortunately he survives. Does 'A' commit any offence? If so, what is the name and maximum punishment for such offence? [9th BJS] |
| 4. A, having been legally summoned to appear as a witness before a Civil Judge, intentionally omits to appear in disobedience to the summons. Determine A's criminal liability referring to the relevant provision(s) of the Penal Code, 1860. [18th BJS, 2025] |
| 5. How does the two offences 'Giving False Evidence' and 'Fabricating False Evidence' differ in terms of object or intent? What is the liability or punishment of a person who fabricates evidence to secure a death penalty conviction for an innocent person? [18th BJS, 2025] |

Solution of Judicial Service Exam Past Questions

1. Define the phrases giving false evidence and fabricating false evidence. Bring out a distinction between them. [7th BJS] [Bar Written Exam-2025]

Ans to question no-1

Giving False Evidence — Section 191 of the Penal Code, 1860:

MEANING

A person is said to **give false evidence** when he:

- Is **legally bound** by an oath, or by law, to state the truth, and
- **Makes a false statement**, or
- **Does not believe the statement to be true**, or
- **Knows the statement to be false**.

ESSENTIAL ELEMENTS

1. The person must be **legally bound to speak the truth**
2. The statement must be **false**
3. The statement must be made **knowingly or believing it to be false**

Illustrations:

- A, in support of a just claim which B has against Z for one thousand taka falsely swears on a trial that he heard Z admit the justice of B's claim, A has given false evidence.

Fabricating False Evidence — Section 192:

MEANING

A person **fabricates false evidence** when he:

- **Creates false circumstances**, or
- **Makes a false document or record**, or
- **Causes any circumstance to exist falsely**,

with the **intention** that such false evidence may:

- Appear in a judicial proceeding, and

- Cause the court or a public servant to form an **erroneous opinion** on a material point.

ESSENTIAL ELEMENTS

1. **Creation of false evidence or circumstance**
2. **Intention** that it may be used in a judicial proceeding
3. Intention to **mislead the court or authority**

Illustrations:

- A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

Difference between false evidence and fabricating false evidence

Following are the differences of giving false evidence and fabricating false evidence –

1. In case of false evidence, general intention is required. Whereas in Fabricating false evidence, particular intention is necessary. Intention is the essence of both the offence.
2. In false evidence, the statement which are false not necessary that it should be material. On the other hand, in fabricating false evidence statements must be on material point only.
3. The offence of giving false evidence is committed by the person who is legally bound by an oath to the state the truth. Whereas its opposite in the fabricating false evidence i.e. the offence is committed by a person who is not legally bound to take an oath to state the truth.
4. In Giving false evidence, the question of effect of the evidence on the officer before whom the evidence is given is of no consequences. While this effect of the evidence is important in fabricating false evidence.
5. In giving false evidence, it is necessary that there should be a proceeding of judicial or non-judicial being conducted. Whereas in fabricating false evidence, it is not necessary of judicial or non-judicial proceeding because it is enough that there is reasonable prospect of the proceeding.

2. a) Any public servant taking gratifications other than legal remuneration in respect of an official act is an offence. Explain.

b) X is a public servant X's wife Y receives a present from a client with the motive for soliciting her husband X to do some illegal favor to the client. The public servant X abets his wife Y doing that favor. Do X, and Y commits any offence under the Penal code? If so what shall be the maximum sentence? Answer stating the relevant provisions. [7th BJS]

Ans to the question no-2(a)

According to section 161 of the Penal Code, 1860 whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or for bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Government or Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustrations:

A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

Ans to the question no-2(b)

Liability of X and Punishment

- According to section 164 of the Penal Code, 1860 whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
- Thus X is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Liability of Y and Punishment

- According to section 163 of the Penal Code, 1860 whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Government or Legislature, or with

any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

- Thus Y is punishable with imprisonment for a term not exceeding one year, or with fine, or with both.

3. a) When can a person be charged with the causing disappearance of evidence of an offence? Enumerate the different modes and scales of punishment for committing such offence attracting different types of punishments.

b) 'A' takes poison with intent to commit suicide; but fortunately he survives. Does 'A' commit any offence? If so, what is the name and maximum punishment for such offence?

[9th BJS]

Ans to the question no-3(a)

Causing disappearance of evidence of offence, or giving false information to screen offender- if a capital offence; if punishable with imprisonment for life; if punishable with less than ten years' imprisonment:

According to section 201 of the Penal Code, 1860 whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if the offence is punishable with 2[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Destruction of document to prevent its production as evidence:

According to section 204 of the Penal Code, 1860 whoever secrets or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution:

According to section 206 of the Penal Code, 1860 Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ans to the question no-3(b)**Fact in Short:**

- 'A' takes poison with intent to commit suicide; but fortunately he survives.

Issue:

- Does 'A' commit any offence?
- If so, what is the name and maximum punishment for such offence?

Analysis and Decision:

- A has committed an attempt to commit suicide. According to section 309 of the Penal Code, 1860 whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.
- Thus A shall be liable for attempts to commit suicide and shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

4. A, having been legally summoned to appear as a witness before a Civil Judge, intentionally omits to appear in disobedience to the summons. Determine A's criminal liability referring to the relevant provision(s) of the Penal Code, 1860. **[18th BJS, 2025]**

A is criminally liable under **Section 174 of the Penal Code, 1860**. Section 174 provides punishment for **non-attendance in obedience to an order from a public servant**. Where a person is legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation issued by a competent public servant, and intentionally omits to attend, he commits an offence under this section.

In the present case, A was **legally summoned to appear as a witness before a Civil Judge**. A Civil Judge is a public servant competent to issue such summons. Since A

intentionally omitted to appear in disobedience to the summons, he has committed the offence contemplated by Section 174.

The punishment under Section 174 is:

- **Simple imprisonment up to one month, or**
- **Fine up to five hundred taka, or**
- **Both.**

Where the summons requires attendance before a Court of Justice, the punishment may extend to:

- **Simple imprisonment up to six months, or**
- **Fine up to one thousand taka, or**
- **Both.**

Conclusion:

Since A intentionally failed to appear as a witness before a Civil Judge despite being legally summoned, he is guilty of the offence under **Section 174 of the Penal Code, 1860**, and is liable to the enhanced punishment applicable to non-attendance before a Court of Justice.

5. How does the two offences ‘Giving False Evidence’ and ‘Fabricating False Evidence’ differ in terms of object or intent? What is the liability or punishment of a person who fabricates evidence to secure a death penalty conviction for an innocent person? [18th BJS, 2025]

Difference between “Giving False Evidence” and “Fabricating False Evidence”

The offences of **Giving False Evidence** and **Fabricating False Evidence** are defined in **Sections 191 and 192 of the Penal Code, 1860** respectively. Although both aim at misleading a judicial or legal proceeding, they differ in their mode of commission.

Giving False Evidence (S.191)	Fabricating False Evidence (S.192)
A person makes a false statement under oath or under a legal obligation to state the truth.	A person creates or causes circumstances, documents, records, or false entries to exist so that they may appear as evidence.
It is committed by making a false statement .	It is committed by creating false evidence or false circumstances .
The falsity lies in the testimony itself.	The falsity lies in the evidence manufactured.
Example: A witness knowingly gives	Example: A person prepares a forged document

a false statement in court.	and intends it to be used in court as genuine evidence.
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Difference in Object or Intent

The **object or intent** of both offences is substantially the same, namely:

- To cause a Court, public servant, arbitrator, or other person authorized by law to form an erroneous opinion upon a material point; or
- To mislead a judicial proceeding by presenting false facts as true.

However:

- In **giving false evidence**, the intent is carried out through a **false oral or written statement** made under a legal duty to tell the truth.
- In **fabricating false evidence**, the intent is carried out by **creating false circumstances, records, or documents** which may appear in evidence and mislead the tribunal.

Liability for Fabricating Evidence to Secure a Death Sentence

Section 194 of the Penal Code, 1860 specifically deals with this situation.

Where a person **gives or fabricates false evidence** intending thereby to cause, or knowing it to be likely that he will thereby cause, **the conviction of an innocent person for an offence punishable with death**, he is punishable with:

- **Imprisonment for life**, or
- **Rigorous imprisonment up to ten years**, and
- **Fine**.

Furthermore, if an innocent person is actually convicted and **executed as a consequence of such false evidence**, the person who gave or fabricated the false evidence may be punished with:

- **Death**, or
- **Imprisonment for life**, or
- The punishment prescribed above.

Chapter-5

Culpable homicide

Judicial Service Exam Past Questions

1. What is meant by culpable homicide? When causing of death is considered as culpable homicide amounting to murder and when it is considered as culpable homicide not amounting to murder? Explain with illustrations.] **[3rd BJS, 10th BJS, 14th BJS]**

2. a) 'A' appears the difference between the offences defined in sections 299 and 300 of the Penal Code. **[16th BJS Exam-2023]**

b) 'A' appears as a witness before 'Z' a Magistrate. 'Z' says that he does not believe a word of 'A's deposition and that 'A' perjured himself. 'A' is moved to sudden passions by these words and kills 'Z'. What type of offence 'A' has committed? **[9th BJS]**

c) In course of an altercation A gives a kick on the abdomen of B, which results in B's instantaneous death. Does A commit any offence? What shall be the maximum punishment for such offence? **[8th BJS]**

3. Every murder is a culpable homicide but every culpable homicide is not a murder, explain it. **[Bar-2020]**

Advocateship Exam Past Questions

1. What is culpable homicide? Distinguish between culpable homicide amounting to murder and culpable homicide not amounting to murder with reference to the relevant provisions of the Penal Code. **[Bar Exam-2009]**

Or

Discuss the essential differences between the offences defined in sections 299 and 300 of the Penal Code with examples. **[Bar Exam-2015, 2012, 2009, 2008]**

2. a) Culpable homicide is genus of which murder is species. Discuss the statement with illustration mentioning character, ingredient and punishment of both the offences.

b) X Shoot at a fowl of Y with intention to kill and steal it. But the bullet struck the leg of Y who was behind the bush. Severely wounded Y died after 1 hour bleeding. X did not know that Y was there. The doctor endorsed a note in the postmortem report that by resorting to proper remedies and skillful treatment death of Y might have been prevented. Determine the liability of X. **[Bar Exam-2020]**

3. X, knowing and intending that it would likely cause death of Y, fires bullet. But it causes death of Z. Under which provision of the Penal Code, 1860 X committed the offence? Explain. **[Bar Exam-2023]**

4. (a) X strikes his neighbor Y and Y gets excited to violent rage by that. Z, a bystander, intending to take advantage of Y's rage, and to cause him to kill X, put a pistol into Y's hand. Y shoots X with that pistol and kills X. Determine the liability of Y and Z in light of the relevant provision of the Penal Code, 1860. **[Bar Written Exam-2025]**

(b) A intending to murder B, by poison, purchases poison and mixes the same with food. Subsequently, A delivers that food to B's servant C to place it on B's table. Although B got sick after eating that food but he did not die due to taking immediate treatment. Ascertain the liability of A and C according to relevant provision of the Penal Code, 1860. **[Bar Written Exam-2025]**

5. A, B, C, D and E together being armed with sticks and iron rods, gathered in front of X's house with the object to intimidate him for spreading false rumors during election campaign. B broke the main gate of the X's house and all five entered inside the house. As X was not at home, his younger brother Y came out to confront them. At one point of argument A got excited and struck Y on the head with an iron rod causing Y's death. The other four, shocked by that incident, fled immediately from that place. Discuss the liability of A, B, C, D and E under the relevant provisions of the Penal Code, 1860. **[Bar Written Exam-2025]**

Solution of Judicial Service Exam Past Questions

1. What is meant by culpable homicide? When causing of death is considered as culpable homicide amounting to murder and when it is considered as culpable homicide not amounting to murder? Explain with illustrations.] **[3rd BJS, 10th BJS, 14th BJS]**

Ans to the question no-1

Homicide

The word homicide has been derived from the Latin word 'homo' which means a man and 'caedere' which means to cut or kill [homo "man" (see homunculus) + -cidium "act of killing," from caedere "to kill, to cut down"]. Thus, homicide means the killing of a human being. Culpable homicide refers to taking the life of another person, where the act has been done with criminal intent. All cases of homicide are not culpable (punishable). Law distinguishes between lawful and unlawful homicide. For instances, killing in self-defense in pursuance of a lawful authority or by reason of mistake of fact is not culpable. Likewise, if death is caused by accident or misfortune or while doing an act in good faith and without any criminal intention for the benefit of the person killed, the man is excused from criminal responsibility for homicide.

Culpable Homicide

Section 299 of the Penal Code, 1860 defines Culpable Homicide as “ whosoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as it is likely to cause death or with the knowledge that he is likely by such act to cause death , commits the offence of Culpable Homicide .”

The essentials of Culpable Homicide are :

- By doing an act – death may be caused in number of ways such as by poisoning , starving , striking , drowning or communicating some shocking news etc. . Act here includes illegal omissions . An omission is illegal if it be an offence and in some direction is a breach of law .
- Intention to cause death – Intention means the expectation of the consequence in question . when a man is charged with doing the act of which the probable consequence maybe highly injurious , the intention is inferred from the acts of the accused and circumstance of the case .
- With the intention of causing such bodily injury as is likely to cause death – The intention of the offender may not be to cause death , it would be sufficient if he intended to cause such bodily injury which was likely to cause death.
- With the knowledge that he is likely by such an act to cause death – Knowledge is a strong word and imports a certainty and not merely a probability . Here knowledge refers to the personal knowledge of the person who does the act.

Examples of culpable homicide:

- A lays sticks and turf over a pit, with the intention of causing death or with the knowledge that death is likely to be caused. Z believing the ground to be firm treads on it, falls in it and dies. Here A has committed culpable homicide.

Explanations:

- 1. After causing the death, the accused person will not be allowed to raise the plea, that victim died because of disease from which he was suffering.
- 2. After causing the death, the accused person will not be allowed to raise the plea, that victim died because of lack of skilful treatment.
- 3. Causing death of a child in womb-----is not culpable homicide. But when a part of the body of the baby comes out of the mother, then causing death of such baby amount to culpable homicide.

Culpable homicide amounting to Murder or Murder

Section 300 of the Code defines murder as – except in the cases , culpable homicide is murder if –

1. If the act by which the death is caused is done with the intention of causing death .
2. If it is done with the intention of causing such bodily injury as the offender knows likely to cause death of the person to whom the harm is caused
3. If it is done with the intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.
4. If the person committing the act knows that it is so immediately dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such an act without an excuse for incurring the risk of causing death or such bodily harm.

Culpable homicide not amounting to Murder

Section 300 explains the 5 circumstances where culpable homicide not amounting to murder

- **1. Acts under grave and sudden provocation**
 - Here person will loss self-control on account of certain situation and causes the death of some person. The provocation must be grave and it must be sudden.
- The above exception is subject to the following provisos:
 - Firstly.-That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
 - Secondly.-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
 - Thirdly.-That the provocation is not given by anything done in the lawful exercise of the right of private defence.
- **2. When private Defense is exceeded in good faith**

In exercising private defense if such person accidentally exceeds his or her right in good faith or in wrong judgment and the act causes the death of a person, the act is culpable homicide and not murder.
- **3. Exceeding the Ambit of discharging public duties**
 - When an officer or public servant exceeds his or her mandate of duties or authority given to him or an officer or public servant assisting him exceeds the same, it is considered culpable homicide not amounting to murder.
- **4. When death is caused in sudden fight or heat of passion upon a sudden quarrel**
 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel.
- **5. When death is caused of a person above eighteen years of age who voluntarily took the risk of death.**

- When death is caused in a situation where a person has by his own consent put himself to risk the same would be culpable homicide and not murder.

Punishment:

- According to section 302 offenders shall be punished with death, or imprisonment for life, and shall also be liable to fine for commission of murder.
- According to section 304 offender shall be punished be punished with imprisonment for life or imprisonment extend to not exceeding ten years and fine for the commission of Culpable homicide not amounting to murder with intention.
- According to section 304 offender shall be punished be punished with imprisonment not exceeding ten years or fine or both for the commission of Culpable homicide not amounting to murder with knowledge .

2. a) 'A' appears the difference between the offences defined in sections 299 and 300 of the Penal Code. [16th BJS Exam-2023]

b) 'A' appears as a witness before 'Z' a Magistrate. 'Z' says that he does not believe a word of 'A's deposition and that 'A' perjured himself. 'A' is moved to sudden passions by these words and kills 'Z'. What type of offence 'A' has committed? [9th BJS]

c) In course of an altercation A gives a kick on the abdomen of B, which results in B's instantaneous death. Does A commit any offence? What shall be the maximum punishment for such offence? [8th BJS]

Ans to the question no-2(a)

██████████ Distinguish between Culpable Homicide and Murder ██████████

Murder (defined under Section 300) and culpable homicide (defined under Section 299) are two offenses under the Penal Code, 1860 the distinction between which has always been perplexing to the law students.

As to Definition

- **Section 299 defines Culpable Homicide.**

Whoever causes death by doing an act with-

1. Intention of causing death.
2. Intentionally causing bodily injury which is **likely** to cause death.
3. Doing an act with knowledge that it is **likely** to cause death.

- **Section 300 defines Murder**

Whoever causes death by doing an act with-

1. Intention of causing death.
2. Causing such bodily injury as the offender knows it is likely to cause death of a person.
3. Intentionally causing bodily injury which is **sufficient** to cause death.
4. Doing an act with knowledge that it is so **imminently dangerous** and in all **probability** causes death.

As to Bodily injury:

- In Culpable Homicide, The offender must have the intention of causing such bodily harm which is likely to cause death. In murder, the offender must know that his act will cause death or the bodily injury will be sufficient in “ordinary course of nature to cause death”.

As to scope:

- Culpable homicide is wider than the term murder. Culpable homicide is therefore considered as the genus while as murder is regarded as a species. All murders are culpable homicide but all culpable homicides are not regarded as murder.

As to aggravated form:

- Murder is an aggravated form of culpable homicide.

As to probability of causing death:

- The probability of causing death is higher in murder than culpable homicide.

As to gravity of offence:

- Culpable Homicide of the first degree is Murder.
- Whereas Culpable Homicide of the 2nd & 3rd degree is Culpable homicide not amounting to Murder.

As to punishment:

- Section 304 provided punishment for culpable homicide not amounting murder.
- Whereas section 302 provided punishment for murder.

Ans to the Question no-2(b)

Issue:

What type of offence ‘A’ has committed?

Legal Analysis & Decision:

- According to Exception-1 of Section 300 of the Penal Code, 1860 Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or cause the death of any other person by mistake or accident.

- But 3rd exception of the exception-1 states that if the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant, the accused person will not get any defence under exception 1 of section 300 and such culpable homicide will be considered as murder.
- **In the given problem** 'A' appears as a witness before 'Z' a Magistrate. 'Z' says that he does not believe a word of 'A's deposition and that 'A' perjured himself. 'A' is moved to sudden passions by these words and kills 'Z'.
- Thus A has committed murder in view of law embodied in Exception-3 of Exception-1 of section 300 of the Penal Code, 1860.

Ans to the Question no-2(c)

Issues:

- Does A commit any offence?
- What shall be the maximum punishment for such offence?

Legal Analysis & Decision:

- According to Exception-4 of **Section 300 of the Penal Code, 1860 culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel.**
- **In the given problem** in course of an altercation A gives a kick on the abdomen of B, which results in B's instantaneous death.
- Thus A has committed **culpable homicide is not murder** in view of law embodied in Exception-4 of section 300 of the Penal Code, 1860.

3. Every murder is a culpable homicide but every culpable homicide is not a murder, explain it. [Bar-2020]

Ans to the question no-3

**Every murder is a culpable homicide but every culpable homicide is not a murder/
Culpable homicide is the genus while as murder is regarded as a species.**

The word homicide has been derived from the Latin word 'homo' which means a man and 'caedere' which means to cut or kill [homo "man" (see homunculus) + -cidium "act of killing," from caedere "to kill, to cut down"]. Thus, homicide means the killing of a human being. Section 299 of the Penal Code of 1860 addresses culpable homicide.

Section 299 of the Penal Code, 1860 defines Culpable Homicide as “ whosoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as it is likely to cause death or with the knowledge that he is likely by such act to cause death , commits the offence of Culpable Homicide .”

Under section 299 of the Penal Code, 1860, the term culpable homicide is further classified into two categories: culpable homicide not amounting to murder and culpable homicide amounting to murder.

Culpable homicide amounting to Murder or Murder

Section 300 of the Code defines murder as – Except in the cases , culpable homicide is murder if –

1. If the act by which the death is caused is done with the intention of causing death .
2. If it is done with the intention of causing such bodily injury as the offender knows likely to cause death of the person to whom the harm is caused
3. If it is done with the intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.
4. If the person committing the act knows that it is so immediately dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such an act without an excuse for incurring the risk of causing death or such bodily harm.

Culpable homicide not amounting to Murder

Section 300 Explains the 5 circumstances where culpable homicide not amounting to murder

- **1. Acts under grave and sudden provocation**
 - Here person will loss self-control on account of certain situation and causes the death of some person. The provocation must be grave and it must be sudden.
- **2. When private Defense is exceeded in good faith**
 - In exercising private defense if such person accidentally exceeds his or her right in good faith or in wrong judgment and the act causes the death of a person, the act is culpable homicide and not murder.
- **3. Exceeding the Ambit of discharging public duties**
 - When an officer or public servant exceeds his or her mandate of duties or authority given to him or an officer or public servant assisting him exceeds the same, it is considered culpable homicide not amounting to murder.
- **4. When death is caused in sudden fight or heat of passion upon a sudden quarrel**
 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel.
- **5. When death is caused of a person above eighteen years of age who voluntarily took the risk of death.**
 - When death is caused in a situation where a person has by his own consent put himself to risk the same would be culpable homicide and not murder.

