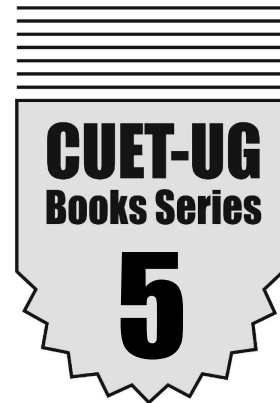


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Common University Entrance Test for
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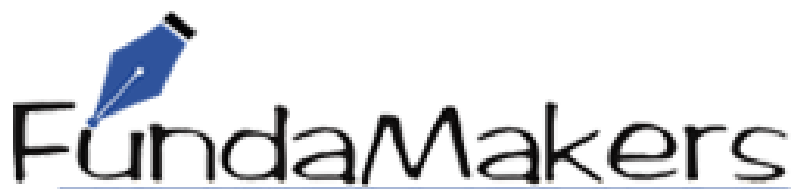
SECTION-II

DOMAIN SPECIFIC SUBJECT

Legal Studies

2023

EDITION



EXAMINATION STRUCTURE

SECTION-II: DOMAIN SPECIFIC SUBJECTS

No. of Questions	Subject	Time
40 Questions to be attempted out of 50	<ul style="list-style-type: none">• Input text can be used for MCQ Based Questions• MCQs based on NCERT Class XII Syllabus only	45 minutes for each Domain Specific Subjects

- **Mode of the Test** : Computer Based Test (CBT)
- **Test Pattern** : Objective type with Multiple Choice Questions
- **Medium of Exam** : **13 Languages** (Tamil, Telugu, Kannada, Malayalam, Marathi, Gujarati, Odiya, Bengali, Assamese, Punjabi, English, Hindi and Urdu)



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SAMPLE PAPER-1 (SOLVED)

CUET-UG

(Common University Entrance Test for UG Programmes)

LEGAL STUDIES*

SECTION-II : DOMAIN SPECIFIC SUBJECT

1. **Principle:** Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property with an intention to take it, is said to commit theft.

Facts: Y cuts down a tree on Z's ground, with the intention of dishonestly taking it out of Z's possession without Z's consent. Y could not take away the tree.

- A. Y can be prosecuted for theft
- B. Y cannot be prosecuted for theft
- C. Y can be prosecuted for attempt to theft
- D. Y has neither committed theft nor attempted to commit theft

2. **Principle:** Penal laws provide that whoever voluntarily has carnal intercourse against the order of nature with any man or woman, shall be punished for rape.

Facts: A Police Officer found a man engaged in carnal intercourse with an animal. The Police Officer arrested the man and produced him before the Court

- A. Court will not punish the police officer
- B. Court will punish the police officer
- C. Court will not punish the man for rape
- D. Court will punish the man for rape

3. **Principle:** Acceptance of a proposal must be absolute and unqualified.

Facts: 'A' made a proposal to sell his motorcycle to 'B' for rupees 25,000/-. 'B' agreed to buy it for rupees 24,000. 'A' sold his motorcycle to 'C' for 26,000 the next day. 'B' sues 'A' for damages.

- A. 'B' will get the difference of rupees 1,000 only
- B. 'B' will not get any damages from 'A'
- C. 'B' will get damages from 'A'
- D. 'B' can proceed against 'C'

4. **Principle:** It is a case of fraud where a party to a contract knows or believes a fact to be true, but conceals it actively from the other party with a view to induce that person to enter into the contract.

Facts: While taking a life insurance policy, in reply to questions by the insurance company during the

inquiry into his proposal, Zameer deliberately concealed the fact of his medical treatment for a serious ailment, which he had undergone only a few weeks ago.

- A. The concealment of fact by Zameer amounted to fraud.
- B. The act of Zameer amounted to innocent misrepresentation.
- C. The act of Zameer did not amount to any misrepresentation.
- D. The act of Zameer did not amount to fraud, as disclosing the fact would have resulted in exposure of his privacy.

5. **Principle:** There are legal provisions to give authority to a person to use necessary force against an assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the state machinery is not readily available; and in so doing he is not answerable in law for his deeds.

Facts: X, a rich man was taking his morning walk. Due to the threat of robbers in the locality, he was carrying his pistol also. From the opposite direction, another person was coming with a ferocious looking dog. All of a sudden, the dog which was on a chain held by the owner, started barking at X. The owner of the dog called the dog to be calm. They crossed each other without any problem. But suddenly, the dog started barking again from a distance. X immediately took out his pistol. By seeing the pistol the dog stopped barking and started walking with the owner. However, X shot at the dog which died instantly. The owner of the dog files a complaint against X, which in due course reached the Magistrate Court. X pleads the right of private defence. Decide,

- A. There was no imminent danger to X as the dog stopped barking and was walking with the owner. Hence, shooting it amounted to excessive use of the right of private defence and hence liable for killing the dog.

- B. The right of private defence is available to persons against assailants or wrong-doers only and a dog does not fall in this category.
- C. Shooting a fierce dog is not to be brought under the criminal law. So the case should be dismissed.
- D. As there was no guarantee that the dog would not bark again, shooting it was a precautionary measure and hence within the right available to X under law.

6. Principle: Under the Employees Compensation Act, 1923, an employer is liable to pay compensation to his workmen for injuries sustained by them by an accident arising out of and in the course of employment.

Facts: M, the Manager of SRK Industries asked his secretary S to submit a report at the Government Labour Office. 'S' submitted the report as directed. On his way back S met one of his classmates. He then decided to have a cup of tea together on a way side restaurant. Some time later, 'S' got a message from his office to report back as it was long time since he left the office. 'S' rushed back on his Motor Cycle. On his way back a Truck which was coming from a side road hit 'S'. He was admitted in a nearby hospital with multiple injuries. He claims compensation under the Employees Compensation Act from his employer.

- A. The Employer is liable to pay compensation as the accident took place arising out of and in the course of employment.
- B. The Employer is not liable as the truck driver was negligent.
- C. The Employer is not liable as he was admitted in a private hospital and not a Government Hospital.
- D. The Employer is liable as S had to rush back to the office, because of the message from the office.

7. Principle: When a person falsifies something with the intent to deceive another person or entity is forgery and is a criminal act. Changing or adding the signature on a document, deleting it, using or possessing the false writing is also considered forgery. In the case of writing/painting to fall under the definition, the material included must have been fabricated or altered significantly in order to represent something it is actually not.

Facts: David made a living travelling from city to city, selling paintings that he claimed were done by great artists. Since the artists' signatures were in place, many people fell for them and purchased the paintings. One of these artists saw three of his alleged paintings in a City gallery containing his name. He knew these were not his works and he complained to the police. Police traced David and initiated legal proceedings. Is David guilty of any offence?

- A. There is no point in taking legal action against David as the signature has not done any alteration to the art work.
- B. David is guilty of forgery as the addition of the signature was with an intention to make people

believe that those were the paintings of the great artists.

- C. Those who buy the art pieces from David ought to have been careful in checking it and ensuring that they were originals before purchasing it.
- D. David is not guilty of any offence as he was selling the art pieces for his living.

8. Principle: If a party to a contract agrees to it under undue influence of any other party then the party under the undue influence may refuse to perform in accordance with the agreement.

Facts: A, a rich youngster became a member of a religious group and soon he was appointed by P the head of the group as his personal secretary. As per the rules of the group, all officials and staff of the group were supposed to stay in the group's official premises itself. Some days later, A was asked by P to execute a Gift deed in favour of P, in which it was mentioned that all immovable properties in his name are being gifted to P. A was unwilling to execute the deed, but he was forcefully restrained by P and his body guards in P's office and made A sign the gift deed. Soon after this A left the group and refused to hand over the property as agreed to in the gift deed. Is A's action valid?

- A. As Gift is also a contract, the consent of A was not obtained by P while executing the deed.
- B. It is illegal for religious groups acquire property from its members.
- C. A executed the deed, under compulsion and undue influence, and was right in withdrawing from the contract.
- D. As the gift deed was executed by A, he cannot refuse.

9. Principle: Whoever takes away with him any minor less than sixteen years of age if a male, or less than eighteen years of age if a female, out of the custody of parents of such minor without the consent of such parents, is said to commit no offence.

Facts: 'A', a man, took away a girl below sixteen years to Mumbai without informing the parents of the girl.

- A. 'A' committed no offence against the parents of the girl.
- B. 'A' committed no offence against the girl as well as her parents.
- C. 'A' committed an offence against the girl.
- D. 'A' committed an offence against the girl as well as her parents.

10. Principle: Nothing is an offence which is done in the exercise of the right of private defence.

Facts: 'A', under the influence of madness, attempts to kill 'B'. 'B' to save his life kills 'A'.

- A. 'B' has committed an offence.
- B. 'A' has not committed an offence because he was mad.
- C. 'B' has not committed any offence.
- D. 'A' has committed the offence of attempt to murder.

- 11. Principle:** Negligence is actionable in law. In simple terms, negligence is the failure to take proper care over something.

Facts: A, a doctor, conducted a hysterectomy sincerely on B and left a small cotton swab inside the abdomen. As a consequence of which B developed some medical problems and had to undergo another surgery. Is A liable?

- A. A is not liable as he did not foresee any consequences at the time of surgery.
- B. As only a small swab was left in the abdomen, there was no negligence.
- C. A is liable for the negligence as he failed to take proper care during the surgery.
- D. Liability for negligence does not arise here as A performed the operation sincerely.

- 12. Principle:** When a person interferes with peaceful possession of another person without the permission of the person in possession of those premises, commits trespass to land.

Facts: 'T' just walked over the land of 'P' to reach his house as it was a short cut. 'P' had displayed a notice that it is not a thoroughfare. 'P' did not cause any damage to the land.

- A. 'T' has not committed any trespass on the land of 'P'.
- B. 'T' has violated privacy of 'P'
- C. 'T' has committed trespass to land
- D. 'T' has created nuisance for 'P'

- 13. Principle:** A contract would be invalid and unlawful, if the contract is for an immoral or illegal purpose.

Facts: P, was a young and helpless widow, living on the pavement. R, a neighbour gave her a house, registered in her name, on the condition that she should allow R to keep his smuggled goods and drugs in her house. After the registration was done, according to the condition in the contract, R's agents went to keep some packets in her house, she refused. R told her the condition under which the house was given to her. She still refused. Is P justified in her action?