Murder is just the aggravated form of culpable homicide. Culpable homicide is genus and 'murder' its specie. In the case of a murder, there is no presence of ambiguity that the act may or may not kill, as it is present in culpable homicide when we read the meaning and essential ingredients. If a person A is killed in cold-blood or with well-setup plan then it is a murder since the intention to kill A is in high degree. On other hand, person A is killed without pre-planned, in a sudden fight, or in sudden anger because of somebody's provocation or instigation, then such death is called culpable homicide.

Therefore, after considering above analysis, every murder is a culpable homicide but every culpable homicide is not a murder. In other word Culpable homicide is therefore considered as the genus while as murder is regarded as a species.

Solution of Advocateship Exam Past Questions

1. What is culpable homicide? Distinguish between culpable homicide amounting to murder and culpable homicide not amounting to murder with Reference to the relevant provisions of the Penal Code. **[Bar Exam-2009] Or**

Discuss the essential differences between the offences defined in sections 299 and 300 of the Penal Code with examples. **[Bar Exam-2015, 2012, 2009, 2008]**

Ans to the question no-1

Homicide:

The word homicide has been derived from the Latin word 'homo' which means a man and 'caedere' which means to cut or kill [homo "man" (see homunculus) + -cidium "act of killing," from caedere "to kill, to cut down"]. Thus, homicide means the killing of a human being. Culpable homicide refers to taking the life of another person, where the act has been done with criminal intent. All cases of homicide are not culpable (punishable). Law distinguishes between lawful and unlawful homicide. For instances, killing in self-defense in pursuance of a lawful authority or by reason of mistake of fact is not culpable. Likewise, if death is caused by accident or misfortune or while doing an act in good faith and without any criminal intention for the benefit of the person killed, the man is excused from criminal responsibility for homicide.

Culpable Homicide:

Section 299 of the Penal Code, 1860 defines Culpable Homicide as “ Whosoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as it is likely to cause death or with the knowledge that he is likely by such act to cause death , commits the offence of Culpable Homicide .”

The essentials of Culpable Homicide are :

- By doing an act – death may be caused in number of ways such as by poisoning , starving , striking , drowning or communicating some shocking news etc. . Act here includes illegal omissions . An omission is illegal if it be an offence and in some direction is a breach of law .

- Intention to cause death – Intention means the expectation of the consequence in question . when a man is charged with doing the act of which the probable consequence maybe highly injurious , the intention is inferred from the acts of the accused and circumstance of the case .
- With the intention of causing such bodily injury as is likely to cause death – The intention of the offender may not be to cause death , it would be sufficient if he intended to cause such bodily injury which was likely to cause death.
- With the knowledge that he is likely by such an act to cause death – Knowledge is a strong word and imports a certainty and not merely a probability . Here knowledge refers to the personal knowledge of the person who does the act.

Examples of culpable homicide:

A lays sticks and turf over a pit, with the intention of causing death or with the knowledge that death is likely to be caused. Z believing the ground to be firm treads on it, falls in it and dies. Here A has committed culpable homicide.

Explanations:

1. After causing the death, the accused person will not be allowed to raise the plea, that victim died because of disease from which he was suffering.
2. After causing the death, the accused person will not be allowed to raise the plea, that victim died because of lack of skilful treatment.
3. Causing death of a child in womb-----is not culpable homicide. But when a part of the body of the baby comes out of the mother, then causing death of such baby amount to culpable homicide.

Kinds of Culpable Homicide

Culpable homicide can be categories into-

1. Culpable homicide amounting to Murder
2. Culpable homicide not amounting to Murder

Culpable homicide amounting to Murder or Murder

Section 300 of the Code defines murder as – Except in the cases , culpable homicide is murder if –

1. If the act by which the death is caused is done with the intention of causing death .
2. If it is done with the intention of causing such bodily injury as the offender knows likely to cause death of the person to whom the harm is caused
3. If it is done with the intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

4.If the person committing the act knows that it is so immediately dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such an act without an excuse for incurring the risk of causing death or such bodily harm.

Culpable homicide not amounting to Murder

Section 300 Explains the 5 circumstances where culpable homicide not amounting to murder

- **1. Acts under grave and sudden provocation**
- **2. When private Defense is exceeded in good faith**
- **4. When death is caused in sudden fight or heat of passion upon a sudden quarrel**
- **5. When death is caused of a person above eighteen years of age who voluntarily took the risk of death.**

Punishment:

- According to section 302 offender shall be punished with death, or imprisonment for life, and shall also be liable to fine for commission of murder.
- According to section 304 offender shall be punished be punished with imprisonment for life or imprisonment extend to not exceeding ten years and fine for the commission of Culpable homicide not amounting to murder with intention.
- According to section 304 offender shall be punished be punished with imprisonment not exceeding ten years or fine or both for the commission of Culpable homicide not amounting to murder with knowledge .

Distinguish between Culpable Homicide and Murder:

Murder (defined under Section 300) and culpable homicide (defined under Section 299) are two offenses under the Penal Code, 1860 the distinction between which has always been perplexing to the law students.

As to Defination:

- **Section 299 defines Culpable Homicide.**

Whoever causes death by doing an act with

1. Intention of causing death.
2. Intentionally causing bodily injury which is **likely** to cause death.
3. Doing an act with knowledge that it is **likely** to cause death.

- **Section 300 defines Murder**

Whoever causes death by doing an act with

1. Intention of causing death.
2. Causing such bodily injury as the offender knows it is likely to cause death of a person.
3. Intentionally causing bodily injury which is **sufficient** to cause death.

4. Doing an act with knowledge that it is so *imminently dangerous* and in all *probability* causes death.

As to Bodily injury:

In Culpable Homicide, The offender must have the intention of causing such bodily harm which is likely to cause death. In murder, the offender must know that his act will cause death or the bodily injury will be sufficient in “ordinary course of nature to cause death”.

As to scope:

Culpable homicide is wider than the term murder. Culpable homicide is therefore considered as the genus while as murder is regarded as a species. All murders are culpable homicide but all culpable homicides are not regarded as murder.

As to aggravated form:

Murder is an aggravated form of culpable homicide.

As to probability of causing death:

The probability of causing death is higher in murder than culpable homicide.

As to gravity of offence:

Culpable Homicide of the first degree is Murder. Whereas Culpable Homicide of the 2nd & 3rd degree is Culpable homicide not amounting to Murder.

As to punishment

Section 304 provided punishment for culpable homicide not amounting murder. Whereas section 302 provided punishment for murder.

2. a) Culpable homicide is genus of which murder is species. Discuss the statement with illustration mentioning character, ingredient and punishment of both the offences.

b) X Shoot at a fowl of Y with intention to kill and steal it. But the bullet struck the leg of Y who was behind the bush. Severely wounded Y died after 1 hour bleeding. X did not know that Y was there. The doctor endorsed a note in the postmortem report that by resorting to proper remedies and skillful treatment death of Y might have been prevented. Determine the liability of X. [Bar Exam-2020]

Ans to the Question no-2(a)

Repeat Questions. Already discussed under Cupabale Homicide Chapter.

Ans to the Question no-2(b)

Issue:

Whether X has committed any offence or not?

Legal Analysis and Decision:

- Here X is not guilty of culpable homicide, as he did not intend to kill Y or cause death by doing an act that he knew was likely to cause death. According to section 299 whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Section 299 requires either knowledge or intention. In the given problem X had no knowledge or intention to kill Y. Therefore, X is guilty of no offence under section 299.

3. X, knowing and intending that it would likely cause death of Y, fires bullet. But it causes death of Z. Under which provision of the Penal Code, 1860 X committed the offence? Explain. **[Bar Exam-2023]**

Ans. to the Qs. No-3**Legal Analysis & Decision:**

- In the given scenario, X's action of firing a bullet, knowing and intending that it would likely cause the death of Y, but instead causing the death of Z, falls under the concept of "transferred intent" or "doctrine of transfer of malice" under the Penal Code, 1860.
- The principle underlying Section 301 is that the intent or knowledge to cause death transfers to the actual result, even if the person who died was not the intended target.
- According to section 301 if a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.
- Therefore, X is held liable for the death of Z in the same manner as if Y had been killed. According to section 302 he shall be liable for committing murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

4. (a) X strikes his neighbor Y and Y gets excited to violent rage by that. Z, a bystander, intending to take advantage of Y's rage, and to cause him to kill X, put a pistol into Y's hand. Y shoots X with that pistol and kills X. Determine the liability of Y and Z in light of the relevant provision of the Penal Code, 1860. **[Bar Written Exam-2025]**

(b) A intending to murder B, by poison, purchases poison and mixes the same with food. Subsequently, A delivers that food to B's servant C to place it on B's table. Although B got sick after eating that food but he did not die due to taking immediate treatment. Ascertain the liability of A and C according to relevant provision of the Penal Code, 1860. **[Bar Written Exam-2025]**

Ans to Question No. 4(a)**Liability of Y:**

- Y was **provoked** by X's sudden and grave act (assault).
- The killing occurred **in the heat of passion**.
- Under **Section 300 Exception 1**, this killing is **not murder but culpable homicide not amounting to murder**.
- Y is therefore liable under **Section 304, Penal Code, 1860 for culpable homicide not amounting to murder**.

Liability of Z:

- Z **had the intention** to cause X's death and **took advantage of Y's provocation** to achieve that end by giving him a pistol.
- Z **instigated and aided** the killing.
- His liability is **not mitigated by Y's provocation** because he acted with full intention and premeditation.
- Z is liable for **murder under Section 302 read with Section 38**.

Ans to Question No. 6(b)**Liability of A:**

A had the intention to cause B's death and took active steps by poisoning the food. Even though B survived due to treatment, A's act amounts to an offence of attempt to murder under Section 307 Penal Code, 1860, because A committed all acts necessary to cause the death of B. His acts were done with clear intention to kill (***mens rea***) and involved overt acts (actus reus) leading towards commission of murder.

Liability of C:

C was unaware of the poisoning and acted in good faith as part of regular duties. No liability unless it is proved that C had knowledge or shared common intention. Therefore the problem does not mention C's knowledge, **we assume C acted innocently without knowledge**. Hence, **C bears no criminal liability**.

5. A, B, C, D and E together being armed with sticks and iron rods, gathered in front of X's house with the object to intimidate him for spreading false rumors during election campaign. B broke the main gate of the X's house and all five entered inside the house. As X was not at home, his younger brother Y came out to confront them. At one point of argument A got excited and struck Y on the head with an iron rod causing Y's death. The other four, shocked by that incident, fled immediately from that place. Discuss the liability of A, B, C, D and E under the relevant provisions of the Penal Code, 1860. **[Bar Written Exam-2025]**

Ans to Question No.5

FACT SUMMARY:

- **A, B, C, D, E:** Armed with sticks and iron rods; gathered in front of X's house to intimidate him (common unlawful object).
- **B:** Broke the gate; all entered the house unlawfully.
- **A:** Struck Y on the head with iron rod → **Y died.**
- **C, D, E:** Fled the scene, shocked by killing.
- All five initially came with **common intention to intimidate**, not explicitly to kill.

Liability of A:

- A intentionally struck Y on the head with an iron rod, as a result of which Y died.
- Such an attack shows an intention to cause death or to cause grievous injury likely to cause death.
- Therefore, A is liable under **Section 302** of the Penal Code.
- In addition, A is also liable under **Sections 148, 452, and 149.**

Liability of B:

- Broke the gate and entered unlawfully → *House-trespass after preparation for hurt (Section 452).*
- Took part in an unlawful assembly armed with a deadly weapon → (**Section 148**).
- As to liability for Y's death: It must be examined whether the death was a probable consequence of their common object.
 - Their common object was to intimidate, not to kill; A's sudden provocation changed the nature of the occurrence.
 - Therefore, B is **not liable for murder under Sections 302/149.**
 - However, he is liable under **Sections 148, 452, and 149.**

Liability of C, D, and E:

- Same as B: They were present in the unlawful assembly with weapons and entered the house.
- They are **not liable under Sections 302/149**, as the murder was not within their common object nor a probable consequence of it.
- However, they are liable under **Sections 148, 452, and 149.**

Chapter-6

Hurt & Grievous hurt

Judicial Service Exam Past Questions

1. a) Define hurt and grievous hurt as given in the Penal Code. Explain the basic difference of the offences punishable under sections 326 and 326A of the Penal Code. [4th BJS]

b) 'A' intending or knowing himself to be likely permanently to disfigure 'B's figure, gives 'b' a blow which does not permanently disfigure 'B's face, but which causes 'B' to suffer severe bodily pain for the space of twenty days. What kind of hurt 'A' has committed? [10th BJS]

2. What is meant by 'Injury' under the Penal Code, 1860? Explain the categories of bodily harm that are classified as 'grievous hurt' under the Code. [18th BJS, 2025]

Solution of Judicial Service Exam Past Questions

1. a) Define hurt and grievous hurt as given in the Penal Code. Explain the basic difference of the offences punishable under sections 326 and 326A of the Penal Code. [4th BJS]

b) 'A' intending or knowing himself to be likely permanently to disfigure 'B's figure, gives 'b' a blow which does not permanently disfigure 'B's face, but which causes 'B' to suffer severe bodily pain for the space of twenty days. What kind of hurt 'A' has committed? [10th BJS]

Ans to the Question no-1(a)

Hurt

Hurt may be described as the bodily pain that is resulting from real contact with the frame by an aggravated assault. There's no radical difference between assault and harm. Section 319 of the Penal Code, 1860 defines hurt as: "whoever reasons bodily pain, disorder or disease to any man or woman is said to have caused harm." To constitute any one or more of essentials of simple hurt must be present:

- Bodily Pain
- Infirmary to another
- Disease

According to 321 whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt". According to section 323 whoever voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both.

Grievous hurt:

According to section 320 of the Penal Code, 1860 the following kinds of hurt only are termed as "grievous":

1. Emasculation,
2. Permanent injury to eyesight or either of the eye,
3. Permanent deafness or injury to either of the eye,
4. Privation of any member or joint (loss of limb),
5. Impairing of Limb,
6. Permanent disfiguration of the head or face,
7. Fracture or dislocation of a bone or tooth,
8. Any hurt which risks life or which causes the victim to be during the time of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

According to section 322 whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

According to section 325 whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Basic difference of the offences punishable under sections 326 and 326A

Basic difference of the offences punishable under sections 326 and 326A

- 1. Section 326 of the Penal Code, 1860 is all about grievous hurt caused by dangerous weapons. Further, Section 326A is the law against acid attacks.
- Section 326 states that whoever voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be considered that he has committed grievous hurt caused by dangerous weapons.
- 2. Whoever, voluntarily causes grievous hurt in respect of both the eyes either by gouging out the same or by means of any corrosive substance; or in respect of permanent disfiguration of the head or face by means of any corrosive substance, he shall be punishable under section 326A.

- 3. According to section 326, if any person committed grievous hurt caused by dangerous weapons, he shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- According to section 326A, if any person committed grievous hurt caused by voluntarily causing grievous hurt in respect of both eyes, hand or face by means of corrosive substance he shall be punished with death, or imprisonment for life and shall also be liable to fine.
- 4. Section 326 mentions grievous hurt by poison or any corrosive substance, But Section 326A elaborates on this issue.

Ans to the Question no-1(b)

Issue:

Whether 'A' has committed any offence?

Legal Analysis & Decision:

- According to section 320 of the Penal Code, 1860 Any hurt which risks life or which causes the victim to be during the time of twenty days in severe bodily pain, or unable to follow his ordinary pursuits is called Grievous hurt.
- Thus A has committed Grievous hurt in view of law embodied in clause 8 of section 320 of the Penal Code, 1860.

2. What is meant by 'Injury' under the Penal Code, 1860? Explain the categories of bodily harm that are classified as 'grievous hurt' under the Code. [18th BJS, 2025]

The term **"Injury"** is defined in **Section 44 of the Penal Code, 1860**. According to this section: **"Injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.**

Thus, injury is not confined to physical harm only; it includes any unlawful harm caused to a person's **body, mind, reputation, or property**.

Grievous Hurt

Section 320 of the Penal Code, 1860 specifies eight kinds of hurt which alone are designated as **"grievous hurt"**. These are:

1. **Emasculation**
Permanent deprivation of a man's virility or reproductive capacity.
2. **Permanent privation of the sight of either eye**
Permanent loss of vision in one or both eyes.
3. **Permanent privation of the hearing of either ear**
Permanent loss of hearing in one or both ears.
4. **Privation of any member or joint**
Loss of any limb or organ of the body, or any joint.
5. **Destruction or permanent impairing of the powers of any member or joint**
Permanent loss or impairment of the functional use of a limb or joint.

6. **Permanent disfiguration of the head or face**
Permanent alteration of the appearance of the head or face, such as a permanent scar.
7. **Fracture or dislocation of a bone or tooth**
Any fracture or dislocation, however minor, of a bone or tooth.
8. **Any hurt which endangers life, or causes severe bodily pain for twenty days, or renders the sufferer unable to follow his ordinary pursuits for twenty days**
This includes injuries that are life-threatening or incapacitate a person for at least twenty days.

Conclusion

Under **Section 44**, *injury* means any unlawful harm caused to a person's body, mind, reputation, or property. Under **Section 320**, only the above eight categories of bodily harm are treated as **grievous hurt**, attracting more severe punishment than ordinary hurt under the Penal Code, 1860.

Chapter-7

Of Wrongful Restraint and Wrongful Confinement & Of Criminal Force and Assault, Rape, Unnatural Offence

Judicial Service Exam Past Questions

- | |
|--|
| 1. a) What is meant by 'wrongful restraint' and 'wrongful confinement'? What is the maximum sentence whoever wrongfully restrains any person? [13th BJS] |
| b) X causes Z to go within a walled space, and locks Z in, Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. Which offence has X committed? What is the maximum punishment of such offence? [8th BJS & 13th BJS] |
| 2. a) Discuss the provisions relation to 'Criminal Force' and 'Assault'. |
| b) A shakes his fist at Z knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. What offence has A committed? [6th BJS] |
| 3. (a) What is rape? Can a man be guilty of the offence of rape against his own wife? Explain. |
| (b) Write a short note on 'unnatural offences'. [12th BJS] |
| 4. What do you mean by 'Force', 'Criminal Force' and 'Assault'? When theft and extortion are considered as robbery? [Bar Exam-2022] |

Solution of Judicial Service Exam Past Questions

- | |
|--|
| 1. a) What is meant by 'wrongful restraint' and 'wrongful confinement'? What is the maximum sentence whoever wrongfully restrains any person? [13th BJS] |
|--|

b) X causes Z to go within a walled space, and locks Z in, Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. Which offence has X committed? What is the maximum punishment of such offence? **[8th BJS & 13th BJS]**

Ans to the Question no-1(a)

Wrongful restraint:

According to section 339 of the Penal Code, 1860 whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Ingredients:

To establish the offence of wrongful restraint the complainant must prove all the following essential:

1. That there was an obstruction;
2. That the obstruction prevented the complainant from proceeding in any direction;
3. That the person/complainant so proceeding must have a right to proceed in the direction concerned.

Illustration:

- A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Punishment for wrongful restraintment:

- According to section 341 of the Penal Code, 1860, whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred taka, or with both.

Wrongful confinement:

- According to section 340 of the Penal Code, 1860, whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Ingredients:

The essential ingredients of the offence of wrongful confinement are:

1. The accused should have wrongfully restrained the complainant (i.e. all ingredients of wrongful restraint must be present)
2. Such wrongful restraint was to prevent the complainant from proceeding beyond certain circumscribing limits beyond which he or she has the right to proceed.

Illustrations:

- A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.
- A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Punishment for wrongful confinement:

- According to section 342 of the Penal Code, 1860, whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both.
- **Wrongful confinement for three or more days:**
 - According to section 343 of the Penal Code, 1860, whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- **Wrongful confinement for ten or more days:**
 - According to section 344 of the Penal Code, 1860, whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ans to the Question no-1(b)**Issue:**

Which offence has X committed?

What is the maximum punishment of such offence?

Legal Analysis and Decision:

According to section 340 of the Penal Code, 1860, whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

- Thus A has committed wrongful confinement in view of law embodied in section 340 of the Penal Code, 1860.

What is the maximum punishment of such offence

- According to section 342 of the Penal Code, 1860, whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both.

2. a) Discuss the provisions relation to 'Criminal Force' and 'Assault'.

b) A shakes his fist at Z knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. What offence has A Committed? **[6th BJS]**

Ans to the Question no-2(a)

According to section 350 of the Penal Code, 1860 if any person intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Ingredients:

Criminal force constitutes the following essentials:

- There must be use of force.
- The force should be used intentionally.
- The force must have been used;

Assault:

- According to section 351 of the Penal Code, 1860 whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation:

- Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Ingredients:

Assault constitutes the following essentials:

- i) Gestures or preparation:- that the accused should make a gesture or preparation to use criminal force.
- ii) Such gestures or preparation should be made in the presence of the person in respect of whom it is made.
- iii) The act was with an intention to cause an apprehension of harm or injury;

Ans to the Question no-2(b)

Issue:

- What offence has A Committed?

Legal Analysis and Decision:

- According to section 351 of the Penal Code, 1860, Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

- Thus A has committed Assault in view of law embodied in section 351 of the Penal Code, 1860.

3. (a) What is rape? Can a man be guilty of the offence of rape against his own wife? Explain.

(b) Write a short note on 'unnatural offences'. [12th BJS]

Ans to the Question no-3(a)

Rape:

Rape is one of the most heinous crimes a person can commit. It is not just a heinous crime but a huge disgrace to mankind as a species. It is a sexual assault that usually involves sexual intercourse with a person without their consent. In short Rape happens when someone didn't want to have sex or didn't give their consent for sex to happen. According to section 375 of the Penal Code, 1860, A man is said to commit "Rape" who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

Firstly:

- Against her will.