- A. As R was making the contract for illegal activities, P's stand is valid in law.
- B. R can take back the house by cancelling the transfer deed.
- C. P is right as she did not like smuggled goods to be kept in her house.
- D. P is not justified as she did not have the right to deny R's request.

- 14. Principle:** When a person consented to an act to be done by another, he cannot claim any damages resulting from doing that act, provided the act done is the same for which consent is given.

Facts: 'P' submitted a written consent to a surgeon 'S' for undergoing a surgical operation for removal of appendicitis. The surgeon while doing surgery also removed the gall bladder of 'A'.

- A. 'P' is required to pay expenses for surgery for Appendicitis but not for gall bladder
- B. 'P' is not bound to pay expenses of the surgery
- C. 'P' can claim damages from 'S'
- D. 'P' cannot claim damages from 'S'

- 15. Principle:** A master shall be liable for the fraudulent acts of his servants committed in the course of employment. However, the master and third parties must exercise reasonable care in this regard.

Facts: Rahul was a door to door salesman with United Manufacturing Company (the Company). The Company was manufacturing Water Purifiers. Rahul, along with the Company's products, used to carry Water Purifiers manufactured by his Cousin in a local Industrial Estate. He used to sell the local product at a lower rate giving the impression to the buyers that he is offering a discount on the Company's product. The Company Management detected the fraudulent activity of Rahul and dismissed him from service. Rahul still continued to carry on with his activity of selling the local product pretending that he was still a salesman of the Company. Several customers got cheated in this process. The fraud was noticed by the Company when the customers began to complain about the product. The customers demanded the Company to compensate their loss.

- A. The Company is liable to compensate all the customers as it did not inform the public about Rahul's fraudulent conduct and the subsequent dismissal.
- B. The liability rests with the local manufacturer as it was a defective product.
- C. The Company is not liable as Rahul was dismissed by the Company.
- D. The Company is liable to the customers who purchased the local product from Rahul only till he remained as a salesman of the Company.

- 16. Principle:** A person is said to do a thing fraudulently, if he does that thing with intent to defraud, but not otherwise.

Facts: 'A' occasionally hands over his ATM card to 'B' to withdraw money for 'A'. On one occasion 'B' without the knowledge of 'A', uses 'A's ATM card to find out the balance in 'A's account, but does not withdraw any money.

- A. 'B' has not committed the act fraudulently
- B. 'B' has committed the act fraudulently
- C. 'B' has committed misappropriation
- D. 'B' has committed breach of faith

- 17. Principle:** Assault is causing bodily injury to another person by use of physical force.

Facts: Rustum while entering into compartment of a train raised his fist in anger towards a person Sheetal, just in front of him in the row, to get way to enter into the train first, but did not hit him. Rustum has:

- A. Insulted Sheetal
- B. Rightly showed his anger

- C. Committed an assault on Sheetal
D. Not committed an assault on Sheetal

18. Principle: Ownership in property consists of right to possess, right to use, right to alienate and right to exclude others. Sale is complete when property gets transferred from the seller to the buyer on sale.

Facts: 'A' sold his car to 'B'. After this, 'B' requested 'A' to keep the car in his care on behalf 'B' for one month. 'A' agreed.

- A. Sale will be automatically completed after the expiry of one month
B. Sale will be completed when 'B' will take the delivery of the car.
C. Sale of car is not complete
D. Sale of car is complete.

19. Principle: When a person makes such a statement which lowers other person's reputation in the estimation of other persons, is liable for committing defamation.

Facts: 'A' writes a letter to 'B' in which he uses abusive language against 'B' and also states that 'B' is a dishonest person. 'A' put the letter in a sealed envelope and delivered it to 'B'.

- A. 'A' has committed defamation
B. 'A' has not committed moral wrong
C. 'A' has not committed defamation
D. 'A' has committed a moral wrong

20. Principle: The concept of natural justice is against bias and for the right to a fair hearing. While the term natural justice is often retained as a general concept, and it has largely been replaced and extended by the general 'duty to act fairly'.

Fact: 'X', a male employee of a company was dismissed by the employer just on the basis of a complaint by 'Y', a female employee of the company that 'X' was trying to be too friendly with her and often requested her to accompany him to the canteen. Is the dismissal of 'X' valid?

- A. No, because the employer did not give a chance to 'X' to explain his side, thereby violated the principles of natural justice.
B. Yes, moral law is antique and therefore, not applicable in modern times, therefore the termination is valid and no violations of the principles of natural justice occurred.
C. Yes, because men are not supposed to behave improperly with women and hence there is no violation of any principles of law.
D. No, because in the modern times this type of behaviour is common.

Directions (Qs. No. 21-35): Legal phrases are followed by four meanings. Choose the most appropriate option:

21 In pari delicto:

- A. Where the petitioner is at fault
B. Where both parties to a dispute are equally at fault
C. Where the lawyer is at fault
D. Where the judge is at fault

22. Turpis arbiter' means:

- A. Inefficient lawyer
B. Corrupt judge
C. Inefficient judge
D. Corrupt prosecutor

23. Caveat venditor:

- A. Manufacturer beware
B. Buyer beware
C. Seller beware
D. Transporter beware

24. 'Animus possidendi' means:

- A. Intent to contract
B. Intention to harm
C. Intention to return
D. Intention to possess

25. Malus animus:

- A. Bad intention
B. Animal farm
C. Good intention
D. Physical force

26. Lex loci:

- A. Italian laws
B. Domestic laws
C. Latin regulations
D. Law of a place

27. Per incuriam:

- A. Mistaken decision
B. Supremacy of law
C. Mistaken identity
D. Supremacy of the Constitution

28. 'Sine die' means:

- A. Adjourned for the day and scheduled to meet next day again.
B. Adjourned for the day and meet after one week.
C. Adjourned without fixing any date for the next meeting.
D. Adjourned for the day and meet after one month.

29. Bona vacantia:

- A. Vacant land.
B. Order of the court for eviction.
C. Goods that have no owner.
D. Vacant building.

30. 'Jus Gentium' means:

- A. Global administrative law
B. Law of Societies
C. Law among Nations
D. Global justice

31. Pari passu:

- A. On an unequal status
B. Supremacy of law
C. Diverse nature
D. On equal footing

32. 'Punctum Temporis' means:

- A. Temporary position
B. Point of time
C. Functional authority
D. Timely assistance

33. Autrefois convict:

- A. Formerly convicted
B. Doubtful conviction
C. Failed prosecution
D. To be convicted

34. Lis pendens:

- A. Facts of case proved
B. Decided case
C. Pending suit
D. No legal issues involved

35. Faux pas:

- A. Passage of time
B. Cheating
C. Pausing for a while
D. Tactless mistake

Directions (Qs. No. 36 to 50) : Choose the most appropriate option:

36. Under the Constitution of India 'Right to Pollution Free Environment' has emerged as a fundamental right from the right to:

- A. Freedom of movement under Article 19
B. Equality under Article 14
C. Life and personal liberty under Article 21
D. Conserve culture under Article 29
37. 'alibi' means a plea by an accused person that he:
A. was present elsewhere.
B. remained in judicial custody.
C. underwent preventive detention.
D. was facing trial.
38. 'obiter dicta' means:
A. Basis of judicial decision.
B. Judgment of a court in the case before it.
C. An opinion given by the court not necessary for the decision.
D. Direction by a judge.
39. If an authority is holding information about another in a 'fiduciary capacity', the information under the Right to Information Act, 2005 may not be obtainable. 'Fiduciary relationship' is based on:
A. Authority B. Trust
C. Law D. Contract
40. Under the Constitution of India restriction on freedom of religion cannot be placed on the ground of:
A. Morality B. Social justice
C. Health D. Public order
41. As per law the minimum age for the marriage of a boy and a girl in India is:
A. 21 years in both cases
B. 18 years and 21 years respectively
C. 21 years and 18 years respectively
D. 18 years in both cases
42. Which among the following was described by Dr. B.R. Ambedkar as the "heart and soul of the Constitution of India"?
A. Freedom of Religion
B. Right to Constitutional Remedies
C. Right to equality
D. Right to move throughout the territory of India
43. The Supreme Court of India has struck down the Constitution (Ninety-ninth Amendment) Act, 2014 as unconstitutional. It is related to:
A. Land Exchange between India and Bangladesh
B. National Judicial Appointment Commission
C. Religious Rights
D. Jallikattu (Bull Fighting)
44. 'lis pendens' means:
A. Awaited information. B. On the basis of evidence.
C. Decision awaited. D. A pending suit.
45. Which one of the following is not a Directive Principle of State Policy under Part IV of the Constitution of India?
A. Provision for just and humane conditions of work and maternity relief.
B. Organisation of village panchayats.
C. Promotion of adult education.
D. Promotion of international peace and security.
46. 'persona non grata' means:
A. Non-performance of promise
B. Non-person
C. An unacceptable person
D. Ungrateful person
47. The object of which one of the following writs is to prevent a person to hold public office which he is not legally entitled to hold?
A. Mandamus B. Quo warranto
C. Certiorari D. Prohibition
48. Which Indian State has prescribed minimum educational qualification for candidates contesting panchayat polls?
A. Gujarat B. Kerala
C. Haryana D. Punjab
49. Which among the following does not belong to the 'right to freedom of religion'?
A. Freedom from payment of taxes for promotion of any particular religion.
B. Freedom from attending religious instruction or religious worship in certain educational institutions.
C. Freedom of conscience and free profession, practice and propagation of religion.
D. Freedom of speech and expression.
50. 'audi alteram partem' means:
A. Not connected to facts
B. Following the substantive law
C. A transferee cannot retransfer
D. Giving opportunity of hearing of the other side

ANSWERS

1	2	3	4	5	6	7	8	9	10
A	C	B	A	A	A	B	C	B	C
11	12	13	14	15	16	17	18	19	20
C	C	A	C	A	A	D	D	C	A
21	22	23	24	25	26	27	28	29	30
B	B	C	D	A	D	A	C	C	C
31	32	33	34	35	36	37	38	39	40
D	B	A	C	D	C	A	C	B	B
41	42	43	44	45	46	47	48	49	50
C	B	B	D	C	C	B	C	D	D

SAMPLE PAPER-2 (SOLVED)

CUET-UG

(Common University Entrance Test for UG Programmes)

LEGAL STUDIES*

SECTION-II : DOMAIN SPECIFIC SUBJECT

Directions (Qs. No. 1 to 10) : The question consist of two statements, one labelled as **Assertion (A)** and other as **Reason (R)**. You are to examine the two statements carefully and select the best option.

1. **Assertion:** Custom per se is law, independent of prior recognition by the sovereign or the judge.
Reason: Custom is source of law but by itself is not law.
A. Both A and R are individually true and R is correct explanation to A
B. Both A and R are individually true but R is not correct explanation of A
C. A is true but R is false
D. A is false but R is true
2. **Assertion:** Idol is a person who can hold property.
Reason: Only human being can be called person not the lifeless things.
A. Both A and R are individually true and R is correct explanation to A
B. Both A and R are individually true but R is not correct explanation of A
C. A is true but R is false
D. A is false but R is true
3. **Assertion:** Laws are means of achieving an end namely social control.
Reason: The ultimate end of law is to secure greatest happiness to greatest number.
A. Both A and R are individually true and R is correct explanation to A
B. Both A and R are individually true but R is not correct explanation of A
C. A is true but R is false
D. A is false but R is true
4. **Assertion:** Every person should have the freedom of speech and expression.
Reason: If a person is stopped from speaking then mankind will lose the truth.
A. Both A and R are individually true and R is correct explanation to A

- B. Both A and R are individually true but R is not correct explanation of A
C. A is true but R is false
D. A is false but R is true
5. **Assertion:** Attempt to commit an offence though does not result in any harm, should also be punished.
Reason: A person who tries to cause a prohibited harm and fails, is, in terms of moral culpability, not materially different from the person who tries and succeeds.
A. Both A and R are individually true and R is correct explanation to A
B. Both A and R are individually true but R is not correct explanation of A
C. A is true but R is false
D. A is false but R is true
6. **Assertion:** In India, every state has a High Court in its territory.
Reason: The Constitution of India provides for a High Court in each state.
A. Both A and R are individually true and R is correct explanation to A
B. Both A and R are individually true but R is not correct explanation of A
C. A is true but R is false
D. A is false but R is true
7. **Assertion:** The Council of Ministers at the centre is collectively responsible both to the Lok Sabha and Rajya Sabha.
Reason: The members of both Lok Sabha and Rajya Sabha are eligible to be ministers of the Union Government.
A. Both A and R are individually true and R is correct explanation to A
B. Both A and R are individually true but R is not correct explanation of A
C. A is true but R is false
D. A is false but R is true

8. Assertion: The reservation of thirty-three per cent of seats for women in Parliament and State Legislature does not require Constitutional Amendment.

Reason: Political parties contesting elections can allocate thirty-three per cent of seats they contest to women candidates without any Constitutional Amendment.

- A. Both A and R are individually true and R is correct explanation to A
- B. Both A and R are individually true but R is not correct explanation of A
- C. A is true but R is false
- D. A is false but R is true

9. Assertion: We, the people of India, having solemnly resolved to constitute India into a Democratic Republic.

Reason: A republic will ensure we have a head of state that is democratically elected and accountable to voters. As a result the head of state will be a more effective constitutional safeguard.

- A. Both A and R are individually true and R is correct explanation to A
- B. Both A and R are individually true but R is not correct explanation of A
- C. A is true but R is false
- D. A is false but R is true

10. Assertion: Republic Day is celebrated on 26th January every year in the country.

Reason: The Constitution of India came into force on 26th January 1950.

- A. Both A and R are individually true and R is correct explanation to A
- B. Both A and R are individually true but R is not correct explanation of A
- C. A is true but R is false
- D. A is false but R is true

Directions (Qs. No. 11 to 13) : Read the definition and elements of the attempt, apply them on the given fact situations and answer the question:

Definition of Attempt: Lord Blackburn has said that “*there is no doubt that there is difference between a preparation antecedent to an attempt and the actual attempt, but if the actual transaction has commenced which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime.*”

- 1. Fault element: Intention or knowledge requisite for committing an offence; and
- 2. Conduct Element: does any act towards its commission and has crossed the stage of preparation. This act is so closely connected with, and proximate to the commission that it fails in object because of facts not known to him or because of circumstances beyond his control.

11. ‘RANI’ ran to a well stating that she would jump into it, and she started running towards the well but she was caught before she could reach it.

- A. She is not guilty of attempt to commit suicide because she might have changed her mind before jumping into the well.
- B. She is guilty of attempt to commit suicide.
- C. Right to life includes rights right to die hence a person should not be held responsible for attempt commit suicide.
- D. None of the above

12. ‘SINY’ with an intention to pick-pocket puts his hand into MINU’s pocket. MINU had a loaded pistol in his pocket. The thief touches the pistol and trigger goes on, whereby MINU is shot dead.

- A. SINY will be liable only for attempting to pick-pocket and not for killing because she cannot be treated differently from all other pick-pockets who steal under exactly similar circumstances and same intention, with no risk of causing death and with no greater care to avoid it.
- B. SINY will be liable for attempting to murder.
- C. SINY will be liable for culpable homicide not amounting to murder as his intention was definitely not to kill.
- D. None of the above

13. ‘JAM’ denied food to his wife JANE for several days by keeping her confined in a room with an intention to accelerate her death. JANE ultimately managed to escape.

- A. JAM is guilty for attempt to murder his wife.
- B. JAM is not guilty for attempt to murder his wife and he was only doing preparation.
- C. JAM is not guilty for attempt to murder his wife as she always had option to escape.
- D. None of the above

Directions (Qs. No. 14 to 17) : Fill in the blanks: Choose the pair of words which complete the sentence to make logical sense.

14. The NDA led Government notified the and the National Judicial Appointments Commission Act, thus ending the over two-decade-old of appointing judges of Supreme Court and high courts. Under the new law, a six-member panel headed by will select judges of the apex court and state high courts.

- A. 99th Constitutional (Amendment) Act 2015, collegium system, the Chief Justice of India
- B. 121st Constitutional (Amendment) Act 2015, collegium system, the Union Law Minister
- C. 121st Constitutional (Amendment) Act 2015, collegium system, the Prime Minister
- D. 99th Constitutional (Amendment) Act 2015, cabinet system, the Prime Minister

15. The Legislative Assembly on 31st March 2015 passed a controversial Anti-Terrorism Law. Earlier, the passed bill was rejected two times by the then in 2004 and 2008.
 - A. Bihar, Presidents
 - B. Madhya Pradesh, Governors
 - C. Gujarat, Presidents
 - D. Maharashtra, Governors
16. The Union Government on the recommendation of the under the chairmanship of has decided to decriminalize Section of the Indian Penal Code.
 - A. 20th Law Commission, Justice A.P. Shah & 309
 - B. 20th Law Commission, Justice M.P. Shah & 307
 - C. Supreme Court, Justice H.L. Dattu & Section 309
 - D. Planning Commission, Law Minister, section 309
17. A bench headed by quashed allocation of 214 as
 - A. Justice H.L. Dattu, coal blocks, illegal and arbitrary
 - B. Justice R.M. Lodha, coal blocks, illegal and arbitrary
 - C. Justice T.S. Thakur, licenses, illegal and arbitrary
 - D. None of the above
18. **Choose the best option for the following statement:**
 No one can be compelled to sing the National Anthem since:
 1. It will be violative of the right to freedom of speech and expression.
 2. It will be violative of the right to freedom of conscience and practice & propagation of religion.
 3. There is no legal provision obliging anyone to sing the National Anthem.
 - A. 1 and 2 are correct B. 2 and 3 are correct
 - C. 1, 2 and 3 are correct D. None is correct
19. Five years' experience is a must to be able to practice as an advocate in the Supreme Court of India. This rule was prescribed by the
 - A. Bar Council of India
 - B. Supreme Court of India
 - C. High Court of Delhi
 - D. Ministry of Law and Justice, Government of India
20. Union Government recently approved 33 per cent Reservation for Women in:
 - A. Horizontally and each category (OBC, SC, ST, and others) in direct recruitment in all non-gazetted Police Posts in all Union Territories including Delhi.
 - B. Horizontally and each category (OBC, SC, ST, and others) in direct recruitment in all gazetted Police Posts in all Union Territories including Delhi.
 - C. Horizontally and each category (OBC, SC, ST, and others) in direct recruitment in all gazetted and non-gazetted Police Posts in all Union Territories including Delhi.
 - D. Horizontally and each category (OBC, SC, ST, and others) in direct recruitment in all gazetted and non-gazetted Posts in all Union Territories including Delhi.
21. As per Indian Protocol, who among the followings ranks highest in the order of precedence?
 - A. Deputy Prime Minister
 - B. Former President
 - C. Governor of a State within his State
 - D. Speaker of Lok Sabha
22. **Consider the following statements and choose the best option:**
 1. The Chairman of the National Legal Services Authority (NALSA) is the Chief Justice of India.
 2. Chief Justice Mr. Justice H.L. Dattu is the present Chairman of NALSA.
 3. The Chairman of the National Legal Services Authority (NALSA) is the senior most judge (after CJI) of the Supreme Court of India.
 4. Hon'ble Mr. Justice T.S. Thakur is the present Chairman of NALSA.
 - A. 1 and 2 are correct B. 2 and 3 are correct
 - C. 3 and 4 are correct D. None is correct
23. India and Britain recently signed an "extradition treaty". Extradition means:
 - A. Exports without double taxation
 - B. Order of Indian courts will apply to Indians living in the U.K.
 - C. India and the U.K. will deport criminals on reciprocal basis to each other
 - D. None of the above
24. What is a 'moot'?
 - A. A basic point of law
 - B. A basic fact of case
 - C. Mock court for practice by students in general
 - D. Another name for magistrate's court
25. The temporary release of a convicted prisoner from jail for a fixed period is called:
 - A. Bail B. Parole
 - C. Acquittal D. Discharge
26. The Railway authorities allowed a train to be over-crowded. In consequence, a legitimate passenger, Mr. X got his pocket picked. Choose appropriate answer:
 - A. Mr. X can sue the railway authorities for the loss suffered.
 - B. Mr. X cannot sue because he had given his consent to travel in a over-crowded train.
 - C. Mr. X cannot sue the railway authorities because there was no infringement of legal right and mere

fact that the loss was caused does not give rise to a cause of action.