Secondly:

- Without her consent.

Thirdly:

- With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly:

- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly:

- With or without her consent, when she is under fourteen years of age.

Punishment for rape:

- Section 376 states that whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marital rape

- Marital rape refers to sexual intercourse with one's spouse without their consent. However, it is an exception in Section 375, Penal Code, 1860. The provision clearly states that "sexual intercourse by a man on his own wife even without her consent will not amount to rape".

- Marital Rape refers to a non-consensual sexual intercourse by a man with his wife. In popular perception, the husband cannot be guilty of raping his lawful wife on account of the presumed matrimonial consent to cohabit. Our laws do not recognize forced cohabitation within marriage as rape. But as per law, sexual intercourse or sexual acts by a man with his own wife, the wife not being under 13 years of age, is not rape. According to Exception of section 375 Sexual intercourse by a man with his own wife, the wife is being under thirteen years of age, is rape.
- Thus having sex with a minor wife amounts to rape, however, beyond 13 years of age there is no legal protection accorded to the wife except in cases when she is living separately under a decree of judicial separation or otherwise i.e. under any custom or usage and the husband forcibly has sexual intercourse with her without her consent,
- According to section 376 if the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ans to the Question no-3(b)

Unnatural offences

Unnatural offences are covered in Penal Code, 1860 under section 377. Section 377 of the Penal Code, 1860 states that whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

As per the **explanation** provided under this section **penetration** is sufficient to constitute the carnal intercourse. As evident from the language of this section, **consent is wholly immaterial** in the case of unnatural offences and the party consenting would be equally liable as an abettor.

Essentials of this Section

- A person accused under this section must have done carnal intercourse with man, woman or an animal
- Such intercourse thus done was against the order of nature
- The offence was done voluntarily by the offender

4. What do you mean by 'Force', 'Criminal Force' and 'Assault'? When theft and extortion are considered as robbery?	[Bar Exam-2022]
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Ans to Qs No-4

Force:

According to section 349 of the Penal Code, 1860 a person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes

to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

Firstly:

- By his own bodily power.

Secondly:

- By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly:

- By inducing any animal to move, to change its motion, or to cease to move.

Criminal Force:

According to section 350 of the Penal Code, 1860 if any person intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Ingredients:

Criminal force constitutes the following essentials:

- There must be use of force.
- The force should be used intentionally.
- The force must have been used;

Assault:

- According to section 351 of the Penal Code, 1860 whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation:

- Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Ingredients:

Assault constitutes the following essentials:

- i) Gestures or preparation:- that the accused should make a gesture or preparation to use criminal force.
- ii) Such gestures or preparation should be made in the presence of the person in respect of whom it is made.

- iii) The act was with an intention to cause an apprehension of harm or injury;

When theft is robbery:

- According to section 390 of the Penal Code, 1860 theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

Chapter-8

Offences Against Property [378-462]

Judicial Service Exam Past Questions

1. What are the differences amongst the offences, a) theft; b) extortion; c) robbery and d) dacoity? Discuss when theft is extortion, extortion is robbery and robbery is dacoity with reference to the relevant provisions of the Penal Code, 1860. **[11th BJS]**

2. (a) Explain 'cheating' Illustrate your answer.

(b) 'A' induced 'B' to pay him (A) Tk. 20 lacs on A's assurance to procure 20 NOCs and visas but failed to keep his promise and finally denied to have received any money from 'B'. Under which section of the Penal code, 1860 has 'A' committed the offence? Explain. **[12th BJS]**

3. What is stolen property? What is the consequence when a person dishonestly receives any stolen property? **[12th BJS]**

4. a) Analyse with illustration the ingredients of 'cheating' and 'criminal breach of trust' with reference to the relevant provisions of the Penal Code.

b) On the pretext of sending B abroad with highly-paid job A induced B to pay him Tk. 5 lacs. Ultimately A does not send B abroad and denies receipt of any money. What type of offence does A commit? Can a person be guilty of forgery by signing his own name? Discuss. **[8th BJS]**

5. a) Define the term Criminal Trespass.

b) Under what circumstances an offence of house-trespass become an offence of house-breaking and larking house-trespass.

c) X is standing on his doorway. One day during daylight Y forces a passage into the house into the house by knocking down X. Does Y commit any offence under the Penal Code? If commits, what is the maximum sentence for such offences? [7th BJS]
6. a) Distinguish ‘Criminal Breach of Trust’ and “Criminal Misappropriation of Property.” [Bar-2020]
b) A finds a valuable mobile set on the road not knowing to whom it belongs. A sells it immediate without attempting to discover the actual owner of the same. Is A guilty of any offence? Answer with reasons.
c) A meets Z on a high-way, shows a pistol & demands Z’s purse. In consequence, Z surrenders his purse. Does A commit any offence? Explain] [6th BJS]
7. X took a loan of Tk. 2 lac from Y with a condition that it would be repaid by 01/01/2020. Y filed a suit in a civil court as X did not repay the amount within the stipulated time. Besides, he (Y) wants to file a criminal case as well. As an Advocate advice Y citing the relevant law and section(s). [Bar Exam-2022]
8. L murdered R, the owner of a house, while K, L, M, N, O and P were committing dacoity in that house. But the gang of dacoits could not take any goods due to hue and cry of people. Determine the criminal liability of K, L, M, N, O and P. [Bar Exam-2022]

Advocateship Exam Past Questions

1. Define theft, extortion, robbery and dacoity. Distinguish theft from extortion and robbery from dacoity with examples. [Bar Exam-2011, 2008, 2006]
2. Ten dacoits armed with deadly weapons committed dacoity in the house of Ibrahim Master. In course of the dacoity Ibrahim Master requested the dacoits not to assault the female members of the house and at that time the leader of the gang fired at him. Ibrahim Master died instantaneously. Thereafter the dacoits left the house of Ibrahim Master with their booty. How would you charge the individual dacoits at the trial? Give reasons in support of your answer. [Bar Exam-2007]
3. Analys the ingredients of 'cheating' and 'criminal breach of trust mentioning the relevant sections of the Penal Code and giving separate examples. [Bar Exam-2015, 2012, 2010, 2007, 2006]
4. Explain with Illustration cheating by False Personation. [Bar Exam-2005]
5. Discuss abduction for immoral purpose specifying relevant section of the Penal Code. [Bar Exam-2005]
6. Rahim and Farid are known to each other for ten years and are partner in a partnership business since then. Rahim filed a Case under section 420/406 of the Penal Code against Farid for not supplying the accounts. Advise Farid. [Bar Exam-2006]
7. Discuss briefly the difference between criminal breach of trust and criminal misappropriation of property. [Bar Exam-2020]

Solution of Judicial Service Exam Past Questions

1. What are the differences amongst the offences, a) theft; b) extortion; c) robbery and d) dacoity? Discuss when theft is extortion, extortion is robbery and robbery is dacoity with reference to the relevant provisions of the Penal Code, 1860. [11th BJS]

Ans to the Question No-1

Theft:

- In general, theft is committed when a person's property is taken without his consent by someone. However, besides the ordinary meaning conveyed by the word theft, the scope of theft is quite wide.
- Section 378 of Penal Code, 1860 defines theft as follows -whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.
- For example, A enters the house of B and takes B's watch without B seeing and puts it in his pocket with an intention to take it for himself. A commits theft.

Explanation 1.

- A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.

- A moving effected by the same act which effects the severance may be a theft.

Explanation 3.

- A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.

- A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.

- The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Ingredients:

- The essential ingredients of the offence of theft are:

1. Dishonest intention to take property

- There must be dishonest intention on the part of the offender. In *K. N. Mehra v. State of Rajasthan* AIR 1957 S. C. 369, SC held that proof of intention to cause permanent deprivation of property to the owner, or to obtain a personal gain is not necessary for the purpose of establishing dishonest intention.

2. Property must be movable

- An immovable property cannot be stolen or moved from the possession so a theft cannot happen in respect of an immovable property.

3. Property must be taken out of possession of another

- The property must be in possession of someone. A property that is not in possession of anybody cannot be a subject of theft. For example, wild dogs cannot be a subject of theft and so if someone takes a wild dog, it will not be theft.

4. Property must be taken without consent

- In order to constitute theft, property must be taken without the consent of person possessing it. As per Explanation 5, consent can be express or implied.

5. Physical movement of the property is must

- The property must be physically moved. It is
- not necessary that it must be moved directly. As per Explanation 3, moving the support or obstacle that keeps the property from moving is also theft. For example, removing the pegs to which bullocks are tied, is theft.

Punishment for theft

- According to section 379 of the Penal Code whoever commits theft he shall be punished with imprisonment of either description for a term which may extend to **—three years, or with fine, or with both.**
- According to section 380 of the Penal Code whoever commits theft **in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or use for the custody of property,** shall be punished with imprisonment of either description for a term which may extend to **seven years, and shall also be liable to fine.**
- According to section 381 of the Penal Code if any person being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to **seven years, and shall also be liable to fine.**
- According to section 382 of the Penal Code whoever If any person commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, **shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.**

Extortion

- According to section 383 of the Penal Code, 1860 whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to give donation or subscription of any kind or to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations

- A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

Ingredients

The essential ingredients of the offence of extortion are:

- intentionally putting a person in fear of injury;
- the purpose of which is to dishonestly induce the person put in fear and
- to deliver property or valuable security.

Punishment for extortion

- According to section 384 of the Penal Code, 1860 whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Robbery:

Section 390 says, "In all robbery, there is either theft or extortion" and goes on to define when theft is robbery and when extortion is robbery.

When theft is robbery:

- Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery:

- Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Punishment for robbery

- According to section 392 of the Penal Code, 1860 the offender shall be punished with **rigorous imprisonment** for a term which may extend to ten years, and shall also be liable to fine;

Robbery on the highway

- ✓ if the robbery be committed **on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.**

Dacoity:

- According to section 391 of the Penal Code, 1860 when five or more persons co-jointly commit or attempt to commit a robbery or where the whole number of persons co-jointly committed or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit Dacoity.

The essential ingredients of Dacoity are:

Essential ingredients of the offence of Dacoity are as follows:

- The accused commit or attempt to commit robbery ;
- Persons committing or attempting to commit robbery and persons present and aiding must not be less than five ;
- All such persons should act conjointly.

Punishment for dacoity

- According to section 395 of the Penal Code, 1860 whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Distinction

There are following important Distinction amongst the offences, a) theft; b) extortion; c) robbery and d) dacoity:

1. As to consent:

- ✓ In theft, the offender takes the property without the owner's consent.
- ✓ Whereas extortion is committed by putting any person in fear of any injury to that person.
- ✓ In Robbery, the offender takes the property by putting that person in fear of instant death, instant hurt, or of instant wrongful restraint to that person,
- ✓ In dacoity consent is not material.

2. As to subject matter:

- ✓ Theft can be committed in respect of movable property,
- ✓ Whereas extortion, Robbery, and Dacoity may be committed in respect of movable and immovable property.

3. As to element of fear:

- ✓ Element of fear is not exist in theft.
- ✓ Whereas, an element of fear exists in extortion, robbery and dacoity.

4. As to use of force:

- ✓ No force is used in theft.
- ✓ In robbery, extortion and dacoity there is an element of force.

5. As to number of offenders:

- ✓ In case of Theft and Extortion, an offence may be committed by one person only.
- ✓ In Robbery the number of persons are less than five. It also may be committed by a single person.
- ✓ In dacoity, the number of persons are five or more.

6. As to provisions:

- The term Theft defined under section 378 of the Penal Code, 1860.
- Term Extortion defined under section 383 of the Penal Code, 1860.
- The term Robbery defined under section 390 of the Penal Code, 1860.
- The term Dacoity defined under section 391 of the Penal Code, 1860.

7. Position In Highway:

- ✓ If robbery is committed on the highway, the imprisonment may be extended to fourteen years.
- ✓ If theft or extortion or Dacoity is committed on the highway, does not change the position or punishment.

8. As to punishment:

- According to section 379 of the Penal Code whoever commits theft he shall be punished with imprisonment of either description for a term which may extend to **three years, or with fine, or with both.**
- According to section 384 of the Penal Code Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
- According to section 392 of the Penal Code whoever commits extortion shall be punished with **rigorous imprisonment** for a term which may extend to ten years, and shall also be liable to fine;
- Court while convicting a person under section 395, P.C., can either sentence him to imprisonment for life or to rigorous imprisonment which cannot be than four years or more than ten years in addition to fine

2. (a) Explain 'cheating' Illustrate your answer.

(b) 'A' induced 'B' to pay him (A) Tk. 20 lacs on A's assurance to procure 20 NOCs and visas but failed to keep his promise and finally denied to have received any money from 'B'. Under which section of the Penal code, 1860 has 'A' committed the offence? Explain.

[12th BJS]

Ans to the Question No-2(a)**Cheating:**

Section 415 of the Penal Code, 1860 deals with cheating. Section 415 of the Penal Code provides that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to

do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". A dishonest concealment of facts is a deception within the meaning of this section.

To hold a person guilty of cheating as defined under Section 415 of the Penal Code, it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the Penal Code which defines cheating, requires deception of any person-

- (a) inducing that person to : (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property or
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody's mind, reputation or property.

Essential ingredients for Cheating

Main ingredients for the first part as follows:

1. The accused deceived some person.
2. By deception he induced that person.
3. The above inducement was fraudulent and dishonest.
4. The person so induced delivered some property to or consented to the retention of some property by any person.

Main ingredients for the second part as follows:

1. The accused deceived some person
2. The accused thereby induced him
3. Such inducement was intentional
4. The person so induced did or omitted to do something
5. Such act or omission caused or was likely to cause damage or harm to the person induced in body, mind, reputation or property.

To constitute the offence of cheating it is not necessary that the act which the person deceived is induced to do should actually cause harm to him. It is enough that the act which the person deceived has been induced to perform is likely to cause damage or harm to him. [*Dibash Sarkar Vs. State, 1989 Cr.L.J.266*]

Example:

- A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean, to pay. A cheats.

Punishment for Cheating:

- The punishment for cheating is defined under section 417 which provides for a imprisonment extending to one year or fines or both.

Ans to the Question No-2(b)

Fact:

- 'A' induced 'B' to pay him (A) Tk. 20 lacs on A's assurance to procure 20 NOCs and visas but failed to keep his promise and finally denied to have received any money from 'B'.

Issue:

- Under which section of the Penal code, 1860 has 'A' committed the offence?

Legal Analysis and Decision:

- In this given problem 'A' induced 'B' to pay him (A) Tk. 20 lacs on A's assurance to procure 20 NOCs and visas but failed to keep his promise and finally denied to have received any money from 'B'. Here A committed cheating under section 415 of the Penal Code, 1860. But he shall be punished under section 420 not under section 417. Because section 420 states that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, he shall be punishable under section 420 of the Penal Code, 1860.
- Therefore, A has committed offence under section 420 of the Penal Code, 1860.

3. What is stolen property? What is the consequence when a person dishonestly receives any stolen property? **[12th BJS]**

Ans to the Question No-3

Stolen property

Section 410 of the Penal Code defines stolen property as follows, property, the possession whereof has been transferred-

- ✓ **by theft, or**
- ✓ **by extortion, or**
- ✓ **by robbery, and**
- ✓ **property which has been criminally misappropriated or**
- ✓ **in respect of which criminal breach of trust** has been committed, is designated as "**stolen property**," whether the transfer has been made, or the misappropriation or breach of trust has been committed, **within or without Bangladesh. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.**

Ingredients

The prosecution must prove the following ingredients that :-

- the stolen property was in the possession of accused.
- the some person than the accused had possession of the property before the accused got possession of it, and
- the accused had knowledge that the property was stolen property.

Consequence of receiving any stolen property dishonestly

- According to section 411, if any person receives any any stolen property dishonestly , he Shall be punished with imprisonment of either description for a term which may **extend to three years, or with fine, or with both.**
- According to section 412, if any person receives any any property **stolen in the commission of a dacoity** dishonestly, he shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

4. a) Analyse with illustration the ingredients of 'cheating' and 'criminal breach of trust' with reference to the relevant provisions of the Penal Code.

b) On the pretext of sending B abroad with highly-paid job A induced B to pay him Tk. 5 lacs. Ultimately A does not send B abroad and denies receipt of any money. What type of offence does A commit? Can a person be guilty of forgery be signing his own name? Discuss. [8th BJS]

Ans to the Question No-4(a)

Cheating:

Section 415 of the Penal Code, 1860 deals with cheating. Section 415 of the Penal Code provides that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". A dishonest concealment of facts is a deception within the meaning of this section.

To hold a person guilty of cheating as defined under Section 415 of the Penal Code, it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the Penal Code which defines cheating, requires deception of any person-

- (a) inducing that person to : (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property or
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody's mind, reputation or property.

Essential ingredients for Cheating

Main ingredients for the first part as follows:

1. The accused deceived some person.
2. By deception he induced that person.
3. The above inducement was fraudulent and dishonest.
4. The person so induced delivered some property to or consented to the retention of some property by any person.

Main ingredients for the second part as follows:

1. The accused deceived some person
2. The accused thereby induced him
3. Such inducement was intentional
4. The person so induced did or omitted to do something
5. Such act or omission caused or was likely to cause damage or harm to the person induced in body, mind, reputation or property.

To constitute the offence of cheating it is not necessary that the act which the person deceived is induced to do should actually cause harm to him. It is enough that the act which the person deceived has been induced to perform is likely to cause damage or harm to him. [*Dibash Sarkar Vs. State, 1989 Cr.L.J.266*]

Example:

- A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean, to pay. A cheats.

Punishment for Cheating:

- The punishment for cheating is defined under section 417 which provides for a imprisonment extending to one year or fines or both.

Criminal Breach of Trust

Section 405 of the Code defines criminal breach of trust. Section 405 stated that, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Ingredients

- To establish the charge of criminal breach of trust the prosecution must prove not only entrustment but also that the accuse dishonestly misappropriated the property. Following are the ingredients of criminal breach of trust.
- Entrusted to Person Property:
- Dishonestly Misappropriation or Converting that Property:
- (iii) Dishonestly Use or Disposal of Property:

Illustrations

- A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

A person commits criminal breach of trust if he:

- i) being in any manner entrusted with property, or with any dominion over property,
- ii. (a) dishonestly misappropriates or converts to his own use that property or (b) dishonestly uses or disposes of that property in violation of any direction such trust is to be discharged, or of any legal or lawful contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do.

Punishment for Criminal breach of trust

- According to section 406 of the Penal Code, 1860, whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

Ans to the Question No-4(b)**Issue:**

- Under which section of the Penal code, 1860 has 'A' committed the offence?

Legal Analysis and Decision:

- In this given problem A made a contract with B, that A will send B abroad with highly-paid job and B will pay 5 lacs taka to A. But subsequently A does not send B abroad and denies receipt of any money.
- Here A committed cheating under section 415 of the Penal Code, 1860. But he shall be punished under section 420 not under section 417. Because section 420 states that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, he shall be punishable under section 420 of the Penal Code, 1860.
- Therefore, A has committed offence under section 420 of the Penal Code, 1860.

Can a person be guilty of forgery be signing his own name?

- Explanation 1 of the Section 464 of the Penal Code, 1860 A man's signature of his own name may amount to forgery. For an instance, A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.
- Therefore, a person can be guilty of forgery be signing his own name under section 464.

5. a) Define the term Criminal Trespass.

b) Under what circumstances an offence of house-trespass become an offence of house-breaking and larking house-trespass.

c) X is standing on his doorway. One day during daylight Y forces a passage into the house into the house by knocking down X. Does Y commit any offence under the Penal Code? If commits, what is the maximum sentence for such offences? [7th BJS]

Ans to the Question No-5(a)

Criminal Trespass

Criminal trespass is defined in section 441 of this code, as follows: If any person enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

Ingredients:

To constitute an offence of criminal trespass as defined in the first part of section 441, the following essential ingredients must be satisfied:

1. Enter into or upon the property of another.
2. If such entry is lawful, then unlawfully remaining upon such property.
3. Such entry or unlawful remaining must be with intent-
 - a) to commit an offence; or
 - b) to intimidate, insult, or annoy any person in possession of the property.

Punishment for criminal trespass

- Section 447 states that if any person commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred taka, or with both.

Ans to the Question No-5(b)

When house-trespass becomes an offence of house-breaking

Section 442 provides that if any person commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

Criminal trespass may be committed by entering upon another's property with intent to intimidate, insult or is used as a human dwelling, the offence of criminal trespass becomes the offence of house-trespass. But if the offence of house trespass is further aggravated by entry or departure of a forcible nature or entry or departure through any passage not intended for human entrance or departure, than the offence becomes house—breaking house—breaking is thus an aggravated form of criminal trespass.

Section 445 provides that A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in —any of such six ways, that is to say:

- 1. If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.
- 2. If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.
- 3. If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.
- 4. If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.
- 5. If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.
- 6. If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

When house-trespass becomes an offence of lurking house-trespass

- Section 442 provides that if any person commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".
- Section 443 provides that if any person commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass". To constitute lurking house trespass the offender must take some effective steps to conceal his presence. According to section 444 of the code whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

Ans to the Question No-5(c)**Issue:**

- Does Y commit any offence under the Penal Code?
- What will be the maximum sentence if Y committed such offence?

Legal Analysis and Decision:

- According to clause 5 of section 445 of the Penal Code, 1860 if any person effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault, he shall be liable for the offence of house breaking.
- In the given problem X is standing on his doorway. One day during daylight Y forces a passage into the house into the house by knocking down X.
- Therefore, Y has committed house breaking under section 445 of the Penal Code, 1860.

What will be the maximum sentence if Y committed such offence?