D. None of the above

27. Choose the best option for the following statement:

The distinction between fraud and misrepresentation:

1. Fraud is more or less intentional wrong, whereas misrepresentation may be quite innocent.
 2. In addition to rendering the contract voidable, is a cause of action in tort for damages. Simple misrepresentation is not a tort but a person who rightfully rescinds a contract is entitled to compensation for any damages which he has sustained through the non-fulfilment of the contract.
 3. A person complaining of misrepresentation can be met with the defence that he had "the means of discovering the truth with ordinary diligence". But excepting fraud by silence in other cases of fraud it is no defence that "the plaintiff had the means of discovering the truth by ordinary diligence".
 4. None of the above
- A. 1 is correct B. 1 and 2 are correct
C. 1, 2 and 3 are correct D. Only 4 is correct

28. In a recent case a Supreme Court bench comprising of Justice Dipak Misra and Justice Prafulla C Pant held that the amount of maintenance to be awarded under Section 125 of CrPC cannot be restricted for the iddat period (three months) only as the inherent and fundamental principle behind Section 125. Also, it said that an order under Section 125 CrPC can be passed if a person, despite having sufficient means, neglects or refuses to maintain the wife.

- A. Shamima Farooqui vs. Shahid Khan
- B. Mohd. Ahmad Khan vs. Shah Bano Begum
- C. Hamida Bano vs. Abdul Rasheed
- D. Abdul Kadir vs. Salima

29. Select the correct statements on Social Justice Bench constituted on social issue

1. Constituted by Supreme Court on 3 December 2014
 2. Started operation on 12 December 2014
 3. The brainchild of Chief Justice of India H.L. Dattu
 4. Two-judge bench to be headed by Justice Madan B Lokur
 5. The other member is Justice U. U. Lalit
- A. 1, 2 and 5 are correct B. 1, 2 and 3 are correct
C. 1, 3 and 4 are correct D. All are correct

30. Select the correct statements about 14th Finance Commission which submitted its report to President

1. It covers the period between 1 April 2015 and 31 March 2020.
2. The Commission headed by former RBI Governor Y. V. Reddy.

3. Provides for devolution of tax receipts from the Centre to the States.
 4. Article 280 of Constitution provides for appointment of Finance Commission.
 5. 1st and 13th Finance Commission was headed by K. C. Neogy and Dr Vijay Kelkar respectively.
- A. 1, 3 and 5 are correct B. 1, 2 and 3 are correct
C. 1, 3 and 4 are correct D. All are correct

31. Who administers oath of office to the Governor of a State?

- A. President of India
- B. Chief Justice of High Court of the respective state
- C. Chief Justice of India
- D. Speaker of State Assembly

32. Governor of a State can make Laws during recess of State Legislative Assembly through

- A. Act
- B. Bills
- C. Notification
- D. Ordinance

33. Who called Indian Constitution as Quasi-Federal?

- A. Austin
- B. K. C. Wheare
- C. H. M. Servai
- D. Jennings

34. President of India exercises his powers.....

- A. Either directly or through officers subordinate to him
- B. Through ministers
- C. Through Prime Minister
- D. Through Cabinet

35. Vote on accounts is meant for

- A. Vote on the report of CAG
- B. To meet unforeseen expenditure
- C. Appropriating funds pending passing of budget
- D. Budget

36. **Principle:** Nothing is an offence which is done by a person who is bound by law to do it.

Facts: 'A', a police officer, without warrant, apprehends 'Z', who has committed murder.

- A. 'A' is guilty of the offence of wrongful confinement
- B. 'A' is not guilty of the offence of wrongful confinement
- C. 'A' may be guilty of the offence of wrongful restraint
- D. 'A' cannot apprehend 'Z' without a warrant issued by a court of law

37. **Principle:** 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.

Facts: Roshan along with two of his friends, Tushar and Tarang proceeded to the house of Darshan in order to avenge an insult made by the brother of Darshan. They opened fire on the members of Darshan's family. It was found that the shots of Roshan did not hit anyone, but the shots of Tushar and Tarang succeeded in killing Darshan.

- A. Roshan was not liable for the offence of murder of Darshan, as Roshan's shots did not hit Darshan
- B. Only Tushar and Tarang were liable for the offence of murder of Darshan, as their shots hit Darshan
- C. Roshan along with Tushar and Tarang was liable for the offence of murder of Darshan
- D. Roshan was liable to a lesser extent comparing to his friends for the offence of murder of Darshan, as Roshan's shots did not hit Darshan

38. Principle : No communication made in good faith in 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.

Facts : '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. 'A' has committed the offence of causing death of his patient
- B. 'A' has not committed the offence of causing death of his patient
- C. 'A' has only partially committed the offence of causing death of his patient
- D. None of the above

39. Principle : Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, has committed a punishable offence of furnishing false information.

Facts : Sawant, a landholder, knowing of the commission of a murder within the limits of his estate, willfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake.

- A. Sawant is not guilty of the offence of furnishing false information to the Magistrate
- B. Sawant is guilty of the offence of furnishing false information to the Magistrate
- C. Sawant is not legally bound to furnish true information to the Magistrate
- D. Sawant has the discretion to furnish true information to the Magistrate, as the murder was committed within the limits of his estate

40. Principle : 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 guilty of a negligent act likely to spread infection of disease dangerous to life.

Facts : 'K', a person, knowing that he is suffering from Cholera, travels by a train without informing the railway officers of his condition.

- A. 'K' has committed an unlawful and negligent act, which is likely to spread the infection of Cholera disease dangerous to the life of fellow-passengers
- B. Railway officers are guilty of an unlawful and negligent act, as 'K' who is suffering from Cholera disease has travelled by the train
- C. 'K' has not committed an unlawful and negligent act, which is likely to spread the infection of Cholera disease dangerous to the life of fellow-passengers
- D. Both 'K' and Railway officers are guilty of an unlawful and negligent act, which is likely to spread the infection of Cholera disease dangerous to the life of fellow-passengers

41. Principle : 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, has committed an offence, which shall be punished in accordance with the law.

Facts : 'X', a truck driver, driving his vehicle rashly and negligently at a high speed climbed the footpath and hit 'Y', a pedestrian, from behind causing his death.

- A. 'X' is not guilty of rash and negligent driving
- B. 'Y' should have taken sufficient care on the footpath
- C. 'X' is guilty of rash and negligent driving
- D. 'X' is only in part guilty of rash and negligent driving

42. Principle : 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.

Facts : 'A' knows 'Z' to be behind a bush. 'B' does not know it. 'A', intending to cause, or knowing it to be likely to cause Z's death, induces 'B' to fire at the bush. 'B' fires and kills 'Z'.

- A. 'B' has committed the offence of culpable homicide
- B. 'A' has committed the offence of culpable homicide
- C. Both 'A' and 'B' have committed the offence of culpable homicide
- D. None of them has committed the offence of culpable homicide

43. Principle : 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.

Facts : 'Z', going on a journey, entrusts his plate to the possession of 'A', the keeper of a warehouse, till 'Z' shall return. Then, 'A' carries the plate to a goldsmith and sells it.

- A. 'A' has committed theft
- B. 'A' has not committed theft
- C. 'A' lawfully sold the plate to the goldsmith
- D. None of the above is true

44. Principle : Whoever 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.

Facts: 'A' without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from 'Z' to 'A', with the intention of selling the estate to 'B' and thereby of obtaining from 'B' the purchase-money.

- A. 'B' has committed forgery
- B. 'Z' has committed forgery
- C. 'A' has committed forgery
- D. 'A' and 'B' have committed forgery

45. Principle : Whoever 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.

Facts: 'Z' is riding in a palanquin. 'A', intending to rob 'Z', seizes the pole and stops the palanquin. Here 'A' has caused cessation of motion to 'Z', and 'A' has done this by his own bodily power.

- A. 'A' has used criminal force to 'Z'
- B. 'A' has no intention to use criminal force to 'Z'
- C. 'A' has used force with the consent of 'Z'
- D. None of the above is correct

46. Principle: One of the essential conditions for a marriage between any two persons to be solemnized under the Special Marriage Act, 1954 is that at the time of the marriage the male has completed the age of twenty-one years and the female the age of eighteen years. If the said condition is not fulfilled such a marriage is null and void.

Facts : 'A', a male aged twenty-two years, proposes to marry 'B', a female aged sixteen years, at Delhi in the month of June 2014 under the Special Marriage Act, 1954.

- A. Marriage between 'A' and 'B' can be legally solemnized under the Special Marriage Act, 1954.
- B. Marriage between 'A' and 'B' cannot be legally solemnized under the Special Marriage Act, 1954

- C. Marriage between 'A' and 'B' can remain valid for A under the Special Marriage Act, 1954
- D. None of the above is correct

47. Principle : Under the Hindu Marriage Act, 1955 either the husband or the wife can move a petition for a decree of divorce on the ground of desertion. The term 'desertion' means desertion of the petitioner by the other party to the marriage for a continuous period of not less than two years immediately preceding the presentation of the petition, without reasonable cause and without the consent or against the wish of such party and the includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly. It is also said that desertion is withdrawal not from a place but from a state of things.

Facts: Rohan, a technocrat, went to US in January 2011 for pursuing his higher studies for a period of three years. In fact, Rohan went to US with the consent of his wife Basanti, who stayed at her parents' home, and with a promise of his return to India upon the completion of his studies. From US he has quite often been in touch with his wife. Subsequently, Rohan has got a job there in US and he wishes to take his wife. She refuses to go to US and, in the meanwhile, she files a petition for a decree of divorce on the ground of desertion by her husband.

- A. Rohan's three year stay in US in the above context can amount to a ground of desertion for divorce.
- B. Rohan's three year stay in US in the above context cannot amount to a ground of desertion for divorce.
- C. Rohan's continued stay after three years can amount to a ground of desertion for divorce.
- D. Basanti's refusal can amount to a ground of desertion for divorce.

48. Principle : Under the Hindu Adoptions and Maintenance Act, 1956, no person shall be capable of being taken in adoption unless he or she is a Hindu, he or she not already been adopted, he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption, and he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being take in adoption.