- According to section 448 whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both.
- Therefore, the maximum punishment for Y will be one year rigorous imprisonment with 1 thousand taka fine.

6. a) Distinguish 'Criminal Breach of Trust' and "Criminal Misappropriation of Property." **[Bar-2020]**

b) A finds a valuable mobile set on the road not knowing to whom it belongs. A sells it immediately without attempting to discover the actual owner of the same. Is A guilty of any offence? Answer with reasons.

c) A meets Z on a high-way, shows a pistol & demands Z's purse. In consequence, Z surrenders his purse. Does A commit any offence? Explain] **[6th BJS]**

Ans to the Question No-6(a)**Criminal Breach of Trust**

Section 405 of the Code defines criminal breach of trust. Section 405 stated that, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Ingredients

- To establish the charge of criminal breach of trust the prosecution must prove not only entrustment but also that the accuse dishonestly misappropriated the property. Following are the ingredients of criminal breach of trust.
- Entrusted to Person Property:
- Dishonestly Misappropriation or Converting that Property:
- (iii) Dishonestly Use or Disposal of Property:

Illustrations

- A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

A person commits criminal breach of trust if he:

- i) being in any manner entrusted with property, or with any dominion over property,
- ii. (a) dishonestly misappropriates or converts to his own use that property or (b) dishonestly uses or disposes of that property in violation of any direction such trust is to be discharged, or of any legal or lawful contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do.

Punishment for Criminal breach of trust

- According to section 406 of the Penal Code, 1860, whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

Criminal Misappropriation of Property

According to section 403 of the Penal Code, 1860 whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients

To constitute the offence of misappropriation the following ingredients must be established:

- i) The accused misappropriated that property and converted the same to his own use dishonestly.
- ii) The movable property belonged to the complainant.

Illustrations

- A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

Distinguish ‘Criminal Breach of Trust’ and “Criminal Misappropriation of Property.”

There are following distinctions between Criminal misappropriation and criminal breach of trust:

Provision:

- Offence of criminal misappropriation is defined under section 403 of Penal Code, 1860.
- Offence of Criminal Breach of Trust is defined under section 405 of Penal Code, 1860.

Relationship:

- In misappropriation, there is no contractual relationship.
- But in Criminal Breach of Trust, there is a contractual relationship of the offender regarding the property.

Possession:

- In misappropriation, the property is obtained by some casualty or otherwise.
- In criminal breach of trust, the property is obtained due to the trust vested by the owner on the offender.

Misappropriation:

- The property is misappropriated by the offender for his own use.
- In criminal breach of trust, the property is misappropriated for his own personal use. A breach of trust includes criminal misappropriation, but the converse is not always true.

Nature of Property:

- In, Criminal misappropriation the property is always movable in nature.
- Whereas, in criminal breach of trust, the nature of property can either be movable or immovable.

Punishment:

- Offence of Criminal Misappropriation is punishable with imprisonment of either description for a term which may extend to 2 years or with fine, or with both (Sec.403,)

- Offence of Criminal Breach of Trust is punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both. (Sec.406,)

Ans to the Question No-6(b)

Issue:

- Is A guilty of any offence?

Legal Analysis and Decision:

- Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be liable for Criminal Misappropriation of Property under to section 403 of the Penal Code, 1860.
- In the given problem A finds a valuable mobile set on the road not knowing to whom it belongs. A sells it immediately without attempting to discover the actual owner of the same. A has duty to discover the actual owner of the mobile phone before sell it.
- Therefore, A has committed Criminal Misappropriation of Property under to section 403 of the Penal Code, 1860.

Ans to the Question No-6(c)

Issue:

- Is A guilty of any offence?

Legal Analysis and Decision:

- According to section 390 of the Penal Code, 1860, extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.
- A meets Z on the high-road, shows a pistol, and demands Z's purse, Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence.
- A has therefore committed robbery under section 490 of the Penal Code, 1860.

7. X took a loan of Tk. 2 lac from Y with a condition that it would be repaid by 01/01/2020. Y filed a suit in a civil court as X did not repay the amount within the stipulated time. Besides, he (Y) wants to file a criminal case as well. As an Advocate advice Y citing the relevant law and section(s). **[Bar Exam-2022]**

Ans to Qs No-7

- Since the loan agreement entered into between them is of a civil nature. In this case, if a party violates the terms of the contract, the aggrieved party can file a suit in a civil court seeking specific performance of the contract. However, if the agreement was made fraudulently to accept a loan, in that case a criminal case can be filed under Section 420 of the Penal Code. But in the case mentioned in the question, the borrower failed to repay his loan on the due date, so here he violated the conditions of the contract. Therefore he can file suit in the civil court. I will advice him not to file criminal case.

8. L murdered R, the owner of a house, while K, L, M, N, O and P were committing dacoity in that house. But the gang of dacoits could not take any goods due to hue and cry of people. Determine the criminal liability of K, L, M, N, O and P. **[Bar Exam-2022]**

Ans. to Qs No-8

According to section 391 of the Penal Code, 1860 when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

According to section 396 of the Penal Code, 1860 if any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment] for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

In the case mentioned in the question, L murdered R, the owner of a house, while K, L, M, N, O and P were committing dacoity in that house. But the gang of dacoits could not take any goods due to hue and cry of people. Therefore K,L,M,N,O,P shall be liable under section 396 of the Penal Code, 1860.

Solution of Advocateship Exam Past Questions

1. Define theft, extortion, robbery and dacoity. Distinguish theft from extortion and robbery from dacoity with examples. **[Bar Exam-2011, 2008, 2006]**

Ans to the question no-1

Theft:

- In general, theft is committed when a person's property is taken without his consent by someone. However, besides the ordinary meaning conveyed by the word theft, the scope of theft is quite wide.

- Section 378 of Penal Code, 1860 defines theft as follows -
- Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.
- For example, A enters the house of B and takes B's watch without B seeing and puts it in his pocket with an intention to take it for himself. A commits theft.

Explanation 1.

- A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.

- A moving effected by the same act which effects the severance may be a theft.

Explanation 3.

- A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.

- A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.

- The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Ingredients

The essential ingredients of the offence of theft are:

- **Dishonest intention to take property:** There must be dishonest intention on the part of the offender. In *K. N. Mehra v. State of Rajasthan* AIR 1957 S. C. 369, SC held that proof of intention to cause permanent deprivation of property to the owner, or to obtain a personal gain is not necessary for the purpose of establishing dishonest intention.
- **Property must be movable:** An immovable property cannot be stolen or moved from the possession so a theft cannot happen in respect of an immovable property.
- **Property must be taken out of possession of another:** The property must be in possession of someone. A property that is not in possession of anybody cannot be a subject of theft. For example, wild dogs cannot be a subject of theft and so if someone takes a wild dog, it will not be theft.
- **Property must be taken without consent:** In order to constitute theft, property must be taken without the consent of person possessing it. As per Explanation 5, consent can be express or implied.

- **Physical movement of the property is must:** The property must be physically moved. It is not necessary that it must be moved directly. As per Explanation 3, moving the support or obstacle that keeps the property from moving is also theft. For example, removing the pegs to which bullocks are tied, is theft.

Punishment for theft:

1. According to section 379 of the Penal Code whoever commits theft he shall be punished with imprisonment of either description for a term which may extend to –
✓ **three years, or with fine, or with both.**

2. According to section 380 of the Penal Code whoever commits theft **in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or use for the custody of property**, shall be punished with imprisonment of either description for a term which may extend to **seven years, and shall also be liable to fine.**

3. According to section 381 of the Penal Code if any person being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to **seven years, and shall also be liable to fine.**

4. According to section 382 of the Penal Code whoever If any person commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, **shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.**

Extortion

- According to section 383 of the Penal Code, 1860 whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to give donation or subscription of any kind or to deliver] to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustration:

- A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

Ingredients

The essential ingredients of the offence of extortion are:

- intentionally putting a person in fear of injury;
- the purpose of which is to dishonestly induce the person put in fear and
- to deliver property or valuable security.

Punishment for extortion

- According to section 384 of the Penal Code, 1860 whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Robbery:

Section 390 says, "In all robbery, there is either theft or extortion" and goes on to define when theft is robbery and when extortion is robbery.

When theft is robbery:

- Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery:

- Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Punishment for robbery:

According to section 392 of the Penal Code, 1860 the offender shall be punished with **rigorous imprisonment** for a term which may extend to ten years, and shall also be liable to fine;

Robbery on the highway:

- ✓ if the robbery be committed **on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.**

Dacoity:

- According to section 391 of the Penal Code, 1860 when five or more persons co-jointly commit or attempt to commit a robbery or where the whole number of persons co-jointly committed or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit Dacoity.

The essential ingredients of Dacoity are:

Essential ingredients of the offence of Dacoity are as follows:

- The accused commit or attempt to commit robbery ;
- Persons committing or attempting to commit robbery and persons present and aiding must not be less than five ;

- All such persons should act conjointly.

Punishment for dacoity:

- According to section 395 of the Penal Code, 1860 whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Distinction between Theft and Extortion

There are following important Distinction between Theft and Extortion:

1. As to consent:

- ✓ In theft, the offender takes the property without the owner's consent.
- ✓ Whereas extortion is committed by the wrongful obtaining of consent.

2. As to subject matter:

- ✓ Theft can be committed in respect of movable property,
- ✓ Whereas extortion may be committed in respect of movable and immovable property.

3. As to element of fear:

- ✓ An element of fear exists in extortion.
- ✓ Whereas, element of fear is not exist in theft.

4. As to use of force:

- ✓ In robbery and extortion there is an element of force.
- ✓ Whereas, no force is used in theft.

5. As to number of offenders:

- ✓ All these three offences may be committed by one person only.

6. As to provisions:

- The term Theft defined under section 378 of the Penal Code, 1860.
- But the term Extortion defined under section 383 of the Penal Code, 1860.

7. As to punishment:

- According to section 379 of the Penal Code whoever commits theft he shall be punished with imprisonment of either description for a term which may extend to **three years, or with fine, or with both.**
- According to section 384 of the Penal Code Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Difference between Robbery And Dacoity

There are following important Distinction between Robbery And Dacoity:

1. Number Of Persons:

- ✓ In Robbery the number of persons are less than five. It may be committed by a single person.
- ✓ In dacoity, the number of persons are five or more.

2. Seriousness:

- ✓ Robbery is less serious in nature.
- ✓ Dacoity is more serious offence than robbery because of the terror caused by the presence number of offenders.

3. Position Of Abettors:

- ✓ In Robbery, the abettors are liable independently.
- ✓ In dacoity abettors who are present and aiding when the crime is committed are counted in the number.

4. Punishment:

- ✓ According to section 392 of the Penal Code whoever commits extortion shall be punished with **rigorous imprisonment** for a term which may extend to ten years, and shall also be liable to fine;
- ✓ Court while convicting a person under section 395, P.C., can either sentence him to imprisonment for life or to rigorous imprisonment which cannot be than four years or more than ten years in addition to fine

5. Position In Highway:

- ✓ If robbery is committed on the highway, the imprisonment may be extended to fourteen years.
- ✓ The fact that the Dacoity is committed on the highway, does not change the position or punishment.

6. As to provisions:

- ✓ The term Robbery defined under section 390 of the Penal Code, 1860.
- ✓ The term Dacoity defined under section 391 of the Penal Code, 1860.

2. Ten dacoits armed with deadly weapons committed dacoity in the house of Ibrahim Master. In course of the dacoity Ibrahim Master requested the dacoits not to assault the female members of the house and at that time the leader of the gang fired at him. Ibrahim Master died instantaneously. Thereafter the dacoits left the house of Ibrahim Master with their booty. How would you charge the individual dacoits at the trial? Give reasons in support of your answer. **[Bar Exam-2007]**

Ans to the question no-2

Issue:

- How to frame the charge against the individual dacoits at the trial?

Legal Reasoning & Decisions:

- According to section 396 of the Penal Code, 1860, if any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity,

- every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.
- According to section 448 of the Penal Code, 1860, whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both.
 - In the given problem ten dacoits armed with deadly weapons committed dacoity in the house of Ibrahim Master. and at the time of commission of dacoity the leader of the gang fired at Ibrahim Master and he died instantaneously.
 - Therefore they may be liable under sections 498 for dacoity with Murder as well as under section 448 for house trespass.

3. Analys the ingredients of 'cheating' and 'criminal breach of trust mentioning the relevant sections of the Penal Code and giving separate examples. **[Bar Exam-2015, 2012, 2010, 2007, 2006]**

Ans to the question no-3

Cheating:

Section 415 of the Penal Code, 1860 deals with cheating. Section 415 of the Penal Code provides that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". A dishonest concealment of facts is a deception within the meaning of this section.

To hold a person guilty of cheating as defined under Section 415 of the Penal Code, it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the Penal Code which defines cheating, requires deception of any person-

- (a) inducing that person to : (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property or
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody's mind, reputation or property.

Essential ingredients for Cheating:

Main ingredients for the first part as follows:

1. The accused deceived some person.
2. By deception he induced that person.

3. The above inducement was fraudulent and dishonest.
4. The person so induced delivered some property to or consented to the retention of some property by any person.

Main ingredients for the second part as follows:

1. The accused deceived some person
2. The accused thereby induced him
3. Such inducement was intentional
4. The person so induced did or omitted to do something
5. Such act or omission caused or was likely to cause damage or harm to the person induced in body, mind, reputation or property.

To constitute the offence of cheating it is not necessary that the act which the person deceived is induced to do should actually cause harm to him. It is enough that the act which the person deceived has been induced to perform is likely to cause damage or harm to him. [Dibash Sarkar Vs. State, 1989 Cr.L.J.266]

Example:

- A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean, to pay. A cheats.

Punishment for Cheating:

- The punishment for cheating is defined under section 417 which provides for a imprisonment extending to one year or fines or both.

Criminal Breach of Trust:

Section 405 of the Code defines criminal breach of trust. Under section 405, Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Illustrations:

A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

A person commits criminal breach of trust if he:

- i) being in any manner entrusted with property, or with any dominion over property,
- ii. (a) dishonestly misappropriates or converts to his own use that property or (b) dishonestly uses or disposes of that property in violation of any direction such trust is to be discharged, or of any legal or lawful contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do.

Ingredients:

To establish the charge of criminal breach of trust the prosecution must prove not only entrustment but also that the accused dishonestly misappropriated the property. Following are the ingredients of criminal breach of trust.

- (i) Entrusted to Person Property:
- (ii) Dishonestly Misappropriation or Converting that Property:
- (iii) Dishonestly Use or Disposal of Property:

Punishment for Criminal breach of trust

- According to section 406 of the Penal Code, 1860, whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

Cheating' and 'Criminal Breach of Trust**i. Acquisition of property:**

- ✓ The cheat obtains possession of the property by deceiving the owner thereof.
- ✓ Offender is lawfully entrusted with property, and he dishonestly misappropriates it or willfully suffers any other person so to do.

ii. Character of possession-

- ✓ There is neither fiduciary relationship nor any conversion of property. There is simply the practising of deception and subsequent acquisition of the property.
- ✓ There is conversion of property held by a person in a fiduciary capacity.

iii. Nature of Property:

- ✓ In both cases subject matter may be movable or immovable.

iii. Punishment:

- ✓ According to section 417 of the Penal Code whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
- ✓ According to section 406 of the Penal Code whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

6. As to provisions:

- ✓ The term Cheating defined under section 415 of the Penal Code, 1860.
- ✓ The term 'Criminal breach of trust defined under section 406 of the Penal Code, 1860.

4. Explain with Illustration cheating by False Personation.[Bar Exam-2005]

Ans to the question no-4**Explain with Illustration cheating by False Personation:**

According to section 416 of the Penal Code, 1860 a person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other

person really is. The explanation to this section as follows, the offence is committed whether the individual personated is a real or imaginary person.

Ingredients

This Section requires any of the following essentials:-

- (1) Presentation by the person to be some other person
- (2) Knowingly substituting one person for another.
- (3) Representation that he or any other person is a person other than he or such other person really is.

Example:

- A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
- A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Punishment:

- Section 419 provides that if any person cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

5. Discuss abduction for immoral purpose specifying relevant section of the Penal Code.
[Bar Exam-2005]

Ans to the question no-5

Abduction for immoral purpose:

- Section 372 of the Penal Code, 1860 deals with Abduction for immoral purpose. Section 372 stated that whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Selling minor for purposes on prostitution, etc.

Explanation I

- When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II

- For the purposes of this section "illicit intercourse" means sexual intercourse between person not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

6. Rahim and Farid are known to each other for ten years and are partner in a partnership business since then. Rahim filed a Case under section 420/406 of the Penal Code against Farid for not supplying the accounts. Advise Farid. **[Bar Exam-2006]**

Ans to the question no-6

Advise for Farid:

According to section 420 of the Penal Code, 1860, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

According to section 405 of the Penal Code, 1860, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

According to section 406 of the Penal Code, 1860, whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

Rahim had a partnership business with Farid. Rahim filed a Case under section 420/406 of the Penal Code against Farid for not supplying the accounts. Here Farid did not commit any fraudulent or dishonest conduct. In **Nasir Uddin & Others Vs. Momtaz Uddin Ahmed & Others**, 36 DLR (AD) 14 held that a partner cannot be charged by his co-partner for breach of trust and cheating.

Therefore Farid can apply for quashing the proceedings under section 561A of the Code of Criminal Procedure, 1898 to the High Court Division.

Ans to the Question no-7

Difference between criminal breach of trust and criminal misappropriation of property.

Ans:

- **Repeat Questions. Already discussed under Offence against Property Chapter.**

Chapter-10

Forgery & Defamation

Bar & Judicial Service Exam Past Questions

1. a) What is meant by 'forgery' and 'making of false documents'? Discuss with illustrations making reference to the relevant provisions of law.

b) What do you mean by a document? When the following thing may be treated as documents'

i) A contract; ii) A Bill of Exchange; iii) A Map. **[9th ,& 12th BJS]**

2. (a) Define 'defamation'. State its exceptions.

(b) 'A' threatens 'B' to burn his house for the purpose of inducing 'B' to resist from prosecuting a civil suit. What is the offence committed by 'A'? Answer with relevant provision of law. **[12th BJS]**

3. Q purchased at auction an immovable property belonging to a co-operative society at Tk. ninety lac. It was proved through evidence that X, secretary of the said co-operative society, in collusion with Y and Z, forged a document in favour of Z mentioning therein Tk. forty lac as the value of property. Under which sections of the Penal Code, 1860 X, Y and Z may be found guilty and sentenced? Answer with reference to relevant provisions. **[Bar Exam-2023]**

Solution of Bar & Judicial Service Exam Past Questions

1. a) What is meant by 'forgery' and 'making of false documents'? Discuss with illustrations making reference to the relevant provisions of law.

b) What do you mean by a document? When the following thing may be treated as documents'

i) A contract; ii) A Bill of Exchange; iii) A Map. **[9th ,& 12th BJS]**

Ans to the Question No-1(a)

Forgery

Forgery is a crime in which someone falsifies something with the intent to deceive. Forgery under Penal Code, as follows : Section 463 provides that if any person makes any false document or part of a document, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Ingredients

The ingredients of the offence are :

- i) the making of a false document or part of it,
- ii) such making should be with intent—
 - a) to cause damage or injury to the public, or to any person, or
 - b) to support any claim or titles or
 - c) to cause any person to part with property; or
 - d) to enter into any express or implied contract; or
 - e) to commit fraud or that fraud be committed.

Punishment for forgery

- According to section 465 of the Penal Code, 1860 whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Making a false documents

The offence of forgery is defined in sections 463 and 464 of the Code. The making of false document with any of the intents therein mentioned is forgery under section 463 and section 464 sets forth when a person is said to make a false document within the meaning of the Code. Section 464 provides that a person is said to make a false document—

- 1. Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or
- 2. Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or
- 3. Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or

intoxication cannot, or that by reason of deception practiced upon him he does not know the contents of the document or the nature of the alteration.

- Thus, A has a letter of credit upon B for taka 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000 and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

Punishment for Making a false documents:

- According to section 465 of the Penal Code, 1860 whoever commits offence **for Making a false documents** shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ans to the Question No-1(b)

Document:

According to section 29 of the Penal Code, 1860 the word "document" denotes any matter expressed or described upon any substance by means of letters, figures, marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in a Court of Justice, or not.

i) A contract;

- When a writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

ii) A Bill of Exchange;

- When someone writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. Therefore after the endorsement A Bill of Exchange becomes document.

iii) A Map.

- When a map or plan is to be used or may be used as evidence, is a document.

2. (a) Define 'defamation'. State its exceptions.

(b) 'A' threatens 'B' to burn his house for the purpose of inducing 'B' to resist from prosecuting a civil suit. What is the offence committed by 'A'? Answer with relevant provision of law. [12th BJS]

Ans to the Question No-2(a)

Defamation

- Every Person has right to maintain and preserve his reputation. The Right of reputation is more valuable than right to property. Law gives protection to a man's reputation. Section 499 to 502 of Penal Code relates to offenses of Defamation.
- Section 499 defines defamation as follows :If any person by words either spoken or intended to be read, or by signs or by visible representations, makes or published any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation or such person, is said, except in the cases hereinafter excepted, to defame that person. There are four explanations to this section, as follows:
 - 1. It may amount to defamation to impute any thing to a deceased person, if the imputation would harm the reputation of that person if living.
 - 2. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.
 - 3. An imputation in the form of an alternative or expressed ironically, may amount to defamation.
 - 4. No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, lowers the moral or intellectual character of his caste.