Facts: Vijay being natural father had given Tarun, a boy aged 10 years, in adoption to Manoj in March 2010 in accordance with the Hindu Adoptions and Maintenance Act, 1956. In May 2012 Manoj gave Tarun in adoption to Sanjay. Subsequently in December 2013, Sanjay gave Tarun in adoption to Vijay.

- A. Adoption of Tarun by Sanjay is valid

- B. Adoption of Tarun by Vijay is valid
- C. Adoption of Tarun by Manoj is valid
- D. None of the above adoptions is valid

49. Principle : Under copyright law copyright subsists in original literary works also. A literary work need not be of literary quality. Even so prosaic a work as an index of railway stations or a railway guide or a list of stock exchange quotations qualifies as a literary work if sufficient work has been expended in compiling it to give it a new and original character.

Facts : Michael works hard enough, walking down the streets, taking down the names of people who live at houses and makes a street directory as a result of that labour.

- A. Michael's exercise in making a street directory is sufficient to justify in making claim to copyright in that work which is ultimately produced
- B. Michael's exercise in making a street directory is not enough to justify in making claim to copyright in that work
- C. A street directory cannot be enough to be considered as a literary work
- D. None of the above statements is correct

50. Principle: Every person shall be liable to punishment under the Indian Penal Code and not otherwise for every act or omission contrary to the provisions of the Code of which he shall be guilty within the territory

of India. In other words, the exercise of criminal jurisdiction depends upon the locality of the offence committed, and not upon the nationality or locality of the offender.

Facts: 'X', a Pakistani citizen, while staying at Karachi, made false representations to 'Y', the complainant, at Bombay through letters, telephone calls and telegrams and induced the complainant to part with money amounting to over rupees five lakh to the agents of 'X' at Bombay, so that rice could be shipped from Karachi to India as per agreement. But the rice was never supplied to the complainant.

- A. The offence of cheating under section 420 of the Code was committed by 'X' within India, even though he was not physically present at the time and place of the crime
- B. The offence of cheating as per section 420 of the Code was not committed by 'X' within India, as he was not physically present at the time and place of the crime
- C. Only the agents of 'X' had committed the offence of cheating under section 420 of the Code within India, as they were physically present at the time and place of the crime
- D. 'Y' was also liable for the offence of cheating under section 420 of the Code within India, as he was physically present at the time and place of the crime

ANSWERS

1	2	3	4	5	6	7	8	9	10
D	C	B	A	A	D	D	D	A	A
11	12	13	14	15	16	17	18	19	20
A	A	A	A	C	A	B	C	A	A
21	22	23	24	25	26	27	28	29	30
C	C	C	C	B	C	C	A	D	D
31	32	33	34	35	36	37	38	39	40
B	D	B	A	C	B	C	B	B	A
41	42	43	44	45	46	47	48	49	50
C	B	B	C	A	B	B	C	A	A



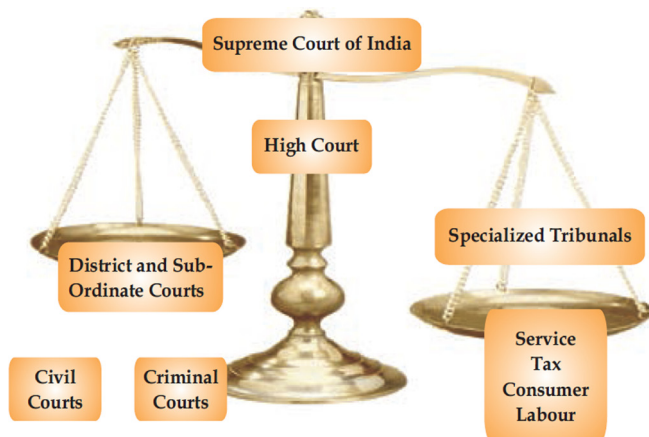
LEGAL STUDIES

JUDICIARY

STRUCTURE AND HIERARCHY OF COURTS, AND LEGAL OFFICES IN INDIA

Structure & Hierarchy of Courts in India

The Constitution of India lays out the framework of the Indian judicial system. India has adopted a federal system of government which distributes the law enacting power between the Centre and the States. Yet the Constitution establishes a single integrated system of judiciary comprising of courts to administer both Central and State laws. The Supreme Court located in New Delhi is the apex court of India. It is followed by various High Courts at the state level which function for one or more number of states. The High Courts are followed by district and subordinate courts which are known as the lower courts in India. To supplement the functioning of the courts, there exist specialised tribunals to adjudicate sector specific claims such as labour, consumer, service matter disputes.



Supreme Court of India

The Supreme Court of India came into being on 28 January, 1950. It replaced both the Federal Court of India and the Judicial Committee of the Privy Council which were at the apex of the Indian court system, under the colonial era. The Constitution of India as it stood in 1950 envisaged a Supreme Court with a Chief Justice and 7 Judges. The Parliament was

granted the power to increase the number of judges in the coming years. At present, the total strength of the Supreme Court is 34 judges including the Chief Justice of India. A group of judges sitting together on a legal matter in the Court constitutes a bench. A division bench comprises of two or three judges. A constitutional bench comprises of five or more judges and may even extend to thirteen judges.

High Courts

India consists of 25 High Courts at the state and union territory level. Each High Court has jurisdiction over a state, a union territory or a group of states and union territories. Below, the High Courts exists a hierarchy of lower courts functioning as civil courts and criminal courts as well as the specialised tribunals. The Madras High Court (1862) in Chennai, Bombay High Court (1862) in Mumbai, Calcutta High Court (1862) in Kolkata and the Allahabad High Court (1866) in Allahabad are the first four High Courts in India.

District and Sub-ordinate Courts

The courts that function below the High Courts are popularly known as the lower courts. They consist of district and sub-ordinate courts. Each state is divided into judicial districts presided over by a 'District and Sessions Judge'. The judge is known as a 'District Judge' when she/he presides over a civil case and a 'Sessions Judge' when he presides over a criminal case. The district judge is also called a 'Metropolitan Sessions Judge' when she/he is presiding over a district court in a city which is designated as a metropolitan area by the State government. District judges may be working with Additional District judges, depending upon the judicial workload.

The district judge is the highest judicial authority below a High Court judge. The District Court also holds appellate jurisdiction and supervision over all sub-ordinate Courts below it. On the Civil side, the sub-ordinate Courts below the District Court include (in ascending order) - Junior Civil Judge Court, Principal Junior Civil Judge Court, Senior Civil Judge Courts (also called sub-Courts). Sub-ordinate Courts on Criminal side (in ascending order) include: Second Class

Judicial Magistrates Court, First Class Judicial Magistrate Court and Chief Judicial Magistrate Court.

Apart from the sub-ordinate courts, Munsiff Courts also form a part of this hierarchy. They are the lowest in terms of handling matters of civil nature and function below the sub-ordinate courts. Their pecuniary limits, meaning the court's ability to hear matters upto a particular claim for money, are notified by respective State governments.

Tribunals

Apart from these judicial bodies, Indian judiciary is also characterised by numerous semi-judicial bodies involved in dispute resolution. These bodies function as semi or quasi-judicial bodies because they may consist of administrative officers or judges without a legal background. Yet they function in their judicial capacity and hear relevant legal matters and settle claims between the parties.

Tribunals have been constituted under specific constitutional mandate enshrined in the Constitution of India or through legal enactments, *e.g.*, a law passed by the legislature. Their creation aims at increasing efficiency in resolving disputes and reducing the burden on courts. Examples of some of these tribunals include: Central Administrative Tribunal (CAT) for resolving the grievances and disputes of central government employees, and State Administrative Tribunals (SAT) for state government employees; Telecom Dispute Settlement Appellate Tribunal (TDSAT) for resolving disputes in the telecom sector in India; and the National Green Tribunal (NGT) for disputes involving environmental issues. Some of these tribunals function with regulators. Regulators are specialised government agencies that oversee the law and order compliance in the relevant government sectors. *For example*, one of the tribunals TDSAT functions alongside the regulator, TRAI (Telecom Regulatory Authority of India) in formulating laws and policy for resolving telecom disputes in India. Therefore these tribunals complement and supplement the role of courts in maintaining law and justice in the society.

Salient Features of Indian Judiciary

India as a Common Law Jurisdiction

Taking its precedence from the British tradition of 'common law', India has adopted a similar model. Under this scheme of the common law system, the decisions, orders and judgments developed by the judges in India help in the creation and development of laws and legal principles, which becomes binding precedents for all subordinate courts in the hierarchy. Therefore, courts play a vital role in creating laws, especially where gaps in law exist, and the legislature or executive have failed to enact laws. Thus, apart from administering civil and criminal justice, courts and judges serve a vital function in the federal set up of the country.

Opposed to this model, is a concept of civil law system followed in countries such as Germany, Russia, and Continental Europe. The main difference between common and civil law is with respect to the source of law. Under common law, judiciary can make laws through judicial decisions of courts; however under civil law, only the legislature or executive has the power to create laws and rules. This salient feature of Indian judiciary in following a common law model further strengthens the role of courts in India.

Adversarial Model of Dispute Resolution

Courts in India follow the adversarial system of adjudication as opposed to the inquisitorial model followed in several civil law countries. In an adversarial model, the role of lawyers representing the party becomes vital. Lawyers of the opposing parties present their cases before a neutral judge who in turn provides a decision based on the merits of the case, as presented by the lawyers. In the inquisitorial system of law, on the other hand, judges are more pro-active in adjudicating the matter. Rather than acting as neutral judges, they have rights to inquire and probe into the matter, much like a police. Here the role of lawyers representing the party and the role of judge cumulatively becomes important in determining the manner in which a civil case or criminal trial proceeds.