Ingredients:

The section requires the following three ingredients:

- i. making or Publishing any imputation concerning any person.
- ii. such imputation must have been made by–
 - a) words, spoken or written;
 - b) signs; or
 - c) visible representations.
- iii. Such imputation must have been made either with the intention to harm, or knowing or having reason to believe that it will harm the reputation of the person concerning whom it is made. Thus, A says – “Z is an honest man; he never stole B's watch”; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

There are following important exceptions to the offence of defamation mentioned in section 499 of the Penal Code 1860 are not considered as defamation:

- 1) Imputation of truth which public good requires to be made or published .
- 2) Public conduct of public servants.
- 3) Conduct of any person touching any public question .
- 4) Publication of reports of proceedings of Courts .
- 5) Merits of case decided in Court, or conduct of witnesses and others concerned.
- 6) Merits of public performance .

- 7) Censure passed in good faith by person having lawful authority over another .
- 8) Accusation preferred in good faith to authorized person.
- 9) Imputation made in good faith by person for protection of his or other's interests.
- 10) Caution intended for good of person to whom conveyed or for public good .

Punishment for defamation

- According to section 500 whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.
- According to section 501 whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.
- According to section 502 whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Ans to the Question No-2(b)

Fact:

- 'A' threatens 'B' to burn his house for the purpose of inducing 'B' to resist from prosecuting a civil suit.

Issue:

- What is the offence committed by 'A'?

Legal Analysis and Decision:

- According to section 503 of the Penal Code, 1860, whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause to alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.
- In this given problem 'A' threatens 'B' to burn his house for the purpose of inducing 'B' to resist from prosecuting a civil suit.
- A is guilty of criminal intimidation within the meaning of section 503 of the Penal Code, 1860.

3. Q purchased at auction an immovable property belonging to a co-operative society at Tk. ninety lac. It was proved through evidence that X, secretary of the said co-operative society, in collusion with Y and Z, forged a document in favour of Z mentioning therein Tk. forty lac as the value of property. Under which sections of the Penal Code, 1860 X, Y and Z may be found guilty and sentenced? Answer with reference to relevant provisions.

[Bar Exam-2023]

Ans. to the Qs. No-3

Under which sections of the Penal Code, 1860 X, Y and Z may be found guilty and sentenced?

A piece of immovable property owned by a co-operative society was purchased at auction by Q for Tk. 90 lakh. It was proved through evidence that the secretary of the co-operative society, X, in collusion with Y and Z, forged a document in favor of Z, mentioning Tk. 40 lakh as the value of the property. X, Y, and Z will be found guilty of preparing a forged document under Section 464 of The Penal Code, 1860, and can be punished under Sections 465/34. According to Section 465, the punishment for forgery can be imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Additionally, under Section 468 of the Penal Code, they will be punished for forgery committed with the intention of cheating, which can result in imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Chapter-11

BJS Problematic Questions

1. Recognize the offences and write features thereof on the following illustrations as per the Penal Code, 1860:

a) X sells chicken in the market knowing that it contains bird flu.

b) X causes grievous hurt to a police named Z in rescuing Y from Z's lawful custody.

c) A passerby was likely to be hurt from over running by two cars while they were competing to overtake. **[13th BJS]**

2. X pretending to be a Secretary receives one lakh taka from Y for arranging a job for Y in the Secretariat. Has X committed any offence by such act? Discuss in detail with illustration. **[13th BJS]**

3. X knows Z to be behind a bush. Y does not know it. X, intending to cause or knowing it likely to cause Z's death induces Y to fire at the bush. Y fires and kills Z. Have X and Y committed any offence by such act? **[13th BJS]**

4. a) X is at work with a hatchet with proper caution; the head of it flies off and kills Y who is standing by. Has X committed any offence? Answer with reason. **[13th BJS]**

b) 'A' is a person of unsound mind. 'B' asked 'A' to set fire to the house of 'C'. Accordingly 'A' set fire to the house. What penalty may be imposed on 'A' and 'B'? Justify your reply with reference to relevant law. **[5th BJS / 3rd BJS Exam]**

5. Whether 'A' commits any offence in the following incidences? Discuss-

a) 'A' is a police officer. 'B' abets the commission of a robbery with full knowledge of 'A'. With the intention to give opportunity for commission of the offence 'A' hides the information and does not take any action to prevent that.

b) 'A' is a surgeon. In good faith, he communicates to a patient his opinion that he lives no longer. The patient dies in consequence of the shock.

c) 'A' signed and issued a falsified document with full knowledge.

d) With the intention of theft 'A' fires a bullet aiming a duck. Hiding behind the bush 'B' is hit by the bullet, which causes his death. 'A' does not know 'B's stay behind the bush.

[11th BJS]

6. Are the following acts offences? Give example for each.

a) Accident in doing a lawful act.

b) Communication made in good faith;

c) Act done by a person bound by law, or by mistake of fact believing himself bound by law;

d) Act done by a person justified, or by any mistake of fact believing himself justified by law. **[10th BJS]**

7. a) 'A' holds 'B' down, and fraudulently takes 'B's money and jewels from his cloths, without his consent. In order to the committing of that act 'A' has voluntarily caused wrongful restraint to 'B'. Answer with reasons as to what offences 'A' has committed.

b) 'A', 'B', 'C' 'D' and 'E' have committed a certain dacoity. Out of the goods stolen, a cell phone was recovered from the possession of 'B' and a gold necklace was recovered from the possession of 'F', who received the same from 'D' knowing it to be a stolen property. All the six accused 'A', 'B' 'C', 'D', 'E' and 'F' were charged under section 395 and 412 of the Penal Code. Will you punish all the accused under both the sections? Give reasons. **[10th BJS]**

8. State the names and maximum punishment of the offence under the relevant provisions of the Penal Code in the following cases:

a) A cuts down a tree on B's land without his consent with the intention to take it for making a boat for A's use.

b) 'A' voluntarily obstructed a private car in which four persons was travelling.

c) A was sent by his master to sell goods and bring the money to him. A did not give the sale proceeds of the goods to his master. **[7th BJS]**

d) A, B, C, D and E, Directors of Forward Bank Ltd. paid dividends out of deposits without making any profit and thereby causing wrongful loss to the depositors. Discuss the criminal liability of the Directors under the Penal Code. **[4th BJS]**

9. Once A strikes Z who is laboring under such a disease that a blow is likely to cause his death. Z dies in consequence of the blow, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. What offence has A committed if he had knowledge and if he had no knowledge about the disease? Discuss with relevant provisions of law. **[6th BJS]**

10. 'A' instigates 'B' to cause death of 'C'. 'B' refuses to do so. Does 'A' commit any offence? If commits, what is the offence punishable under what section of the Penal Code, 1860? **[11th BJS]**

11. X who by reason of threat of being beaten joins a Gang of dacoits knowing their character and committed dacoity. Will X be entitled to have the protection of general exception as described in the Penal Code 1860 for his participation in dacoity because of fear of threat of being beaten? Answer with reference to relevant law. **[14th BJS Exam]**

12. a) X strikes Y. Y is by this provocation excited to violent rage. Z a by-stander intending to take advantage of Y's rage and to cause him to kill X put a knife into Y's hand for that purpose. Y kills X with that knife. Determines the criminal liability of Y and Z in this case in the light of relevant provision of law. **[14th BJS Exam]**

13. Some dacoits committed dacoity at the residence of A. At that time 'A' resisted. The dacoits except 'B' attempted to kill 'A' and 'B' forbade them. But the other dacoits ultimately killed 'A'. Is 'B' liable to any penalty? Justify your reply with reference to relevant law. **[5th BJS]**

14. (a) In a case, charge was framed under sections 379 and 411 of the Penal Code, 1860 against an accused. The learned Magistrate found the accused guilty and sentenced him to suffer rigorous imprisonment for two years under section 379 and rigorous imprisonment for six months under section 411. Is the conviction lawful? Answer with reference to relevant legal provisions.

(b) 'X', a soldier, fires on a mob by the lawful order of his superior officer. Determine the criminal liability of 'X'.

(c) 'X' while working with a hatchet; the head flies off and kills a bystander. There was no want of proper caution on the part of 'X'. Determine the criminal liability of 'X'.

(d) Who is an abettor? 'X' instigates 'Y' to give false evidence. 'Y', as a result of such instigation, commits that offence. What crime is 'X' guilty of and what is the punishment for the offence? **[15th BJS]**

15. a) When and under what circumstances the act of Judge; accident; act likely to cause harm are not offences?
b) A, in a judicial proceeding before a Court, uses as genuine a document which he knows to be forged. Under which section the offence committed by A is punishable? What is the maximum sentence prescribed in the Penal Code, 1860 for that offence?
c) X holds Z down and fraudulently takes Z's money and jewels from Z's cloths, without Z's consent. Under which section the offence committed by X is punishable? What is the maximum sentence prescribed in the Penal Code, 1860 for that offence? [16th BJS Exam-2023]
16. a) Y threatens to publish a defamatory label concerning X unless X gives him money and thus induces X to give him money. What offence Y has committed and mention the elements of that offence.
b) X instigates Y to burn Z's house. Y sets fire to the house and at the same time commits theft of property there. Is X guilty for abetting theft? Answer with reference to specific provisions.
c) A, in support of a just claim which B has against Z for five thousand taka falsely swears on a trial that he heard Z admit the justice of B's claim. Which offence A has committed and mention the elements of that offence.
d) X puts jewels into a box belonging to Y, with intention that they may be found in that box, and that this circumstance may cause Y to be convicted of theft. Which offence X has committed and mention the elements of that offence. [16th BJS Exam-2023]
17. a) Define stolen property under the Penal Code, 1860. A committed theft at night in B's dwelling house. On the next morning, A was arrested with stolen property. Under which section(s) of the Penal Code, 1860 the offence of A is punishable? Furnish reasons in support of your answer. [17th BJS Exam-2024]
b) Answer the following questions with reference to relevant provisions of the Penal Code, 1860— [17th BJS Exam-2024]
i) Can a person be guilty of theft of his own property?
ii) "If you commit suicide, you will survive, if you live, you will suffer." Explain.
18. a) A group of protestors namely A, B, C, D, E and F plotted to frustrate a protest meeting. A directly threw stone to the stage when B, C, D, E and F chanted slogan and restrained the participants. Mention A's offence and punishment thereof. Can B, C, D, E and F be charged with the same offence along with A? Reason your answer. Describe mentioning the concerned provisions of the Penal Code, 1860. [17th BJS Exam-2024]
b) A draws a picture of Z running away with T's watch, intending it to be believed that Z stole B's watch. Has any offence been committed by A? Explain the liability of A along with the 3 exceptions by dint of which A's act would not be treated as offence. [17th BJS Exam-2024]

c) The complainant alleged that the accused purchased products from him worth Tk. 3,25,000 on credit with a promise of paying the money quickly. Although the accused initially paid Tk. 1,80,000 but did not pay the rest even after several requests. The complainant brought allegation against the accused under sections 406 and 420 of the Penal Code, 1860. The accused proved the allegation of debt. What is the possible consequence of the case? Explain with reference to relevant provisions of the Penal Code, 1860 and mention the punishment for those two offences. **[17th BJS Exam-2024]**

19. Z, a shopkeeper, while closing his store at night, B, armed with a knife, attempts to forcibly enter the shop, threatening to kill Z if he resists. Z initially tries to shut the door and call for help, but B breaks in and lunges at him. In that situation, Z grabs a heavy iron rod and strikes B multiple times, resulting in B's death. Meanwhile, C, a passerby who is unarmed, tries to intervene to stop the fight. In the heat of the moment, considering C as an accomplice of B, Z strikes C as well, causing grievous injury. Subsequently, it is revealed that B was intoxicated and acting without premeditation, and C had no connection with B. Discuss, with reasons, whether Z can successfully claim the right of private defence under the Penal Code, 1860 in respect of the death of B, and the injury caused to C. In your answer, examine the scope and limitations of the right of private defence. **[18th BJS, 2025]**

20. Y instigates Z to burn X's house. Being so instigated, Z sets fire to X's house and also commits theft of his property. Determine the criminal liability of Y and Z for both the offence of theft and the act of setting fire, with reference to the relevant provisions of law. **[18th BJS, 2025]**

21. A strikes Z, who is suffering from a disease that makes him particularly vulnerable to injury. As a result of the blow, Z dies, even though the same blow might not have been fatal to a person in normal health. Discuss the criminal liability of A in light of the relevant provisions of the Penal Code, 1860. **[18th BJS, 2025]**

Solution of Past Questions

1. Recognize the offences and write features thereof on the following illustrations as per the Penal Code, 1860:

a) X sells chicken in the market knowing that it contains bird flu.

b) X causes grievous hurt to a police named Z in rescuing Y from Z's lawful custody.

c) A passerby was likely to be hurt from over running by two cars while they were competing to overtake. **[13th BJS]**

Ans to the Question No-1

a) X is liable under section 269 of the Penal Code, 1860. According to section 269 whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

b) X is liable under section 333 of the Penal Code, 1860. According to section 333 whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

c) Offender is liable under section 279 of the Penal Code, 1860. According to section 279 whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may, subject to the minimum of one thousand taka, extend to five thousand taka or with both.

2. X pretending to be a Secretary receives one lakh taka from Y for arranging a job for Y in the Secretariat. Has X committed any offence by such act? Discuss in detail with illustration. **[13th BJS]**

Ans to the Question No-2

Fact:

- X pretending to be a Secretary receives one lakh taka from Y for arranging a job for Y in the Secretariat.

Issue:

- Has X committed any offence by such act?

Legal Analysis and Decision:

- X is liable under section 170 of the Penal Code, 1860. According to section 170 whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be liable for offence of **personating a public servant**.
- Illustration:

- A pretending to be a Assistant Judge receives 50 thousand taka from B for declaring judgment in favour of B. Such Judge committed offence within the meaning of section 170 of the Penal Code.
- Therefore, if anyone commites offence under section 170, he shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

3. X knows Z to be behind a bush. Y does not know it. X, intending to cause or knowing it likely to cause Z'death induces Y to fire at the bush. Y fires and kills Z. Have X and Y committed any offence by such act? **[13th BJS]**

Ans to the Question No-3

Fact:

- X knows Z to be behind a bush. Y does not know it. X, intending to cause or knowing it likely to cause Z'death induces Y to fire at the bush. Y fires and kills Z.

Issue:

- Have X and Y committed any offence by such act?

Legal Analysis and Decision:

- Here Y may be guilty of no offence; but X has committed the offence of culpable homicide. According to section 299 whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Therefore X has committed culpable homicide under section 299. Here X will be punishable under section 302 of the Penal Code.

4. a) X is at work with a hatchet with proper caution; the head of it flies off and kills Y who is standing by. Has X committed any offence? Answer with reason. **[13th BJS]**

b)'A' is a person of unsound mind. 'B' asked 'A' to set fire to the house of 'C'. Accordingly 'A' set fire to the house. What penalty may be imposed on 'A' and 'B'? Justify your reply with reference to relevant law. **[5th BJS]/ 3rd BJS Exam]**

Ans to the Question No-4(a)

Fact:

- X is at work with a hatchet with proper caution; the head of it flies off and kills Y who is standing by.

Issue:

- Has X committed any offence?

Legal Analysis and Decision:

- X has committed no offence. According to section 80 nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Ans to the Question No-4(b)

Fact:

- 'A' is a person of unsound mind. 'B' asked 'A' to set fire to the house of 'C'. Accordingly 'A' set fire to the house.

Issue:

- What penalty may be imposed on 'A' and 'B'?

Legal Analysis and Decision:

- A has committed no offence but B will be liable for abetting A to set fire. **According to Explanation 3 of section 108** it is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge. According to 84 nothing is an offence which is done by a person of unsound mind.
- Therefore, though A is not liable as a principal offender because of unsound mind but B is liable as an abettor.
- So B shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine under section 436 of the Penal Code for the offence of **Mischief by fire with intent to destroy house.**

5. Whether 'A' commits any offence in the following incidences? Discuss-

a) 'A' is a police officer. 'B' abets the commission of a robbery with full knowledge of 'A'. With the intention to give opportunity for commission of the offence 'A' hides the information and does not take any action to prevent that.

b) 'A' is a surgeon. In good faith, he communicates to a patient his opinion that he lives no longer. The patient dies in consequence of the shock.

c) 'A' signed and issued a falsified document with full knowledge.

d) With the intention of theft 'A' fires a bullet aiming a duck. Hiding behind the bush 'B' is hit by the bullet, which causes his death. 'A' does not know 'B's stay behind the bush.

[11th BJS]

Ans to the Question No-5

a) **A is liable under section 119 of the Penal Code, 1860. Section 11 states that** whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,
if offence be committed;

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

if offence be punishable with death, etc;

or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years;

if offence be not committed

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

b) According to section 93 of the Penal Code 1860, 'A' has committed no offence. Section 93 states that No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

c) According to section 464 A made a false document. Therefore he has committed forgery. Section 464 states that a person is said to make a false document-Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed. Therefore by signing and issuing a falsified document with full knowledge A has committed forgery.

d) Here A may be guilty of no offence; According to section 299 whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Section 299 requires either knowledge or intention. In the given problem A had no knowledge or intention to kill B. Therefore A is guilty of no offence under section 299.

6. Are the following acts offences? Give example for each.

a) Accident in doing a lawful act.

b) Communication made in good faith;

c) Act done by a person bound by law, or by mistake of fact believing himself bound by law;

d) Act done by a person justified, or by any mistake of fact believing himself justified by law. **[10th BJS]**

Ans to the Question No-6

a) Accident in doing a lawful act:

- According to section 80 of the Penal Code, 1860 **nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.**

Illustration:

- **A is at work with a hatchet; the head flies off and kills a man who is standing by. Here if there was no want of proper caution on the part of A, his act is excusable and not an offence.**

b) Communication made in good faith;

- According to section 93 of the Penal Code, 1860 no communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration:

- A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death

c) Act done by a person bound by law, or by mistake of fact believing himself bound by law:

- According to section 76 of the Penal Code, 1860 nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations:

- A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

d) Act done by a person justified, or by any mistake of fact believing himself justified by law:

- According to section 79 of the Penal Code, 1860 nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration:

- A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

7. a) 'A' holds 'B' down, and fraudulently takes 'B's money and jewels from his cloths, without his consent. In order to the committing of that act 'A' has voluntarily caused wrongful restraint to 'B'. Answer with reasons as to what offences 'A' has committed.

b) 'A', 'B', 'C' 'D' and 'E' have committed a certain dacoity. Out of the goods stolen, a cell phone was recovered from the possession of 'B' and a gold necklace was recovered from the possession of 'F', who received the same from 'D' knowing it to be a stolen property. All the six accused 'A', 'B' 'C', 'D', E' and 'F' were charged under section 395 and 412 of the Penal Code. Will you punish all the accused under both the sections? Give reasons. **[10th BJS]**

Ans to the Question No-7(a)**Fact:**

- 'A' holds 'B' down, and fraudulently takes 'B's money and jewels from his cloths, without his consent. In order to the committing of that act 'A' has voluntarily caused wrongful restraint to 'B'.

Issue:

- What offences 'A' has committed?

Legal Analysis and Decision:

- 'A' has committed **Robbery**. According to section 390 in all robbery there is either theft or extortion. Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

- A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

Ans to the Question No-7(b)

Legal Analysis and Decision:

- No, I will not punish all the accused under sections 395 and 412 of the Penal Code, 1860. Here 'A', 'B', 'C' 'D' and 'E' only liable under section 395 but not under section 412 because dacoity goods will belong to dacoits. But F will be punished under section 412, because a gold necklace was recovered from the possession of 'F', who received the same from 'D' knowing it to be a stolen property.

8. State the names and maximum punishment of the offence under the relevant provisions of the Penal Code in the following cases:

a) A cuts down a tree on B's land without his consent with the intention to take it for making a boat for A's use.

b) 'A' voluntarily obstructed a private car in which four persons was travelling.

c) A was sent by his master to sell goods and bring the money to him. A did not give the sale proceeds of the goods to his master. [7th BJS]

d) A, B, C, D and E, Directors of Forward Bank Ltd. paid dividends out of deposits without making any profit and thereby causing wrongful loss to the depositors. Discuss the criminal liability of the Directors under the Penal Code. [4th BJS]

Ans to the Question No-8

a) According to section 378 A is liable for theft. Section 378 provided whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

According to section 378 whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Therefore the maximum punishment for A is 3 years rigorous imprisonment with fine.

b) According to section 339 A is liable for **Wrongful restraint**. Section 339 provided whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

According to section 341 whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred taka, or with both.

Therefore the maximum punishment for A is one month simple imprisonment with 500 taka fine.

c) A is liable under section 408 of the Penal Code, 1860. Section 408 states that whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Therefore the maximum punishment for A is 7 years rigorous imprisonment with fine.

d) A, B, C, D and E, are liable under section 409 of the Penal Code, 1860 if they, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law.

Section 409 states that Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

They can be liable under section 418 of the Penal Code, 1860 if it is proved that they cheat with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by legal contract, to protect, they shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

9. Once A strikes Z who is laboring under such a disease that a blow is likely to cause his death. Z dies in consequence of the blow, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. What offence has A committed if he had knowledge and if he had no knowledge about the disease? Discuss with relevant provisions of law. **[6th BJS]**

Ans to the Question No-9

Issue:

- What offence has A committed if he had knowledge and if he had no knowledge about the disease?

Legal Analysis and Decision:

- According to clause 2 of section 300 of the Penal Code, 1860 culpable homicide is murder, if it is done with the intention of causing such bodily injury as the

offender knows to be likely to cause the death of the person to whom the harm is caused.

- A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.
- But if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, then also A will be liable for Murder within the meaning of clause 3 of section 300 of the Penal Code.

10. 'A' instigates 'B' to cause death of 'C'. 'B' refuses to do so. Does 'A' commit any offence? If commits, what is the offence punishable under what section of the Penal Code, 1860? **[11th BJS]**

Ans to the Question No-10

Fact:

- 'A' instigates 'B' to cause death of 'C'. 'B' refuses to do so.

Issues:

- Does 'A' commit any offence?
- If commits, what is the offence punishable under what section of the Penal Code, 1860?

Legal Analysis and Decision:

- A has committed the offence of Abetment. According to explanation 2 of section 108 of the Penal Code, 1860 to constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused. Therefore, though B refuses to cause death but A will be liable for abetment for murder.
- According to section 115 whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;
- and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to

imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

- Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to C in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

11. X who by reason of threat of being beaten joins a Gang of dacoits knowing their character and committed dacoity. Will X be entitled to have the protection of general exception as described in the Penal Code 1860 for his participation in dacoity because of fear of threat of being beaten? Answer with reference to relevant law. [14th BJS Exam]

Ans to the Question no-11

Fact:

- X who by reason of threat of being beaten joins a Gang of dacoits knowing their character and committed dacoity.

Issue:

- Will X be entitled to have the protection of general exception as described in the Penal Code 1860 for his participation in dacoity because of fear of threat of being beaten?

Legal Analysis and Decision:

- According to section 94 of the Penal Code, 1860 except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.
- Explanation 1 of section 94 a person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.
-
- Therefore he is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.

12. X strikes Y. Y is by this provocation excited to violent rage. Z a by-stander intending to take advantage of Y's rage and to cause him to kill X put a knife into Y's hand for that purpose. Y kills X with that knife. Determines the criminal liability of Y and Z in this case in the light of relevant provision of law. [14th BJS Exam]

Ans to the Question no-12

Issue:

- What will be the criminal liability of Y and Z in this case?

Legal Analysis and Decision:

- According to section 38 where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.
- And According to exception 1 of section 300 culpable homicide is not murder if it is committed due to sudden and grave provocation and without premeditation.
- After considering the above legal analysis, we can say that Y and Z both are liable for the offence within the meaning of section 38. Y will be liable under section 304 and Z will be liable under section 302/38 of the Penal Code, 1860.

13. Some dacoits committed dacoity at the residence of A. At that time 'A' resisted. The dacoits except 'B' attempted to kill 'A' and 'B' forbade them. But the other dacoits ultimately killed 'A'. Is 'B' liable to any penalty? Justify your reply with reference to relevant law.] **[5th BJS]**

Ans to the Question No-13

Issue:

- Is 'B' liable to any penalty?

Legal Analysis and Decision:

- All dacoits including B shall be liable for dacoity with murder under section 396 of the Penal Code, 1860. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be liable for dacoity with murder, no matter whether any dacoit tried to resist or not to kill.

14. (a) In a case, charge was framed under sections 379 and 411 of the Penal Code, 1860 against an accused. The learned Magistrate found the accused guilty and sentenced him to suffer rigorous imprisonment for two years under section 379 and rigorous imprisonment for six months under section 411. Is the conviction lawful? Answer with reference to relevant legal provisions.

(b) 'X', a soldier, fires on a mob by the lawful order of his superior officer. Determine the criminal liability of 'X'.

(c) 'X' while working with a hatchet; the head flies off and kills a bystander. There was no want of proper caution on the part of 'X'. Determine the criminal liability of 'X'.

(d) Who is an abettor? 'X' instigates 'Y' to give false evidence. 'Y', as a result of such instigation, commits that offence. What crime is 'X' guilty of and what is the punishment for the offence? **[15th BJS]**

Ans to the qs no 14

a) In a case, charge was framed under sections 379 and 411 of the Penal Code, 1860 against an accused. The learned Magistrate found the accused guilty and sentenced him to suffer rigorous imprisonment for two years under section 379 and rigorous imprisonment for six months under section 411. If the accused sentenced under section 379 and 411 for the same offence, it will not be lawful. Offences under sections 411 and 379 are different offences. Naturally stolen goods taken away at the time of theft may be found in possession a person who has committed theft. Therefore a separate charge under section 411 cannot be framed against him.

b) According to section 76 of the Penal Code, 1860 X has committed no offence, because he complied the lawful order with good faith.

(c) According to section 80 of the Penal Code, 1860 nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. Therefore, X has committed no offence.

(d) Abettor:

According to section 108 of the Penal Code, 1860 A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Ans of the Problem Part:

- According to section 109 of the Penal Code, 1860 whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
- So no separate punishment is given under Penal Code, 1860 for abetment of giving false evidence. Therefore X will be guilty under section 193/109 of the Penal Code and shall be punished with imprisonment not exceeding 7 years and fine.

15. a) When and under what circumstances the act of Judge; accident; act likely to cause harm are not offences?

b) A, in a judicial proceeding before a Court, uses as genuine a document which he knows to be forged. Under which section the offence committed by A is punishable? What is the maximum sentence prescribed in the Penal Code, 1860 for that offence?

c) X holds Z down and fraudulently takes Z's money and jewels from Z's cloths, without Z's consent. Under which section the offence committed by X is punishable? What is the maximum sentence prescribed in the Penal Code, 1860 for that offence?

[16th BJS Exam-2023]

Ans. to Qs No-15(a)

When and under what circumstances the act of Judge;

- According to section 77 of the Penal Code, 1860 nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Accident:

- According to section 80 of the Penal Code, 1860 nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Act likely to cause harm are not offences:

- According to section 81 of the Penal Code, 1860 nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Ans. to Qs No-15(b)

According to section 471 of the Penal Code, 1860 whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

He shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both under section 465 of the Penal Code, 1860.

Ans. to Qs No-15(c)

According to section 390 of the Penal Code, 1860 theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

X holds Z down and fraudulently takes Z's money and jewels from Z's cloths, without Z's consent. Therefore X is liable for robbery and shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years under section 392.

16. a) Y threatens to publish a defamatory label concerning X unless X gives him money and thus induces X to give him money. What offence Y has committed and mention the elements of that offence.
b) X instigates Y to burn Z's house. Y sets fire to the house and at the same time commits theft of property there. Is X guilty for abetting theft? Answer with reference to specific provisions.
c) A, in support of a just claim which B has against Z for five thousand taka falsely swears on a trial that he heard Z admit the justice of B's claim. Which offence A has committed and mention the elements of that offence.
d) X puts jewels into a box belonging to Y, with intention that they may be found in that box, and that this circumstance may cause Y to be convicted of theft. Which offence X has committed and mention the elements of that offence. [16 th BJS Exam-2023]

Ans. to Qs No-16(a)

- Y has committed extortion. According to section 383 of the Penal Code, 1860 whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in 2[fear to give donation or subscription of any kind or to deliver] to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Ingredients

The essential ingredients of the offence of extortion are:

- intentionally putting a person in fear of injury;
- the purpose of which is to dishonestly induce the person put in fear and
- to deliver property or valuable security.

Ans. to Qs No-16(b)

According to section 111 of the Penal Code, 1860 when an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it: Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Therefore X shall not be guilty for abetting theft, because X instigates Y to burn Z's house and theft is not probable consequence of burning house.

Ans. to Qs No-16(c)

According to section 191 of the Penal Code, 1860 whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. Therefore A has given false evidence.

Essential Ingredients of False Evidence:

False evidence made by a person who is:

- i. Bound by oath, or
- ii. By an express provision of law, or
- iii. A declaration which a person is bound by law to make on any subject, and
- iv. Which statement or declaration is false and which he either knows or believes to be false or does not believe to be true.

Three essential prerequisite condition for the application of Section 191:

- A legal obligation to state the truth,
- Making of a false statement or declaration, and
- Belief in its falsity.

Ans. to Qs No-16(d)

According to section 192 of the Penal Code, 1860 whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such

circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate the evidence."

Therefore X has fabricated false evidence.

Essentials of fabricating false evidence:

1. Cause any circumstances to exist; or
2. Makes any false entry in any book or record etc containing a false statement ;
3. Intending that such circumstances, false entry or false statement may appear in evidence in a:
 - a) Judicial proceeding, or
 - b) In a proceeding taken by law before a public servant,
 - c) Before an arbitrator; and
- 4) Helps form an opinion upon the evidence, to entertain an erroneous opinion;
- 5) Touching any point material to the result of such proceeding.

17. a) Define stolen property under the Penal Code, 1860. A committed theft at night in B's dwelling house. On the next morning, A was arrested with stolen property. Under which section(s) of the Penal Code, 1860 the offence of A is punishable? Furnish reasons in support of your answer. **[17th BJS Exam-2024]**

b) Answer the following questions with reference to relevant provisions of the Penal Code, 1860— **[17th BJS Exam-2024]**

i) Can a person be guilty of theft of his own property?

ii) "If you commit suicide, you will survive, if you live, you will suffer." Explain.

Ans to the Qs No. 17(a)

Analysis of the Incident:

- A committed theft at B's house at night.
- The next morning, A was arrested with the stolen property.

Legal Analysis & Applicable Sections Against A:

1. Section 380 – Theft in Dwelling House:

This section applies when theft is committed in any building used as a human dwelling.

- In this case, since A committed theft in B's residence, this section applies.
- **Punishment:** Imprisonment up to **7 years** and **fine**.

2. Section 457 – Lurking House-Trespass or House-Breaking by Night in order to commit an offence:

Whoever commits house-trespass by night with intent to commit a punishable offence is liable under Section 457.

- This section applies here because:
 - The offence occurred **at night**,
 - It took place **inside B's dwelling**, and
 - The **intention was to commit theft**, which is a punishable offence.
- **Punishment:** Imprisonment up to **14 years** and **fine**.

3. Sections 410 and 411 – Possession of Stolen Property:

- Section 410 of the Penal Code defines **stolen property**.
- Although A was found with the stolen items, he **will not be charged under Section 411**, because this section applies to a person who **knowingly receives** stolen property.
- Since A is the **actual thief**, Section 411 does not apply to him in this case.
- Section 411 would only apply if **another person knowingly accepted** the stolen goods.

Conclusion:

- A has committed punishable offences under **Sections 380 and 457** of the Penal Code, 1860.
- Section 411 is **not applicable**, as it is normal for the stolen goods to be in the possession of the thief himself.

Ans to the Qs No. 17(b)

i) Can a person be guilty of theft of his own property?

Yes, under Section 378 of the Penal Code, a person can be guilty of theft of his own property if he takes that property from the lawful possession of another person with dishonest intention.

Essential Ingredients:

To constitute the offence of theft, the following elements must be present—

1. Property must be in the lawful possession of another person
2. The property must be taken with **dishonest intention**
3. The act of taking must be **secretly**

Illustration:

- A pawns his watch to Z and borrows money from him. If A takes back the watch from Z's possession **without Z's consent** and **without repaying the loan**, A is guilty of theft, **even though the watch is his own property**.

Therefore, **ownership is not the determining factor**; rather, the **lawful possession and dishonest intention** are the core components of theft. Hence, even if the property belongs to the person, taking it **dishonestly from another's lawful possession** amounts to **theft**.

ii) "If you commit suicide, you will survive, if you live, you will suffer." Explain.

The given sentence is a form of **psychological remark**, the legal interpretation of which depends on the **context, intention, and impact** of the statement. Whether it falls under any **legal provision relating to suicide** can be analyzed under two different situations:

First: If it is a general statement –

- Example: "If you commit suicide, you won't be punished."
 ➡ In this case, the person is expressing the idea that there is **no legal consequence after death**, which implies that **attempt to commit suicide is treated as a punishable offence**.

Relevant Provision: Section 309 – Attempt to commit suicide

- If a person attempts to commit suicide and does any act towards the commission of such offence, he shall be punished with **simple imprisonment for a term which may extend to one year**, or with **fine**, or with **both**.

Therefore, **if suicide is successful, it is not punishable**. But if the person survives the attempt, they will face punishment under Section 309. Thus, in this context, the person will have to **suffer legally**.

Second: If the statement is directed at another person –

If someone makes such a statement targeting another person, and as a result, that person attempts or commits suicide, the statement may be treated as **abetment**.

Relevant Provisions:

- **Section 107 – Definition of abetment**
- **Section 306 – Punishment for abetment of suicide**

However, these provisions will apply only when—

- The statement is **intentional** and **capable of creating mental pressure**, and
- As a **direct consequence**, the victim **attempts or commits suicide**.

18. a) A group of protestors namely A, B, C, D, E and F plotted to frustrate a protest meeting. A directly threw stone to the stage when B, C, D, E and F chanted slogan and restrained the participants. Mention A's offence and punishment thereof. Can B, C, D, E and F be charged with the same offence along with A? Reason your answer. Describe mentioning the concerned provisions of the Penal Code, 1860. **[17th BJS Exam-2024]**

b) A draws a picture of Z running away with T's watch, intending it to be believed that Z stole B's watch. Has any offence been committed by A? Explain the liability of A along with the 3 exceptions by dint of which A's act would not be treated as offence. **[17th BJS Exam-2024]**

c) The complainant alleged that the accused purchased products from him worth Tk. 3,25,000 on credit with a promise of paying the money quickly. Although the accused initially paid Tk. 1,80,000 but did not pay the rest even after several requests. The complainant brought allegation against the accused under sections 406 and 420 of the Penal Code, 1860. The accused proved the allegation of debt. What is the possible consequence of the case? Explain with reference to relevant provisions of the Penal Code, 1860 and mention the punishment for those two offences. **[17th BJS Exam-2024]**

Ans to Qs No. 18(a)

Facts in Short:

A group of six persons—**A, B, C, D, E, and F**—plotted to disrupt a protest meeting. During the execution of their plan:

- **A** threw a stone at the stage,
- **B to F** chanted slogans and restrained the participants.

Offence Committed by A:

A has committed the offence of:

- **Assault or criminal force (Section 352)**, or
- For unlawful Assembly under s.143 or
- **Mischief (Section 427)** depending on the result of the stone throwing.

➡ These are **substantive offences** under the Penal Code.

Liability of B, C, D, E, and F:

- Although only A threw the stone, the **entire group acted with a common object** to frustrate the meeting. B, C, D, E, and F supported the act by chanting slogans and restraining attendees. Hence, they are liable for unlawful assembly through the principle of constructive criminal liability.
- Section 141 states, an **unlawful assembly** is a gathering of **five or more persons** with a **common object** to use or threaten criminal force to overawe authority, resist law, commit offences, enforce rights unlawfully, or compel actions against one's legal will.

- **Section 149** states, if an offence is committed by any member of an unlawful assembly in prosecution of the common object, every person who is a member of that assembly is guilty of the offence.

Why Section 149 applies here:

1. **Six persons** formed an **unlawful assembly** (minimum 5 required – S.141),
2. The **common object** was to **disrupt a lawful public meeting**,
3. A's act (stone throwing) was **in prosecution of that common object**,
4. Even though B to F didn't throw stones, they actively **facilitated the offence**.

Therefore, A, B, C, D, E and F **are liable** under sections 143/ 323/ 352/ 427/ 149 of the Penal Code, 1860.

Ans to Qs No. 18(b)

- Yes, **A has committed an offence**, specifically the offence of **defamation** under **Section 499 of the Penal Code, 1860**.
-

Legal Analysis:

- According to section 499 of the Penal Code, 1860, "whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm... the reputation of such person, is said to defame that person.

In this case:

- **A draws a picture** (a form of **visible representation**),
- The picture **falsely shows Z running away with someone else's watch**,
- With the intention that **others will believe Z is a thief**,
- This clearly amounts to an **imputation intended to harm Z's reputation**,
 ➔ Hence, A's act constitutes **defamation**.

Liability of A:

A is **criminally liable** under **Section 500** of the Penal Code, which provides for **punishment of defamation**, namely:

- **Imprisonment up to 2 years, or Fine, or Both**

Three Exceptions under Section 499 (which may protect A if applicable):

- There are **10 exceptions** under Section 499, but in this case, **three are most relevant** and must be considered to determine whether A's act would be treated as an offence or not:

Exception 1 – Imputation of truth for public good:

- If the imputation is **true**, and its **publication is for the public good**, it is not defamation.
 ➔ In A's case, **the imputation is false**, so this exception does **not apply**.

Exception 2 – Public conduct of public servants:

- Making fair criticism of a **public servant** in respect of his public functions is not defamation.
- ➡ Z is not a public servant in this scenario, so this **exception does not apply**.

Exception 9 – Caution in good faith:

- Conveying a caution in **good faith and for the benefit** of the person to whom it is conveyed or of some other person in whom that person is interested is not defamation.
- ➡ A's act was **intended to malign Z**, not to warn T or protect any interest, so **this exception does not apply**.

Ans to Qs No. 18(c)

Facts in short:

- The complainant sold goods worth Tk. 3,25,000 on credit.
- The accused paid Tk. 1,80,000 but failed to pay the remaining amount despite repeated requests.
- The complainant alleged offences under **Sections 406** (Criminal Breach of Trust) and **420** (Cheating) of the **Penal Code, 1860**.
- The accused has **proved the existence of a debt**, i.e., a civil liability.

Possible consequence of the case:

- Mere failure to repay a civil debt does not attract Sections 406 or 420, **unless it is shown that the accused never intended to pay from the beginning (cheating), or was entrusted with the property and misused it (breach of trust)**.

Section 406: Criminal Breach of Trust:**Ingredients:**

To establish an offence under Section 406, the following must be proved:

1. **Entrustment** of property or dominion over property,
2. **Dishonest misappropriation**, conversion, or disposal of the property in violation of:
 - any legal contract,
 - or direction of law.

Why it may not apply:

In this case:

- The transaction appears to be a **commercial sale on credit**, not an entrustment.
- There is **no evidence** of dishonest misappropriation or breach of any trust-based relationship.
- No offence under **Section 406** is likely to be made out.

Section 420: Cheating and Dishonestly Inducing Delivery of Property:**Ingredients:**

1. **Deception** of any person,
2. **Fraudulent or dishonest inducement** to:
 - deliver any property, or
 - make/alter/destroy any valuable security or document,
3. **Dishonest intention** must exist **at the time of the transaction**.

Why it may not apply:

- If the accused **genuinely intended to pay** and **partially paid** the amount (Tk. 1,80,000), and
- The dispute is about the **remaining balance**,
Then it is a **breach of contract**, not **cheating**.
- The **absence of initial dishonest intention** defeats the applicability of **Section 420**.

Section 420 is also unlikely to apply if it was a **pure civil debt** with **no evidence of fraud** at inception.

Conclusion:

Since the accused has **proved the existence of a debt** and there is **no clear evidence of dishonest intention or entrustment**, the case is **likely to fail** under **Sections 406 and 420 of the Penal Code**. The matter is essentially **civil in nature**, and the complainant may pursue **recovery through a civil suit**, not criminal prosecution.

Punishments:

- **Section 406:** Imprisonment up to **3 years**, or **fine**, or **both**.
- **Section 420:** Imprisonment up to **7 years**, and **fine**.

19. Z, a shopkeeper, while closing his store at night, B, armed with a knife, attempts to forcibly enter the shop, threatening to kill Z if he resists. Z initially tries to shut the door and call for help, but B breaks in and lunges at him. In that situation, Z grabs a heavy iron rod and strikes B multiple times, resulting in B's death. Meanwhile, C, a passerby who is unarmed, tries to intervene to stop the fight. In the heat of the moment, considering C as an accomplice of B, Z strikes C as well, causing grievous injury. Subsequently, it is revealed that B was intoxicated and acting without premeditation, and C had no connection with B. Discuss, with reasons, whether Z can successfully claim the right of private defence under the Penal Code, 1860 in respect of the death of B, and the injury caused to C. In your answer, examine the scope and limitations of the right of private defence. [18th BJS, 2025]

Issue 1:

- Whether Z can claim the right of private defence for causing the death of B

Decision:

Yes. Z can successfully claim the right of private defence under the **Penal Code, 1860.**

Reasons

1. Sections 96 and 97

- Nothing is an offence which is done in the exercise of the right of private defence.
- Every person has a right to defend his own body and property against unlawful aggression.

2. Section 102

- The right of private defence of the body commences as soon as a reasonable apprehension of danger arises and continues as long as such apprehension continues.

3. Section 103 (Defence of Property)

- The right extends to causing death where the offence attempted is:
 - Robbery,
 - House-breaking by night,
 - Mischief by fire to a dwelling house, etc.
- B attempted to **forcibly enter the shop at night while armed with a knife**, which amounts to **house-breaking by night**.

4. Section 100 (Defence of Body)

- The right extends to causing death where there is a reasonable apprehension that the assault may cause death or grievous hurt.
- B threatened to kill Z and lunged at him with a knife. Therefore, Z had a reasonable apprehension of death or grievous hurt.

5. Section 99

- The force used must not be more than necessary.
- Here, B was armed with a deadly weapon and had already broken into the shop. Z first attempted to shut the door and seek help. The use of the iron rod was a defensive response to an immediate threat.

Effect of B's Intoxication

B's intoxication is irrelevant. The right of private defence depends on the **reasonable apprehension of the defender**, not on the actual mental condition or intention of the aggressor.

Conclusion regarding B

Z's act falls within **Sections 96, 97, 100 and 103**. Therefore, **the killing of B is protected by the right of private defence and is not an offence.**

Issue 2:

- Whether Z can claim the right of private defence for causing grievous injury to C

Decision:

No. Z cannot successfully claim the right of private defence regarding the injury caused to C.

Reasons

1. The right of private defence exists only against the person from whom the danger proceeds.
2. C was:
 - Unarmed,
 - A passerby,
 - Attempting to stop the fight,
 - Not connected with B.
3. There was **no assault, threat, or reasonable apprehension** from C.
4. Under **Section 99**, the right cannot be exercised beyond what is necessary for defence.
5. Since C posed no threat, striking him and causing grievous hurt was outside the scope of private defence.

Exception: Section 106

Section 106 protects a person who, while defending himself against a deadly assault, runs the risk of harming an innocent person.