Attorney General of India and Law officers in India

Certain law offices at the Union and State level exist to advise the executive wing of the government. These law officers are taken up by law officers, who derive their mandate either from the Constitution or other statutory enactments and rules. The Attorney General is the first legal officer of the country. The Attorney General of India is appointed by the President of India under Article 76 of the Constitution, which states that he can hold the office during the pleasure of the President. The Attorney General must be a person qualified to be appointed as a Judge of the Supreme Court, possessing adequate legal practice or have served as a judge for a requisite duration as mandated by the Constitution. It is the duty of the Attorney General for India to give advice to the Government of India upon legal matters and to perform other duties of legal character as may be referred or assigned to him by the President. In the performance of his duties, he has the right to appear in the Courts. This is known as a right to audience given to the Attorney General. He may also take part in the proceedings of the Parliament without a right to vote. In discharge of his functions, the Attorney General is assisted by a Solicitor General and four Additional Solicitors General. The position of the Solicitor General and Additional Solicitors General is not recognised in the Constitution. However they are governed through rules enacted by the Parliament.

Similar to the Attorney General of India, the position of Advocate General exists at the state level. An Advocate General is a senior law officer who acts as a legal adviser to the State Government. According to Article 165 of the Constitution, Advocate General is appointed by the Governor of the respective state. The Advocate General is the chief legal advisor of the State and performs duties of a legal character including representing the State before the courts either through himself/herself or through the law officers or pleaders appointed by the State. The qualification required for appointment as an Advocate General is similar to that of a judge of a High Court. The office of an Advocate General is held during the pleasure of the Governor, who also determines the nature of remunerations for the Advocate General. Additional Advocate Generals are also appointed to assist the office of the Advocate General.

CONSTITUTION, ROLES AND IMPARTIALITY

The judiciary in India derives its powers and functions from the Constitution, which till date remains the fundamental legal text for the functioning of Indian democracy.

Independence of Judiciary as a Constitutional Safeguard

Article 50 of the Indian Constitution lays the rule of independence of judiciary. This is understood as judiciary's autonomous status, separate from the executive or legislative wings of the government. Independence of judiciary helps in the maintenance of rule of law, ensuring good governance and creating a free and fair society. The independent status of the judiciary and roles to be performed by it; can be understood as two sides of the same coin. In this context, one must understand the reasons for granting a special status to the judiciary:

First, Judiciary's independence is linked to its role as the watch-dog in a democracy. It monitors and maintains the checks and balances over the other arms of the government. Thus judiciary emerges as a mediator when any organ of the government exercises 'excess power' which tends to violate the larger societal or individual interest. For instance, the Indian Police has extensive powers for crime detection and gathering evidence for prosecution of criminals. It is common for the police to interrogate suspect criminals in order to gather the best evidence of the crime. However such powers should not impinge upon the rights of the accused or the suspected criminal. An accused cannot be coerced into giving statement pointing to his/her guilt. This right has been constitutionally guaranteed to the accused under Article 20(3) of the Constitution, which states:

"No person accused of any offence shall be compelled to be a witness against himself".

Judiciary steps in when such delicate interests are at loggerheads. Similarly, when there is a thin line of difference

as in case of a police exercising their power to gather witness, in the exercise of the 'legitimate' and 'excess' right of a state organ, the role of judiciary becomes vital.

Second, in order to ensure that constitutionally guaranteed freedoms such as freedom to speak in public or peacefully assemble, are interpreted as per the true constitutional philosophy, judiciary has been kept free from any external pressures. This is particularly useful when judiciary is interpreting a case of conflict between say between the government (political party in power) and certain protesting people of the civil society who have peacefully articulate their opinions on social issues *for example*, crime against women.

Third, Judiciary acts as a guardian of fundamental rights which are constitutionally granted to every citizen in India. Independence of judiciary was carved out during the formation of Indian Constitution as India was transitioning from a feudal to a democratic order. It was done to fully translate the well-knit provisions of extensive rights guaranteed under the Constitution into the lives of average citizens. Our Constitution grants us unique rights such as:

- Civil and political rights—the right to life; right to freedom of discrimination based on religion, race, caste, sex or place of birth.
- Economic, social and cultural rights—freedom to practice any religion; protection of interests of minorities.

An independent and impartial Judiciary has empowered Indian citizens and performed this role. Illustratively, one may look into the role of Court in giving an expanded meaning to Article 21 of the Indian Constitution which talks about a general right to life and personal liberty. *For example*, within this freedom, the Supreme Court has held that a street vendor has a right to operate on streets as selling products on street is linked to his livelihood and daily living which is protected under Article 21. Similarly, the Supreme Court has also stated that those who are aged, disabled and destitute in India including men and women have a right to food, which is most essential for their survival. State has a corresponding duty to provide them with food. This right has been read into the general right under Article 21. Therefore, the Court is performing the role which it was granted at the time of the drafting of Indian constitution. Even though the drafters did not include specific rights such as livelihood and food, within the constitutional ambit of enforceable fundamental rights, they are now made available to the citizens of India as matters of rights. This has been possible only by the interpretation and rule making function of the courts in India.

In the domain of criminal law as well, independence of judiciary is linked to the granting of a fair trial to the accused. This becomes extremely important even when the accused are foreign nationals or persons who have committed crimes against the state, e.g. terrorists.

Independence of judiciary is vital for the respect of due process of law. Due process of law means that the State must respect all the legal rights that are owed to a person and confirm to the norms of fairness, liberty, fundamental rights etc. Only an independent judiciary can make this concept operational. History has evidenced that whenever the independence of judiciary has been disturbed, it has directly impacted upon the due process of governance and rights granted to average citizens.

These lessons teach us that even in grave political circumstances, the rights of citizens should not be compromised and this could only be possible through an independent and impartial judiciary. Therefore independence of judiciary remains a vital and core principle even in the modern democracy.

Role of Indian Judiciary

The Role of Courts

Indian judiciary comprises of the Supreme Court, High Court, Sub-ordinate Courts and other Tribunals. The role of these courts along with their composition, powers and procedures for functioning have been elaborated in the Constitution.

Different Roles of the Supreme Court of India

The Supreme Court of India primarily exercises the role of an adjudicator and interpreter. This is explained through different jurisdictions vested with the court. Its role as an adjudicator and interpreter can be understood through the original and appellate jurisdiction vested with the Court. Under Article 131 of the Constitution, the Supreme Court is granted original jurisdiction. This power is exercised to adjudicate amongst disputes between Union and one or more states and between two or more states. Such disputes must involve some question of law or fact on which the existence or extent of legal rights can be adjudicated. *For example*, the dispute between the sharing of river or other natural resources between two states in India can be directly brought to the Supreme Court under exercise of its original jurisdiction.

Article 32 of the Constitution further gives an extensive original jurisdiction to the Supreme Court for the enforcement of fundamental rights of the citizens, through issuing directions, orders and writs. This is popularly known as the 'Writ Jurisdiction' of the Court.

The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court. Appeal to the Supreme Court may be made against any judgement, decree or final order of a High Court in both civil and criminal cases. Like the exercise of original jurisdiction, these cases must involve a substantial question of law as to the interpretation of the Constitution. Substantial questions of law as highlighted above connote questions of law or fact on which the existence or extent of legal rights can be adjudicated.

Apart from the listed appellate powers of the Court, the Supreme Court is also vested with wide appellate jurisdiction over all Courts and Tribunals as provided in Article 136 of the Constitution. Under its discretion, the Court may grant a special leave to appeal and receive any judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or Tribunal in the territory of India.

Besides being an adjudicator and interpreter, Supreme Court also functions as an adviser. Court's advisory jurisdiction may be sought by the President under Article 143 of the Constitution. This procedure is termed as "Presidential Reference" and is recognised as the 'Advisory jurisdiction' of the Court. Under this scheme, President may refer any question of law or fact of public importance. However, it is not binding on the Supreme Court to answer questions raised in the reference. In the last more than 70 years, only a handful of references have been made. The Supreme Court can refuse to provide its advisory opinion if it is satisfied that the questions are either socio-economic or political in nature.

So far we have seen the constitutional imperatives that permit the Supreme Court to adjudicate and advice on disputes coming from the sub-ordinate courts, individuals exercising writ jurisdiction and the President of India. In the recent years, the Supreme Court has relaxed its locus standi (the right of a party to appear and be heard by a Court) and has permitted public spirited citizens and civil society organisations to approach the Court on behalf of the victims for better administration of justice. On other accounts, the Court has on its own initiative started cases of public importance. For instance, it has summoned and reprimanded state authorities for their apathy and lack of diligence in running child care homes in the states. All, this has been possible through the judicial activism of the Supreme Court through Public Interest Litigation (PIL, Janhit Yachika). This extra-ordinary jurisdiction has been invoked either through writs or even by writing letters to Judges, whose modalities are maintained under the guidelines for PIL enacted by the Court.

The first ever PIL is listed as Hussainara Khatoon v. State of Bihar and dates back to 1979. A public interest activist lawyer filed this case on behalf of thousands of prisoners of the Bihar jail against the inhuman conditions of the prison. A Supreme Court bench headed by Justice P.N. Bhagwati declared the right for free legal aid and expeditious trial of these prisoners, which ultimately led to their release. Since then, PILs have encompassed several issues including socio-economic rights (freedom from bonded labour), legal entitlements (right to food; right to work), environment issues (clean air and water) and political reforms (disclosure of assets by members of the executive; disbursement of natural resources done by the government).

The progress of PIL has thus seemed to incorporate several issues. Yet common characteristics encompass these litigations. These characteristics include:

- (i) PILs can be termed as non-adversarial litigation that pits the interest of one party over the other. Rather than focussing on traditional litigation of adversary character, PILs are recognised as tools for social change.
- (ii) PILs are based on the tenets of citizen standing and representative standing which expands the rights of third-parties to approach the Court.
- (iii) PIL from its inception is modelled on remedial nature which aims at creating a dynamic, welfare oriented model of judiciary. PIL thus incorporates the Directive Principles whose claims cannot be brought directly to the Courts, into the domain of fundamental rights under Part III of the Constitution, which can be invoked before the Courts as a matter of rights by the citizens of India. Therefore PILs are creating new rights and laws within the realm of the state. These laws are also democratising citizen's access to justice, thereby strengthening the democracy in India.
- (iv) PIL further strengthens the role of judiciary as a monitor and watch-dog agency. Fear of being dragged to the Court via PIL has improved the quality of several social institutions in the country such as jails, protective homes, mental asylums etc.

However, with the advent and growth of PILs, they have also been misused for private gains, and led to frivolous litigation on unnecessary issues. They have also been criticised for judicial over-reach and stepping into the shoes of legislature.