However, it does **not apply here**, because:

- Z intentionally struck C believing him to be an accomplice.
- The injury was not an unavoidable consequence of defending against B.

Liability regarding C

Since private defence is unavailable, Z may be liable for:

- **Grievous hurt under Sections 320 and 325**, or
- Any other appropriate offence depending on the facts proved.

Scope and Limitations of the Right of Private Defence

Scope

- **Section 96:** Acts done in private defence are not offences.
- **Section 97:** Defence of body and property.
- **Section 100:** Right may extend to causing death in specified assaults.
- **Section 103:** Right may extend to causing death in specified offences against property.

Limitations

- **Section 99:**
 - No right against acts of public servants acting in good faith.
 - No right where there is sufficient time to seek protection from public authorities.
 - Force used must not be more than necessary.
- The right exists only so long as the danger continues.
- It cannot be exercised against innocent persons except in the exceptional circumstances of **Section 106**.

20. Y instigates Z to burn X's house. Being so instigated, Z sets fire to X's house and also commits theft of his property. Determine the criminal liability of Y and Z for both the offence of theft and the act of setting fire, with reference to the relevant provisions of law. [18th BJS, 2025]

Relevant Provision

Section 108 of the Penal Code, 1860 provides that an abettor is liable for the act abetted and also governs the extent of liability when the person abetted commits an act different from that instigated.

Liability of Z

(A) Setting Fire to X's House

- Y instigated Z to burn X's house.
- Acting upon that instigation, Z set fire to the house.

Z is directly liable under section 436 of the Penal Code, 1860 for the offence of mischief by fire.

(B) Theft of X's Property

- Z independently committed theft in addition to setting fire to the house.

Z is also liable under section 380 of the Penal Code, 1860 for theft.

Liability of Y

(A) Setting Fire to X's House

- Y instigated Z to burn X's house.
- The act was committed in consequence of that instigation.

Y is liable as an abettor of the offence of setting fire under section 436/109 of the Penal Code, 1860.

(B) Theft of X's Property

- Y merely instigated the burning of the house.
- There is no evidence that Y instigated, conspired for, or intentionally aided the theft.

- Under **Section 111 and Illustration (b)** of the Penal Code, where a person instigates another to burn a house and the latter also commits theft therein, the abettor is liable for the burning but not for the theft.
- The theft was a distinct and independent act and was not a probable consequence of the abetment.

Therefore, Y is liable for the offence of setting fire to the house but is not liable for the theft committed by Z.

21. A strikes Z, who is suffering from a disease that makes him particularly vulnerable to injury. As a result of the blow, Z dies, even though the same blow might not have been fatal to a person in normal health. Discuss the criminal liability of A in light of the relevant provisions of the Penal Code, 1860. [18th BJS, 2025]

The criminal liability of A depends upon **whether A knew of Z's special disease or vulnerability** at the time of striking him.

Relevant Provision

Section 300, clause-2, Penal Code, 1860 provides that culpable homicide is murder if the act is done: "with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused."

If A Knew of Z's Disease

If A knew that Z was suffering from a disease that made him particularly vulnerable and nevertheless struck him with the intention of causing bodily injury, and Z died as a result, then A is guilty of **murder** under **Section 300, Secondly**.

This is because A had knowledge that such injury was likely to cause Z's death, even though the same blow might not have been fatal to a healthy person.

Therefore, where knowledge of the victim's special condition exists, the offence amounts to **murder punishable under Section 302**.

If A Did Not Know of Z's Disease

If A was unaware of Z's disease and inflicted a blow which would not ordinarily cause the death of a healthy person, then A is **not guilty of murder** merely because Z happened to die due to his peculiar physical condition.

In such a case, A may be liable for **culpable homicide not amounting to murder** under Section 304, depending on the facts and degree of intention or knowledge.

Conclusion

- If A knew of Z's disease and intentionally struck him, causing his death, A is guilty of murder under Section 302.
- If A did not know of Z's disease, and the blow was not ordinarily sufficient to cause death, A is not guilty of murder but culpable homicide not amounting to murder under section 304 of the Penal Code, 1860.

Chapter-12

Important Difference

Bar & BJS Exam

1. Distinction between 34 & 149.
2. Difference between Abetment and Criminal Conspiracy
3. Distinction between rioting and unlawful assembly
4. Difference between false evidence and fabricating false evidence
5. Distinguish between Culpable Homicide and Murder
6. Basic difference of the offences punishable under sections 326 and 326A
7. Distinction amongst the offences, a) theft; b) extortion; c) robbery and d) dacoity:
8. Distinguish 'Criminal Breach of Trust' and "Criminal Misappropriation of Property."
9. Distinction between Theft and Extortion
10. Difference between Robbery And Dacoity
11. Cheating' and 'Criminal Breach of Trust
12. Imprisonment, imprisonment for life and imprisonment till death;
13. Giving false evidence and fabricating false evidence;
14. Using of a 'false trade mark' and 'false property mark;
15. House trespass and house breaking.
16. Distinctions between attempt and preparation to commit a crime
17. Waging war against Bangladesh and Sedition;

1. Distinction between 34 & 149.

The main differences between the two sections are as follows:

1. Offence

- Section 34 does not create any specific offence but only lays down the principle

of joint criminal liability. Whereas s.149 creates specific offence and being a member of an unlawful assembly is itself a crime, which is punishable under s.143.

2.Provisions

- ‘Common intention’ used in S.34 is not defined anywhere in PC, while ‘common object’ in s.149 must be one of the five ingredients defined in S. 141 of **Penal Code, 1860**.

3. Prior meeting

- Common intention requires a prior meeting of mind and unity of intention and overt act has been done in furtherance of the common intention of all.
- Whereas a common object may be formed without a prior meeting of mind when the common object of the members of the unlawful assembly is one but the intention of participants is different.

4.Members

- For invoking S.34 it is sufficient that two or more persons were involved.
- However, there have to be a minimum of five persons to impose S.149.

5. Participation

- The crucial factor of S.34 is ‘participation’
- while there is no need of active participation in S.149 of PC.

2. Difference between Abetment and Criminal Conspiracy

The following points highlight the difference between abetment and criminal conspiracy:

1. The number of persons committing an offence varies in an abetment and a conspiracy. In an abetment, one person influences, provokes another to commit an illegal act whereas in a conspiracy two or more persons enter into an agreement to commit that offence.
2. The offence of conspiracy is substantive whereas abetment is not on its own a substantive offence.
3. Abetment is defined under Section 107 of the Penal Code 1860. Whereas criminal conspiracy is defined under Section 120-A of the Penal Code, 1860.
4. To be tried for abetment, the person must have committed the act of aiding or instigating, or helping the principal offender. But, in the case of a conspiracy, it is irrespective of the commission of the offence. The prosecution can try a person for having the agreement and the knowledge of the act.
5. The parties to a conspiracy are called conspirators. But in the case of abetment, there are two persons called the abettor and the principal offender.
6. Abettor is not a principal offender whereas a conspirator (accused) is a principal offender.
7. Abetment can be done in three ways whereas conspiracy is a method of abetment.
8. It can be said that abetment is the genus, whereas conspiracy is a species.

9. The concept of criminal conspiracy has a wider jurisdiction in most cases than of abetment.

3. Distinction between rioting and unlawful assembly

- Unlawful assembly is an assembly which constitutes five or more persons whereas whenever force or violence is used by an unlawful assembly, it becomes rioting.
- Section 141 defined unlawful assembly, whereas section 146 defined rioting.
- A riot is an unlawful assembly in particular state of activity, which activity is accompanied by the use of force or violence.
- It is only use of force that distinguishes rioting from an unlawful assembly. Two things are, therefore, necessary to convert an unlawful assembly into a riot, viz; (a) the use of force or violence by an unlawful assembly or any member thereof; and
- (b) Such force or violence being used in prosecution of the common object of such assembly.
- According to section 143 whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
- Whereas According to section 143 whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

4. Difference between false evidence and fabricating false evidence

Following are the differences of giving false evidence and fabricating false evidence –

1. In case of false evidence, general intention is required. Whereas in Fabricating false evidence, particular intention is necessary. Intention is the essence of both the offence.
2. In false evidence, the statement which are false not necessary that it should be material. On the other hand, in fabricating false evidence statements must be on material point only.
3. The offence of giving false evidence is committed by the person who is legally bound by an oath to the state the truth. Whereas its opposite in the fabricating false evidence i.e. the offence is committed by a person who is not legally bound to take an oath to state the truth.
4. In Giving false evidence, the question of effect of the evidence on the officer before whom the evidence is given is of no consequences. While this effect of the evidence is important in fabricating false evidence.
5. In giving false evidence, it is necessary that there should be a proceeding of judicial or non-judicial being conducted. Whereas in fabricating false evidence, it is not necessary of judicial or non-judicial proceeding because it is enough that there is reasonable prospect of the proceeding.

5. Distinguish between Culpable Homicide and Murder

Murder (defined under Section 300) and culpable homicide (defined under Section 299) are two offenses under the Penal Code, 1860 the distinction between which has always been perplexing to the law students.

As to Definition

- **Section 299 defines Culpable Homicide.**

Whoever causes death by doing an act with-

1. Intention of causing death.
2. Intentionally causing bodily injury which is *likely* to cause death.
3. Doing an act with knowledge that it is *likely* to cause death.

- **Section 300 defines Murder**

Whoever causes death by doing an act with-

1. Intention of causing death.
2. Causing such bodily injury as the offender knows it is likely to cause death of a person.
3. Intentionally causing bodily injury which is *sufficient* to cause death.
4. Doing an act with knowledge that it is so *imminently dangerous* and in all *probability* causes death.

As to Bodily injury:

- In Culpable Homicide, The offender must have the intention of causing such bodily harm which is likely to cause death. In murder, the offender must know that his act will cause death or the bodily injury will be sufficient in “ordinary course of nature to cause death”.

As to scope:

- Culpable homicide is wider than the term murder. Culpable homicide is therefore considered as the genus while as murder is regarded as a species. All murders are culpable homicide but all culpable homicides are not regarded as murder.

As to aggravated form:

- Murder is an aggravated form of culpable homicide.

As to probability of causing death:

- The probability of causing death is higher in murder than culpable homicide.

As to gravity of offence:

- Culpable Homicide of the first degree is Murder.
- Whereas Culpable Homicide of the 2nd & 3rd degree is Culpable homicide not amounting to Murder.

As to punishment:

- Section 304 provided punishment for culpable homicide not amounting murder.
- Whereas section 302 provided punishment for murder.

6. Basic difference of the offences punishable under sections 326 and 326A

Basic difference of the offences punishable under sections 326 and 326A

- 1. Section 326 of the Penal Code, 1860 is all about grievous hurt caused by dangerous weapons. Further, Section 326A is the law against acid attacks.
- Section 326 states that whoever voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be considered that he has committed grievous hurt caused by dangerous weapons.
- 2. Whoever, voluntarily causes grievous hurt in respect of both the eyes either by gouging out the same or by means of any corrosive substance; or in respect of permanent disfiguration of the head or face by means of any corrosive substance, he shall be punishable under section 326A.
- 3. According to section 326, if any person committed grievous hurt caused by dangerous weapons, he shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- According to section 326A, if any person committed grievous hurt caused by voluntarily causing grievous hurt in respect of both eyes, hand or face by means of corrosive substance he shall be punished with death, or imprisonment for life and shall also be liable to fine.
- 4. Section 326 mentions grievous hurt by poison or any corrosive substance, But Section 326A elaborates on this issue.

7. Distinction amongst the offences, a) theft; b) extortion; c) robbery and d) dacoity:

There are following important Distinction amongst the offences, a) theft; b) extortion; c) robbery and d) dacoity:

1. As to consent:

- ✓ In theft, the offender takes the property without the owner's consent.
- ✓ Whereas extortion is committed by putting any person in fear of any injury to that person.
- ✓ In Robbery, the offender takes the property by putting that person in fear of instant death, instant hurt, or of instant wrongful restraint to that person,
- ✓ In dacoity consent is not material.

2. As to subject matter:

- ✓ Theft can be committed in respect of movable property,
- ✓ Whereas extortion, Robbery, and Dacoity may be committed in respect of movable and immovable property.

3. As to element of fear:

- ✓ Element of fear is not exist in theft.
- ✓ Whereas, an element of fear exists in extortion, robbery and dacoity.

4. As to use of force:

- ✓ No force is used in theft.
- ✓ In robbery, extortion and dacoity there is an element of force.

5. As to number of offenders:

- ✓ In case of Theft and Extortion, an offence may be committed by one person only.
- ✓ In Robbery the number of persons are less than five. It also may be committed by a single person.
- ✓ In dacoity, the number of persons are five or more.

6. As to provisions:

- The term Theft defined under section 378 of the Penal Code, 1860.
- Term Extortion defined under section 383 of the Penal Code, 1860.
- The term Robbery defined under section 390 of the Penal Code, 1860.
- The term Dacoity defined under section 391 of the Penal Code, 1860.

7. Position In Highway:

- ✓ If robbery is committed on the highway, the imprisonment may be extended to fourteen years.
- ✓ If theft or extortion or Dacoity is committed on the highway, does not change the position or punishment.

8. As to punishment:

- According to section 379 of the Penal Code whoever commits theft he shall be punished with imprisonment of either description for a term which may extend to **three years, or with fine, or with both.**
- According to section 384 of the Penal Code Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
- According to section 392 of the Penal Code whoever commits extortion shall be punished with **rigorous imprisonment** for a term which may extend to ten years, and shall also be liable to fine;
- Court while convicting a person under section 395, P.C., can either sentence him to imprisonment for life or to rigorous imprisonment which cannot be than four years or more than ten years in addition to fine

8. Distinguish 'Criminal Breach of Trust' and "Criminal Misappropriation of Property."

There are following distinctions between Criminal misappropriation and criminal breach of trust:

Provision:

- Offence of criminal misappropriation is defined under section 403 of Penal Code, 1860.
- Offence of Criminal Breach of Trust is defined under section 405 of Penal Code, 1860.

Relationship:

- In misappropriation, there is no contractual relationship.
- But in Criminal Breach of Trust, there is a contractual relationship of the offender regarding the property.

Possession:

- In misappropriation, the property is obtained by some casualty or otherwise.
- In criminal breach of trust, the property is obtained due to the trust vested by the owner on the offender.

Misappropriation:

- The property is misappropriated by the offender for his own use.
- In criminal breach of trust, the property is misappropriated for his own personal use. A breach of trust includes criminal misappropriation, but the converse is not always true.

Nature of Property:

- In, Criminal misappropriation the property is always movable in nature.
- Whereas, in criminal breach of trust, the nature of property can either be movable or immovable.

Punishment:

- Offence of Criminal Misappropriation is punishable with imprisonment of either description for a term which may extend to 2 years or with fine, or with both (Sec.403,)
- Offence of Criminal Breach of Trust is punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both. (Sec.406,)

9. Distinction between Theft and Extortion

There are following important Distinction between Theft and Extortion:

1. As to consent:

- ✓ In theft, the offender takes the property without the owner's consent.
- ✓ Whereas extortion is committed by the wrongful obtaining of consent.

2. As to subject matter:

- ✓ Theft can be committed in respect of movable property,
- ✓ Whereas extortion may be committed in respect of movable and immovable property.

3. As to element of fear:

- ✓ An element of fear exists in extortion.
- ✓ Whereas, element of fear is not exist in theft.

4. As to use of force:

- ✓ In robbery and extortion there is an element of force.
- ✓ Whereas, no force is used in theft.

5. As to number of offenders:

- ✓ All these three offences may be committed by one person only.

6. As to provisions:

- The term Theft defined under section 378 of the Penal Code, 1860.
- But the term Extortion defined under section 383 of the Penal Code, 1860.

7. As to punishment:

- According to section 379 of the Penal Code whoever commits theft he shall be punished with imprisonment of either description for a term which may extend to **three years, or with fine, or with both.**
- According to section 384 of the Penal Code Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

10. Difference between Robbery And Dacoity

There are following important Distinction between Robbery And Dacoity:

1. Number Of Persons:

- ✓ In Robbery the number of persons are less than five. It may be committed by a single person.
- ✓ In dacoity, the number of persons are five or more.

2. Seriousness:

- ✓ Robbery is less serious in nature.
- ✓ Dacoity is more serious offence than robbery because of the terror caused by the presence number of offenders.

3. Position Of Abettors:

- ✓ In Robbery, the abettors are liable independently.
- ✓ In dacoity abettors who are present and aiding when the crime is committed are counted in the number.

4. Punishment:

- ✓ According to section 392 of the Penal Code whoever commits extortion shall be punished with **rigorous imprisonment** for a term which may extend to ten years, and shall also be liable to fine;
- ✓ Court while convicting a person under section 395, P.C., can either sentence him to imprisonment for life or to rigorous imprisonment which cannot be than four years or more than ten years in addition to fine

5. Position In Highway:

- ✓ If robbery is committed on the highway, the imprisonment may be extended to fourteen years.
- ✓ The fact that the Dacoity is committed on the highway, does not change the position or punishment.

6. As to provisions:

- ✓ The term Robbery defined under section 390 of the Penal Code, 1860.
- ✓ The term Dacoity defined under section 391 of the Penal Code, 1860.

11. Cheating' and 'Criminal Breach of Trust**i. Acquisition of property:**

- ✓ The cheat obtains possession of the property by deceiving the owner thereof .
- ✓ Offender is lawfully entrusted with property, and he dishonestly misappropriates it or willfully suffers any other person so to do.

ii. Character of possession-

- ✓ There is neither fiduciary relationship nor any conversion of property. There is simply the practising of deception and subsequent acquisition of the property.
- ✓ There is conversion of property held by a person in a fiduciary capacity.

iii. Nature of Property:

- ✓ In both cases subjectmatter may be movable or immovable.

iii. Punishment:

- ✓ According to section 417 of the Penal Code whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
- ✓ According to section 406 of the Penal Code whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

6. As to provisions:

- ✓ The term Cheating defined under section 415 of the Penal Code, 1860.
- ✓ The term 'Criminal breach of trust defined under section 406 of the Penal Code, 1860.

1. Imprisonment is the restraint of a person's liberty against their will.

#Imprisonment for life means imprisonment for 30 years. **Ataur Mridha alias Ataur =Versus= The State, 73 DLR (AD) (2021) 298** court held that imprisonment for life be deemed equivalent to imprisonment for 30 years if sections 45 and 53 are read along with sections 55 and 57 of the Penal Code and section 35A of the Code of Criminal Procedure, 1898.

#Imprisonment for life literally means imprisonment until one's natural death. **Ataur Mridha alias Ataur Versus The State, 73 DLR (AD) (2021) 298** court held that imprisonment for life prima-facie means imprisonment for the whole of the remaining period of convicts natural life.

2. In case of imprisonment the convict can be imprisoned for any term as mentioned under law.

But in case of imprisonment for life, it is equivalent to imprisonment for 30 years.

Whereas imprisonment till death means till the natural death of a convict.

3. In case of imprisonment and imprisonment for life, the convict will be entitled to get the benefit of section 35A of the Code of Criminal Procedure, 1898.

Whereas imprisonment till death, the convict will not be entitled to get the benefit of section 35A of the Code of Criminal Procedure, 1898.

4. Imposing imprisonment and imprisonment for life is not the discretionary power of the court.

Whereas imposing imprisonment till death, is the discretionary power of the court or tribunal.

13. Giving false evidence and fabricating false evidence;

1. For both the cases intention is necessary ingredient. But in case of giving false evidence general intention is sufficient.

Whereas in case of fabricating false evidence particular intention as to deceive a person to take erroneous decision is necessary.

2. Only a person bound by the oath or by any provision of law or by a declaration to state truth will be held liable under the offence of giving false evidence.

Whereas any person who is not legally bound under the oath can be held liable under the offence of fabricating false evidence.

3. Under the offence of giving false evidence, it is necessary that the false evidence is given during the conduction of a proceeding.

Whereas the same is not necessary under fabrication of false evidence .

4. Section 191 deals with **Giving false evidence.**

Section 192 deals with fabricating false evidence.

14. Using a false trade mark:

- 1. According to section 480 of the Penal Code, 1860 whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any good contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.
- 2. A trademark can be any word, phrase, symbol, design, or a combination of these things that identifies your goods or services.
- 3. According to section 482 of the Penal Code, 1860 whoever use any false trade mark shall, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Using a false property mark:

- 1. According to section 481 of the Penal Code, 1860 whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.
- 2. A mark used for denoting that movable property belongs to a particular person is called a property mark.
- 3. According to section 482 of the Penal Code, 1860 whoever use any false property mark shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

15. House Breaking & House-trespass:

House Breaking:

- Section 445 of Penal Code , 1860 defines the House Breaking.
- Section 453 of Penal Code , 1860 talks about the punishment for House Breaking.
- Punishment for housebreaking is two years, and shall also be liable to fine.
- House-breaking can be committed only in case of dwelling buildings.

House-trespass:

- Section 442 of Penal Code, 1860 defines the House-trespass.
- Section 448 of Penal Code, 1860 talks about the punishment for House Trespass.
- Punishment for housebreaking is one year, or with fine which may extend to one thousand taka, or with both.
- House-breaking can be committed by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property.

16. Distinctions between attempt and preparation to commit a crime

There are following distinctions between attempt and preparation to commit a crime:

- 1. Preparation is the procurement of the means of attempting the crime while the attempt is the direct movement towards committing the crime after the commencement.
- 2. Preparations are not punishable but attempts are punishable.
- 3. Preparation is the second stage of the commission of crime. Whereas Attempt is the third stage of the commission of crime.