High Courts and Lower Courts

The High Courts function as the organs of judicial administration at the State level. Similarly, the lower courts function as centres of civil and criminal justice at the district level. Lower courts as explained above comprise of district and sub-ordinate courts. Districts Courts are usually Courts of first instance, where litigants proceed for their disputes. These Courts have set territorial and pecuniary limits when accepting cases of civil nature. A similar hierarchy exists in the criminal courts at the sub-ordinate level. Once matters are adjudicated by these courts, they proceed to the High Courts on appeal. Thus sub-ordinate courts are mainly vested with the establishment of facts while the appellate courts deal with interpretation of statutes and the correct application of law.

The High Courts have power to issue within their jurisdiction directions, orders, or writs including writs which are in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of Fundamental Rights and for any other purpose. This writ jurisdiction is similar to the Supreme Court of India. The role of High Court also becomes similar to the Supreme Court in the exercise of public interest litigation. Furthermore, each High Court has powers of superintendence over all Courts within its

jurisdiction. It can call for records from such courts, make and issue general rules and prescribe forms to regulate their practice and proceedings and determine the manner and form in which book entries and accounts shall be kept.

Independence & Impartiality of Indian Judiciary

The meaning and rationale for independence of Indian judiciary has been dealt earlier. However we must also understand how the independence of judiciary is ensured and maintained by the Constitution. The theory of 'constituent mechanism' of independence of judiciary defines judiciary's independence in terms of the independence of its judges. Judges ought to function in an unbiased manner and scholars as pointed out by Simon Shetreet (The Culture of Judicial Independence; Judges on Trial).

One must note that, independence of judiciary and impartiality of judges exist as two distinct concepts— the former referring to the institution, and the latter referring to its constituent actors. The concept of impartiality of judges can be understood within the broad framework of independence of judiciary. These concepts must be studied in conjunction as they aim at achieving the same goal of maintaining judicial integrity in the democratic process of the country.

It is important to discuss the constitutional framework for the independence of judiciary. Broadly, the Indian Constitution contains several provisions to serve these twin functions.

Provisions Relating to the Institution of Judiciary

The Constitution recognises that vast powers enjoyed by the courts, especially the Supreme Court cannot be curtailed by the Parliament. In the civil cases, Parliament only has a limited right to change the pecuniary limits for appeal to the Supreme Court. In turn, the Supreme Court has a vast appellate jurisdiction and supplementary powers to enable its efficient functioning. Both the Supreme Court and the High Courts are courts of record and possess the power to punish for contempt against the judiciary or judges.

Provisions Relating to the Judges

Independence of judges is crucial to ensuring independence of judiciary. The following legal provisions mandate judge's independence and impartiality:

- (i) Once appointed, judges are provided with a security of tenure till they reach a retirement age. This age remains 62 for the High Court judges and 65 for the Supreme Court judges. Judges are not allowed to practice as advocates in the same or equivalent courts, post their retirement. *For example*, a retired High Court judge can practice in the Supreme Court, but is prevented from practicing in the same or other High Courts. This ensures that ex-judges practicing

at the bar do not influence the decision of the bench, with whom they may have presumed familiarity.

- (ii) Judges cannot be easily removed from their office except for proven misbehaviour and incapacity. The legal process is kept stringent to ensure security of tenure of the judges.
- (iii) The salaries and allowances of judges are fixed and not subject to vote of the legislature. Judges derive their salaries from the consolidated fund of India (for the Supreme Court) and consolidated fund of state (in case of High Courts). Their emoluments cannot be altered to their disadvantage except in the event of financial emergency.
- (iv) Even the judicial conduct of the judges has been kept immune from examination by other Constitutional organs. The conduct of judges of both the Supreme Court and High Courts cannot be discussed in Parliament or state legislature, except when a motion for removal of a judge is being presented to the President.
- (v) Supreme Court of India has been authorized to have its own establishment and to have complete control over it. It is further authorized to make appointments of officers and staff of the court and determine their service conditions.

Therefore, one can conclude that independence of judiciary is a constitutionally conferred protection.

APPOINTMENTS, TRAININGS, RETIREMENT AND REMOVAL OF JUDGES

Appointment of Judges

Constitutional Mandate

The method of appointment of judges at the Supreme Court, High Court and District Courts has been enshrined in the Constitution of India. According to Article 124 of the Constitution, 'every judge of the Supreme Court shall be appointed by the President after consultation with such of the Judges of the Supreme Court and of the High Courts in the States, as the President may deem necessary'. The Article also provides that in case of appointment of a judge other than the Chief Justice of India, the Chief Justice must be consulted. The Article further provides for the qualifications required to become a judge at the Supreme Court. These qualifications include:

- Citizenship of India, and
- Has been for at least five years a Judge of a High Court or of two or more High Courts in succession; or
- Has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
- Is a distinguished jurist in the opinion of the President.

Similarly, the procedure for appointment of judges at the High Court has been enshrined in Article 217 of the Constitution. This Article prescribes that every Judge of the High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State; and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court concerned. The qualifications of a High Court judge includes:

- Citizenship of India, and
- Has for at least ten years held a judicial office in India; or
- Has for at least ten years been an advocate in a High Court or of two or more such Courts in succession.

For the district and sub-ordinate Courts or the lower judiciary in India, the procedure for appointment is mentioned in Article 233 of the Constitution. Appointment of district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. The qualifications for appointment as District Judge include:

- Member of judicial service of the State; or
- Any person who has had a minimum of seven years of practice as a lawyer at bar.

Current Practice in the Appointment of Judges

Despite a clear Constitutional mandate, the appointment of Judges in practice remains a complex process. There has been an extensive debate over the appointment procedure of judges which has seen alterations in actual practice. At present, the appointment at the Supreme Court and the High Court follows a collegium model, which is a judicial creation through case-laws, even though not constitutionally mandated. Under the collegium model for appointment of judges of the Supreme Court, the Chief Justice of India consults four senior most judges of the Supreme Court. The Chief Justice of India sends his recommendations to the Union Minister of Law and Justice, who then puts up the same to the Prime Minister. The Prime Minister will then advise the President. For High Courts, the collegium comprises of the Chief Justice of the High Court and two senior most judges of the High Court. The Chief Justice conveys his recommendations to the Chief Minister of the State and the Governor of the State, who in turn send their views directly to the Union Minister of Law and Justice. The complete material is then forwarded to the Chief Justice of India, who in consultation with a collegium of two Judges of the Supreme Court, would send his recommendations to the Union Minister of Law and Justice. The Union Minister of Law and Justice then puts up the same to the Prime Minister who will advise the President in the matter of appointment.

The seniority of a Judge plays a vital role in his/her elevation or appointment as Chief Justice. For initial appointment as a Judge in a High Court for those from

the lower judiciary inter-se seniority does matter; and for elevation of advocates from the bar, relative merit matters. The collegium model, considers the relative merits of those Judges/advocates in the zone of consideration for elevation with reference to their judgements and cases.

Tracing the Historical Debate on the Issue of Appointment of Judges

The issue of appointment has often been linked to the independence of judiciary and there has been a constant tussle between executive and judiciary over the appointment of judges. As early as the 14th Law Commission Report under the chairmanship of M.C. Setalvad, India's first attorney general in 1958, these concerns were raised. The Commission noted the appointment or rejection of appointment of judges by the executive, in contrary to what the judiciary suggested, creating rather awkward situations. The report highlighted that several appointments were being made on political, regional, communal or other grounds as a result of which the fittest of the lot were never appointed. The Commission thus suggested on strengthening the process of consultation between the executive and the judiciary.

Later, a series of three judicial decisions popularly known as the Three Judges Cases helped in the development of the modern collegium system. This development has been a result of a tumultuous process, but in modern practice governs the rule for judicial appointments. The first Judges case (1981) gave primacy to the Executive and stated that the CJI's recommendation to the President can be refused for cogent reasons. It gave vast powers to the Executive for the next 12 years, in making judicial appointments. This however was modified in the second Judges case (1993). The Judgment held that the Chief Justice of India has primacy in the matter of appointments to the Supreme Court and the High Courts, and that an appointment 'has to be in conformity with the final opinion of the Chief Justice of India', while emphasising the desirability of consultation of the Chief Justice with other Judges. The executive element in the appointment process was reduced to a minimum and political influence eliminated. This decision rendered by a nine-judge bench was however supported by only five judges on the bench and the four other judges did not concur with the majority opinion. The years that followed thus witnessed some confusion in the process of appointment as CJI made some unilateral appointments and the role of the President was reduced to a mere approval. Later in 1998, the Supreme Court in a Presidential reference (1998 advisory decision) emphasized upon the role of 'consultation' and held that the process of appointment of Judges to the Supreme Court and the High Courts is an 'integrated participatory consultative process'. The Chief Justice of India firms up his opinion after consultation with a plurality of judges; his opinion is formed by a body of senior Judges.

Judicial Training

National Judicial Academy is a government funded training institute constituted for the training of Supreme and High Court judges and judicial officers in India. This body was founded in 1993 and is located in Bhopal, with a registered office in New Delhi. It aims at suggesting judicial reforms and providing research support services for greater efficiency, fairness and productivity in judicial decisions.

As a part of providing judicial training, the National Judicial Education Strategy (NJES) has been established in 2006 to provide judicial education to High Court judges, District Judiciary and State Judicial Academies. The training consists of conferences, orientations, workshops on core judicial skills and administration and seminars on substantive law and justice. The Academy also aims at enhancing the online skills registry of Indian judges to increase their proficiency and making better access to judicial decisions.

Retirement of Judges

The retirement age for a Supreme Court judge is 65 years. Similarly, a High Court judge continues in his office, till the retirement age which is 62 years. The age of retirement of District Court judges is determined by their respective State Government under special service rules.

The retirement age of judges as specified in the Constitution has been subject to intense debate in India. There lies a pending bill in the Parliament (114th Amendment Bill, 2010) which proposes to increase the retirement age of High Court judges from 62 to 65. However, since the bill is still being debated in the Parliament, it has no legal effect. Similarly, the Venkatachalliah Committee formed to review the working of the Constitution (2000) suggested to increase the retirement age of Supreme Court judges from 65 to 68. These proposals have been made in the light of global comparative standards, followed to determine the retirement age for the judges.