Chapter-12**Bar Exam Short Notes**

1.	Common intention <u>[18th BJS, 2025]</u>
2.	Common object <u>[18th BJS, 2025]</u>
3.	Criminal Conspiracy
4.	Abetment
5.	Culpable homicide not amounting to murder
6.	Culpable homicide amounting to murder
7.	Kidnapping <u>[18th BJS, 2025]</u>
8.	Abduction <u>[18th BJS, 2025]</u>
9.	Theft,
10.	Extortion
11.	Robbery

12.	Dacoity
13.	Cheating <u>[18th BJS, 2025]</u>
14.	Criminal breach of trust, <u>[18th BJS, 2025]</u>
15.	Wrongful confinement and
16.	Wrongful Restraint
17.	Mischief
18.	Grievous Hurt,
19.	Unlawful Assembly,
20.	Criminal intimidation
21.	Rioting
22.	Right of private defence
23.	Dishonest Misappropriation of property
24.	Criminal trespass and
25.	Stolen Property
26.	Cheating by Personation
27.	Sedition
<u>[2025, 2024, 2014, 2010, 2009, 2007, 2006, 2004, 2002, 1999]</u>	

1. Common intention

Section 34 of the Penal Code, 1860 deals with Common intention. **According to section 34 of the Penal Code, 1860** when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Section 34 deals with a situation, where an offence requires a particular criminal intention or knowledge and is committed by several persons. Each of them who join the act with such knowledge or intention is liable in the same way as if it were done by him alone with that intention or knowledge. The liability of individuals under this circumstance is called Joint Liability.

To constitute “common intention” within the meaning of sec-34, P.C., there must be a pre-arranged plan, a meeting of mind, an intention agreed upon by two or more persons as the intention of all such persons. Such plan may be made shortly or immediately before the commission of the crime.

This section is intended to meet a case in which it may be difficult to distinguish between the acts of individual members of a party who act in furtherance of common intention of all or to prove exactly what part was played by each of them.

In Lieutenant Colonel Syed Farook Rahman Vs. State, 53 DLR 287 court held that it is

established that the offence which resulted was committed in furtherance of the common intention of all the participants, the fact that any of them did not take part in the commission of that offence will not prevent his being held liable for the offence.

Essential ingredients:

To attract the application of Section 34, the following conditions must be satisfied:-

- a) that a criminal act was done.
- b) that the said act was done by several persons; and
- c) that several persons did it in furtherance of the common intention of all.

In order to attract the provisions of this section, it is not enough that there was some intention on the part of several people to commit a particular criminal act or a similar intention but it is necessary to prove that there was a pre-arranged plan pursuant to which the criminal act was done.

Example:

- A, B, and C entered into a house of X armed with deadly weapons. A and B hold the hands of X and C gave a blow with a sharp cutting weapon causing serious injury to X. All of them would be liable for the grievous hurt all the same and each of them would be liable as if he did the entire injury himself alone.

2. Common object

Section 149 of the Penal Code, 1860 deals with the common object. According to section 149 if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

In *Abed Ali Vs. Bangladesh*, 36 DLR (AD) 234 held that mere membership of an unlawful assembly makes one liable under section 149. But in *Babar Ali Vs. State*, 20 DLR (SC) 347 held that if some member of the unlawful assembly commits a more serious offence which was not the object of assembly, they can be convicted for offence of their individual acts in addition to punishment for offence done in pursuance of the common object.

Essential ingredients

So the essential ingredients of Section 149 are:-

1. There must be an unlawful assembly, as defined in section 141.
2. Criminal act must be done by any member of such assembly.
3. Act done is for prosecution of the common object of the assembly or such which was likely to be committed in prosecution of the common object.
4. Members have voluntarily joined the unlawful assembly and knew the common object of the assembly.
5. Mere presence and sharing of common object of the assembly makes a person liable for the offence committed even if he had no intention to commit that offence.

Example:

- A, B, C, D, E and F with an object to obstruct public servant to discharge his lawful

duty and taken forcible possession of a piece of land belonging to X. They committed an unlawful assembly and all members of such assembly shall be guilty.

3. Criminal Conspiracy

According to section 120A of the Penal Code, 1860 when two or more persons agree to do, or cause to be done,—

- a. an illegal act, or*
- b. an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*

This definition thus made conspiracy punishable as a substantive offence, as a form of abetment, conspiracy to wage war against the Government of Bangladesh and involvement in other specific offences.

Ingredients:

a. There should be an involvement of 2 or more persons

It is an established principle that conspiracy requires involvement of 2 persons and one alone cannot commit the offence of conspiracy.

b. Who are in agreement with one another

c. This agreement relates to causing or getting done-

- an illegal act; or
- a legal act by illegal means.

For example- Persons A, B, C and D conspire to rob the local bank for which they decide that A and B would threaten the bank manager at the counter, C would take care of the situation at the gate and D would keep the car ready for A, B, and C when they successfully rob the bank.

Here, there is a criminal conspiracy between A, B, C and D to rob the bank and they shall all be liable for the act.

Punishment of criminal conspiracy:

According to section 120B of the Penal Code –

1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

4. Abetment

Sometimes, indirectly participating in committing an offence itself may also become a punishable offence. In such crimes, the offenders do not directly involve themselves in the offence. However, their abetment can become punishable in itself. These offences relate to Section 107, PC under the chapter of abetment.

To explain the concept of abetment, the word 'abet' should be given a deep scrutiny. In general use, it means to aid, advance, assist, help and promote. In the case of **Sanju v. State of Madhya Pradesh, (2002) 5 SCC 371** the honorable Supreme court defined 'abet' as meaning to aid, to assist or to give aid, to command, to procure, or to counsel, to countenance, to encourage, or encourage or to set another one to commit.

Essential Elements

A person abets the doing of a thing when

- (1) he **instigates** any person to do that thing; or
- (2) **engages** with one or more other persons in any conspiracy for the doing of that thing; or
- (3) **intentionally aids**, by act or illegal omission, the doing of that thing. These things are the essentials of abetment as a complete crime.

Illustration:

- A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Punishment for Abetment:

- According to section 109 of the Penal Code, 1860 whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

5. Culpable homicide not amounting to murder

Section 300 of the Code defines murder as – Except in the cases , culpable homicide is murder if –

1. If the act by which the death is caused is done with the intention of causing death .
2. If it is done with the intention of causing such bodily injury as the offender knows likely to cause death of the person to whom the harm is caused
3. If it is done with the intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.
4. If the person committing the act knows that it is so immediately dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such an act without an excuse for incurring the risk of causing death or such bodily harm.

Punishment:

- According to section 302 offender shall be punished with death, or imprisonment for life, and shall also be liable to fine for commission of murder.

6. Culpable homicide amounting to murder

Section 300 Explains the 5 circumstances where culpable homicide not amounting to murder

- **1. Acts under grave and sudden provocation**
- **2. When private Defense is exceeded in good faith**
- **4. When death is caused in sudden fight or heat of passion upon a sudden quarrel**
- **5. When death is caused of a person above eighteen years of age who voluntarily took the risk of death.**

Punishment

- According to section 304 offender shall be punished be punished with imprisonment for life or imprisonment extend to not exceeding ten years and fine for the commission of Culpable homicide not amounting to murder with intention
- According to section 304 offender shall be punished be punished with imprisonment not exceeding ten years or fine or both for the commission of Culpable homicide not amounting to murder with knowledge .

7. Kidnapping

According to section 359 of the Penal Code The crime of kidnapping occurs when a person is taken from one place to another against their will or a person is confined to a controlled space without legal authority to do so. According to section 359 of the Penal Code 1860, kidnapping is of two kinds:

- i) kidnapping from Bangladesh and
- ii) kidnapping from lawful guardianship.

Kidnapping from Bangladesh:

According to section 360 of the Penal Code Whoever conveys any person beyond the limits of Bangladesh without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Bangladesh.

Essential ingredients:

The following are the essential ingredients of the offence under this section:

- Conveyance of a person: To convey means to carry from one place to another. The conveyance or carrying is a continuous process until the destination is reached. In the case of any offence under this section, the destination must be some foreign territory.
- Beyond the limits of Bangladesh: These words in the section indicate that for an offence under it must be to some foreign territory.
- Without the consent of that person or of some person legally authorized to consent on behalf of that person: A consent given under a misapprehension of fact, is not true consent.

Kidnapping from lawful guardianship:

- According to section 361 of the Penal Code Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Ingredients:

This section has four main essentials:

1. Taking or enticing away a minor person or a person of unsound mind.
2. Such minor must be under the age of fourteen years, if male, or under the age of sixteen years, if a female.
3. The taking away or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
4. Such enticing away must be without the consent of the lawful guardian.

Punishment

- Section 363 of the Penal Code, 1860 provides punishment for kidnapping from Bangladesh or from lawful guardianship. According to section 363, whoever kidnaps any person from Bangladesh or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

8. Abduction

As expand kidnapping, abduction is also a crime under Penal Code it is mentioned in following sections. Section 362 of the Penal Code, 1860 provides that “Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

This section merely gives a definition of the word “abduction” which occurs in some of the penal provisions which follow. There is no such offence as abduction under the Code, but abduction with certain intent is an offence. Force or fraud is essential.

Ingredients:

This section requires two things:

1. Forceful compulsion or inducement by deceitful means.
2. The object of such compulsion or inducement must be the going of a person from any place.

Force in Section 362 means actual force and not merely a show or threat of force. Deceitful means signifies anything intended to mislead another. It includes inducement and its scope is very wide. The intention of the accused, one may say, is a gravamen of the charge.

9. Theft

In general, theft is committed when a person's property is taken without his consent by someone. However, besides the ordinary meaning conveyed by the word theft, the scope of theft is quite wide. Section 378 of Penal Code defines theft as follows -

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

For example:

- A enters the house of B and takes B's watch without B seeing and puts it in his pocket with an intention to take it for himself. A commits theft.

Ingredients

The essential ingredients of the offence of theft are:

1. Dishonest intention to take property:

- There must be dishonest intention on the part of the offender. In *K. N. Mehra v. State of Rajasthan* AIR 1957 S. C. 369, SC held that proof of intention to cause permanent deprivation of property to the owner, or to obtain a personal gain is not necessary for the purpose of establishing dishonest intention.

2. Property must be movable:

- An immovable property cannot be stolen or moved from the possession so a theft cannot happen in respect of an immovable property.

3. Property must be taken out of possession of another:

- The property must be in possession of someone. A property that is not in possession of anybody cannot be a subject of theft. For example, wild dogs cannot be a subject of theft and so if someone takes a wild dog, it will not be theft.

4. Property must be taken without consent:

- In order to constitute theft, property must be taken without the consent of person possessing it. As per Explanation 5, consent can be express or implied.

5. Physical movement of the property is must:

- The property must be physically moved. It is not necessary that it must be moved directly. As per Explanation 3, moving the support or obstacle that keeps the property from moving is also theft. For example, removing the pegs to which bullocks are tied, is theft.

Punishment for theft:

1 According to section 379 of the Penal Code whoever commits theft he shall be punished with imprisonment of either description for a term which may extend to –

- ✓ **three years, or with fine, or with both.**

10. Extortion

According to section 383 of the Penal Code whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in 2[fear to give donation or subscription of any kind or to deliver] to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustration:

- A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

Ingredients

The essential ingredients of the offence of extortion are:

1. intentionally putting a person in fear of injury;

2. the purpose of which is to dishonestly induce the person put in fear and
3. to deliver property or valuable security.

Punishment for extortion:

- According to section 384 of the Penal Code, 1860 whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

11. Robbery

Section 390 says, "In all robbery, there is either theft or extortion" and goes on to define when theft is robbery and when extortion is robbery.

When theft is robbery:

- Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery:

- Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Punishment for robbery:

- According to section 392 of the Penal Code, 1860 shall be punished with **rigorous imprisonment** for a term which may extend to ten years, and shall also be liable to fine;

Robbery on the highway:

- ✓ If the robbery be committed **on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.**

12. Dacoity

According to section 391 of the Penal Code, 1860 when five or more persons co-jointly commit or attempt to commit a robbery or where the whole number of persons co-jointly committed or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit Dacoity.

The essential ingredients of Dacoity are:

Essential ingredients of the offence of Dacoity are as follows:

- The accused commit or attempt to commit robbery ;

- Persons committing or attempting to commit robbery and persons present and aiding must not be less than five ;
- All such persons should act conjointly.

Punishment for dacoity:

- According to section 395 of the Penal Code whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

13. Cheating

Section 415 of the Penal Code, 1860 deals with cheating. Section 415 of the Penal Code provides that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". A dishonest concealment of facts is a deception within the meaning of this section.

To hold a person guilty of cheating as defined under Section 415 of the Penal Code, it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the Penal Code which defines cheating, requires deception of any person-

- (a) inducing that person to : (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property or
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody's mind, reputation or property.

Essential ingredients for Cheating

Main ingredients for the first part as follows:

1. The accused deceived some person.
2. By deception he induced that person.
3. The above inducement was fraudulent and dishonest.
4. The person so induced delivered some property to or consented to the retention of some property by any person.

Main ingredients for the second part as follows:

1. The accused deceived some person
2. The accused thereby induced him
3. Such inducement was intentional
4. The person so induced did or omitted to do something
5. Such act or omission caused or was likely to cause damage or harm to the person induced in body, mind, reputation or property.

Punishment for Cheating:

- The punishment for cheating is defined under section 417 of Penal Code, 1860 which provides for a imprisonment extending to one year or fines or both.

14. Criminal Breach of Trust

Section 405 of the Code, 1860 defines criminal breach of trust. Under section 405, Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Illustrations:

A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

A person commits criminal breach of trust if he:

- i) being in any manner entrusted with property, or with any dominion over property,
- ii. (a) dishonestly misappropriates or converts to his own use that property or (b) dishonestly uses or disposes of that property in violation of any direction such trust is to be discharged, or of any legal or lawful contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do.

Ingredients:

To establish the charge of criminal breach of trust the prosecution must prove not only entrustment but also that the accuse dishonestly misappropriated the property. Following are the ingredients of criminal breach of trust.

- (i) Entrusted to Person Property:
- (ii) Dishonestly Misappropriation or Converting that Property:
- (iii) Dishonestly Use or Disposal of Property:

Punishment for Criminal breach of trust:

- According to section 406 of the Penal Code, 1860, whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

15. Wrongful Confinement

According to section 340 of the Penal Code, 1860 whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Example:

A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

Ingredients:

There are following ingredients is required to constitute a wrongful confinement-

1. Wrongful restraint of a person

2. Such restraint must prevent that person from proceeding beyond certain limits.

Punishment for wrongful confinement:

- According to section 342 of the Penal Code, 1860 whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both.[S.342]

16. Wrongful Restraint

Section 339 of the Penal Code 1860 deals with wrongful restraint. This section defines it thus: Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. Wrongful restraint means preventing a person from going to a place where he has a right to go.

Ingredients

This section requires—

- i) Voluntary obstruction of a person.
 - ii) The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed.
- Obstruction means physical obstruction, though it may cause by physical force or by the use of threats.

Example:

- A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Punishment for wrongful restraint

- According to section 341 of the Penal Code, 1860 whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred taka, or with both.

17. Mischief

Sections 425 of the Penal Code, 1860 lays down that if any person, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Ingredients:

The three ingredients necessary to be proved the offence of mischief are:

1. That the accused:
 - i) the destruction of some property, or
 - ii) change in such property, or in its situation.
2. That such act destroyed or diminished its value or utility or affected it injuriously.

3. That the accused did it with intent to cause (or knowing that he was likely to cause) wrongful loss :

- i) to the public; or
- ii) to any, person.

Illustration:

- A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

Punishment for Mischief:

- According to section 426 of the Penal Code, 1860 if any person commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

18. Grievous Hurt

Section 320 Penal Code, 1860 provides that the following kind of hurt only are designated as “Grievous”-

- i. Emasculation.
- ii. Permanent privation of the sight of either eye.
- iii. Permanent privation of the hearing of either ear.
- iv. Privation of any member or joint.
- v. Destruction or permanent impairing of the powers of any member or joint.
- vi. Permanent disfiguration of the head or face.
- vii. Fracture or dislocation of a bone or tooth.
- viii. Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Thus, it can be seen that grievous hurt is a more serious kind of hurt. Since it is not possible to precisely define what is a serious hurt and what is not, to simplify the matter, only hurts described in section 320 are considered serious enough to be called grievous hurt.

Punishment for Grievous Hurt

- According to section 325 of the Penal Code, 1860 whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

19. Unlawful Assembly

The term ‘Unlawful Assembly’ has been defined under section 141 of the Penal Code, 1860 as an assembly of five or more persons having a common object to perform an omission or offence. Section 141, means an assembly of 5 or more persons if the common object of the assembly is-

- 1. To overawe by using criminal force or show criminal force, to Central or any State Government or Parliament or any State Legislature or any public servant; or
- 2. To oppose the performance of any law or legal process; or
- 3. To carry out any mischief or criminal trespass or any other offense; or

4. By use of criminal force takes possession of any property or deprives any person of the right to the way or the use of water or any incorporeal right; or
5. The use or show of criminal force compels any person to do any illegal act.

Essentials to constitute an Unlawful Assembly:

To constitute an unlawful assembly the following 3 conditions must co-exist:-

- There must be an assembly of five persons.
- The assembly must have a common object and
- The common object must be to commit one of the five illegal objects specified in the section.

Section 142 of the Penal Code states that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

‘An assembly, which was lawful to start with, became unlawful the moment one of the members called on the others to assault the victim and his associates, and in response to his invitation all the members of the assembly started to chase the victim while he was running.’

Section 149 of the Penal Code, 1860 states that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Punishment:

- According to section 143 of the Penal Code, 1860 whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

20. Criminal intimidation

- According to section 503 of the Penal Code, 1860 whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause to alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation

- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

- A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Punishment for criminal intimidation:

- According to section 506 of the Penal Code, 1860 whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 3[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Criminal intimidation by an anonymous communication:

- According to section 507 of the Penal Code, 1860 whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

21. Rioting

- Rioting is an unlawful assembly in a particular form of activity. An unlawful assembly in a state of violence becomes a rioting. It is an aggravated form of being a member of an unlawful assembly.

According to sec-146 the Penal Code, 1860, whenever force or violence is used by an unlawful assembly or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly every member of such assembly is guilty of the offence of rioting.

Ingredients

The essential ingredients that constitute the offence of rioting are:

- i) that the accused persons being five or more in number formed an unlawful assembly;
- ii) that they were animated by a common object;
- iii) that force or violence was used by the unlawful assembly or any member of it; and
- iv) that such force was used in prosecution of the common object.

Punishment

Rioting is punishable with imprisonment of either description upto 2 years or with fine or with both under section 147 the Penal Code, 1860.

22. Criminal Trespass

Criminal trespass is defined in section 441 of the Penal Code, 1860, as follows: if any person enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

Ingredients:

To constitute an offence of criminal trespass as defined in the first part of section 441 the Penal Code, 1860, the following essential ingredients must be satisfied:

1. Enter into or upon the property of another.
2. If such entry is lawful, then unlawfully remaining upon such property.
3. Such entry or unlawful remaining must be with intent-
 - a) to commit an offence; or
 - b) to intimidate, insult, or annoy any person in possession of the property.

Punishment for criminal trespass

- According to section 447 of the Penal Code, 1860 if any person commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred taka, or with both.

23. Dishonest Misappropriation of Property

- According to section 403 of the Penal Code, 1860 whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients

To constitute the offence of misappropriation the following ingredients must be established:

- i) The accused misappropriated that property and converted the same to his own use dishonestly.
- ii) The movable property belonged to the complainant.

Illustrations

- A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

24. Waging war against Bangladesh and Sedition;

1. Waging war against Bangladesh means challenging the country's sovereignty.
Whereas sedition means challenging the established government of a country by law.

2. Waging war against Bangladesh is the last step of war.
On the other hand, sedition is the initial step to declare war against Bangladesh.

3. De Waging war against Bangladesh is a grave crime.
Sedition, on the other hand, is a less serious crime.

4. Article 121 provides punishment for waging war against Bangladesh.
On the other hand, the provision of punishment for sedition is described in Section 124A.

25. Stolen Property

According to section 410 property, the possession whereof has been transferred-

- ✓ **by theft, or**
- ✓ **by extortion, or**

- ✓ **by robbery, and**
- ✓ **property which has been criminally misappropriated or**
- ✓ **in respect of which criminal breach of trust** has been committed, is designated as "**stolen property**," whether the transfer has been made, or the misappropriation or breach of trust has been committed, **within or without Bangladesh. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.**

Dishonestly receiving stolen property

- According to section 411 he shall be punished with imprisonment of either description for a term which may **extend to three years, or with fine, or with both.**

26. Cheating by Personation

A person commits **cheating by personation** if he:

1. Pretends to be **another person**, or
2. Knowingly substitutes one person for another, or
3. Represents that he or someone else is a person different from who he really is.

It is a **special form of cheating** under Section 415.

Essential Ingredients:

To establish offence under **Section 416**, prosecution must prove:

1. **There was cheating** (as defined under Section 415), and
2. The cheating was done by:
 - Pretending to be another person, or
 - Substituting another person, or
 - False representation of identity.

Mere false statement is not enough — it must involve **false identity**.

Punishment:

According to section 419 whoever commits cheating by personation shall be punished with:

- Imprisonment of either description or up to **3 years**, or Fine, or Both.

27. Sedition

According to section 124A whoever-

- **by words, either spoken or written, or**
- **by signs, or by visible representation, or**

- **otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government** established by law shall be punished with-
 - **imprisonment for life** or
 - **any shorter term, to which fine may be added**, or
 - with imprisonment which **may extend to three years**, to
 - which **fine may be added**, or
 - **with fine**.

Ingredients:

- ✓ bringing or attempting to bring into hatred or contempt exciting or attempting to excite disaffection towards the Government of Bangladesh, and
- ✓ such act or attempt may be done by
 - a) words, either spoken or written, or
 - b) sign, or
 - c) visible representation.