For instance, there is no retirement age for Supreme Court judges in the United States. In the High Court of Australia, the retirement age is 70. The Supreme Court of Canada has fixed the retirement age of their judges as 75. Similarly in the UK Supreme Court, the retirement age is 75, while the Constitutional Court of South-Africa follows the age of 70 or after 12 years of the service of the judge.

Similarly, Indian proposals focus on enhancing the age of retirement for the judges. It is done in-order to facilitate them excel in their service like their counter-part judges in the foreign jurisdictions. Similarly, several senior lawyers with requisite expertise and experience decline to accept judge-ship due to the lower retirement age of 62, especially in the High Courts. By an enhanced age, this problem could be rectified as advocates would have greater incentive to forego their individual legal practice and function in the role of judges. Further, the relatively early retirement age

in India is often linked to the declining quality of judicial service and the inability of a judge to properly effectuate the stipulated judicial work-load. Overall, the proposals mention that such issues could be taken care of, if the retirement age of the judges would be increased.

Removal of Judges

Judges of the Supreme Court and the High Courts can be removed through a process called as ‘impeachment’. The process for removal of the judges is exactly the same for both the Supreme Court and the High Courts. This has been stated explicitly in the Constitution of India.

As a part of the process of impeachment, an inquiry is made into the grounds of removal of the judges. The grounds for removal include:

- (i) proven misbehaviour or
- (ii) incapacity. The inquiry into these grounds is made under the Judges Inquiry Act, 1986. This inquiry is done by a committee of three members, of which two are judges — one from the Supreme Court and second is the Chief Justice of High Court. If the complaint is against the high court judge then two judges from the Supreme Court constitute this Committee.

Based on the findings, the recommendation to impeach the judge has to be made by the Chief Justice of India to the President of India. If it is accepted then, the proposal of impeachment must be introduced in the Parliament for discussion by 100 MPs in Lok Sabha or 50 MPs in Rajya Sabha. The copy of the proposal is given to the concerned judge before the proceeding starts in the Parliament of India.

The impeachment process in the Parliament is governed under Article 124(4) of the Constitution. Under this scheme, the motion of impeachment has to be passed by the two-third majority members present and voting must be done separately in the each house of the Parliament. If the motion is passed then the formal announcement is done by the President of India. Therefore, the overall process of impeachment is lengthy and complex.

Consequently, in the history of Indian judiciary, this process has been successful only once. Justice Soumitra Sen, the Chief Justice of Calcutta High Court was impeached in 2011 for misappropriation of funds. Previously in 1991, the impeachment process was initiated against Justice V Ramaswamy, Chief Justice of Punjab and Haryana High Court but did not succeed on falling short of the two-thirds voting criteria.

As to the removal of judges in the lower judiciary, a District Judge or an Additional District Judge can be removed from his office by the State Government in consultation with the High Court.

“...The success of a democracy largely depends upon an impartial, strong and independent judiciary endowed with sufficient power to administer justice,”

“Although both judicial independence and judicial accountability are vital for maintaining the rule of law, they are sometimes projected as conflicting phenomenon. Judicial accountability has become an indispensable counterbalance to judicial independence.

“In that connection, accountability is fostered through the process of selection, discipline and removal found in the Constitution and the statutes in various judicial systems,”

Stressing the need for an independent judiciary, Justice P. Sathasivam, Chief Justice of India (2014) said, without it, there is a little hope for the rule of law.

COURTS AND JUDICIAL REVIEW

Judicial Review

Judicial review is a principle or a legal doctrine or a practice whereby a court can examine or review an executive or a legislative act, such as law or some other governmental or administrative decision, and determine if the act is incompatible with the constitution. In some countries, like the United States, France and Canada, judicial review allows the court to invalidate or nullify the law or the act of the legislature or the executive if they are found to be contrary to the constitution. In the United Kingdom, judicial review powers are restricted; the courts do not have authority to nullify or invalidate legislation of the Parliament. Likewise, there may be other countries where courts may have different kind of restrictions and may review only one branch.

Separation of Powers

The term ‘Separation of Powers’ (‘trias politica’) was coined by Montesquieu, an 18th century French social and political philosopher. His publication, ‘Spirit of the Laws’, inspired the ‘Declaration of the Rights of Man’ and the ‘Constitution of the US.’ Under his model, the political authority of the state is divided into legislative, executive and judicial powers. He asserted that, to most effectively promote liberty, these three powers must be separate and acting independently. Most democratic countries have adopted in their Constitutions partial or complete system of separation of powers horizontally among the three branches of the government or of the state—the legislative, the executive, and the judiciary. The doctrine of separation of powers ensures that each branch has distinct powers and responsibilities, based on organizational scheme of the Constitution. Furthermore, Constitution provides checks and balances so that no one branch exercises its supremacy over the others or misuse the powers provided to them. In this way, each branch puts a check on the other whenever there is an encroachment or conflict of powers among them and thereby preventing any concentration of powers in one branch. It is believed that the system of separation of powers may have few advantages: (1) it allows for liberty as it avoids concentration of powers in one branch; (2) it promotes efficiency; and (3) it facilitates and enriches democratic discussion through the powers of checks and balances of each branch. The powers of judicial

review allow judiciary to safeguard the checks and balances and to ensure the separation of powers of the other two branches of the government.

Another related concept is the doctrine of division of powers between the federal or centre and states or provinces. Federal government has law making powers different than that of states or provinces. *For example*, the subject matters on national defense and foreign affairs often fall with the federal government, and matters of prisons and direct taxes may fall with the state or provincial governments. The doctrine of division of powers stipulates and delimits subject matters or items on which the federal government and provincial/state governments have powers to make laws. The scheme may also involve common items on which both governments may have powers to make laws. Courts have judicial review powers to declare any law as unconstitutional if it is enacted by breaching the demarcation.

India, which is based on the parliamentary form of government, follows the system of separation of powers among the three branches of the government as prescribed in the Indian Constitution. The executive branch consists of the President, the Prime Minister and the bureaucracy. The legislative branch includes both houses of Parliament: the Lok Sabha and the Rajya Sabha. In the judiciary, the Supreme Court is the final authority for interpreting the constitution; judiciary is quiet independent of the other two branches.

Scope of Judicial Review in India

Judicial review is one of the essential features of the Indian Constitution; it has helped preserve the constitutional principles and values and the constitutional supremacy. The power of judicial review is available to the Supreme Court and the High Courts in different states in the matters of both legislative and administrative actions. Largely, this power has been applied for the protection and enforcement of fundamental rights provided in the Constitution. To a lesser extent, judicial review has also been used in matters concerning the legislative competence with regards to the Centre-State relations. With respect to judicial review on matters of executive or administrative actions, courts have employed doctrines such as ‘proportionality’, ‘legitimate expectation’, ‘reasonableness’, and the ‘principles of natural justice’. Essentially, the scope of judicial review in courts in India has developed with respect to three issues: (1) protection of fundamental rights as guaranteed in the Constitution; (2) matters concerning the legislative competence between the centre and states; and (3) fairness in executive acts. There are some of the salient features, issues, as well as examples of the ways in which judicial review is practiced by the Supreme Court of India.

Individual and Group Rights

Article 13(2) of the Constitution of India provides that: “The State shall not make any law which takes away or abridges

the rights conferred by Part III — Fundamental Rights, and any law made in contravention of this clause shall, to the extent of the contravention, be void.” B. R. Ambedkar, the chairman of the Constitution drafting committee of the Constituent Assembly, has termed this provision as the ‘heart of the Constitution’. This Article provides explicitly the powers of judicial review to the courts in the matters of fundamental rights. Furthermore, Article 32 offers the Supreme Court the power to enforce fundamental rights, and provides one the right to move the Supreme Court for the enforcement of those rights. From this article, the Supreme Court derives authority to issue directions or order or writs in the nature of: (1) habeas corpus, *i.e.*, to order the release of person who is unlawfully detained; (2) mandamus, *i.e.*, to order to a public authority to do its duty; (3) prohibition, *i.e.*, to prevent a subordinate court from continuing on a case; (4) quo warranto, *i.e.*, to issue directive to a person to vacate an office wrongfully occupied; and (5) certiorari, *i.e.*, to remove a case from a subordinate court and get the proceedings before it.

Like Article 32, Article 226 is a parallel provision for High Courts in states and allows one to institute similar writs in the High Courts for the enforcement of fundamental rights.

Courts, through its judicial review practice, have liberalized the doctrine of locus standi (right to appear before or petition the court) for the enforcement of fundamental rights of those who lack access to courts due to the reasons of poverty or social and economic disabilities. This method led to the development of Public Interest or Social Action Litigation (PIL or SAL) whereby any public spirited person can petition or write letters to courts on behalf of the human rights violation victims or aggrieved parties.

Centre-State Relations

Judicial review has also been used in matters concerning the legislative competence with regards to the Centre-State relations. Article 246 of the Constitution provides that the Parliament has exclusive powers to make laws with respect to matters itemized in the ‘Union List’ (List I of the Seventh Schedule of the Constitution). It provides further that both the Parliament and the Legislature of any State have powers to make laws with respect to matters enumerated in the ‘Concurrent List’ (List III of the Seventh Schedule of the Constitution). With respect to the States, it provides that the Legislature of any State has exclusive power to make laws with respect to matters listed in the ‘State List’ (List II of the Seventh Schedule of the Constitution). This Article delivers clear division of lawmaking powers (division of powers) as well as room for intersection between the Centre and the State. Judicial review helps demarcate the legislative competencies and ensures that Centre does not exert its supremacy over the state matters and likewise states do not encroach upon matters within the ambit of the Centre.

Fairness in Executive Actions

In matters of executive or administrative actions, judicial review practice of courts have often employed doctrines like ‘principles of natural justice’, ‘reasonableness’, ‘proportionality’, and ‘legitimate expectation’; discussed below are few examples.

There is a Latin phrase *Audi alteram partem*, which literally means ‘listen to the other side’. This phrase is an established principle in the Indian law practice and was applied by the Supreme Court in several cases including the landmark decision of ***Maneka Gandhi vs. Union of India***. Her passport was confiscated by the governmental authorities without giving her any chance of prior hearing. Invoking its judicial review powers in administrative matters, the Supreme Court held that in the matter of confiscation of passport a hearing should have been given to the petitioner in the interest of the principles of natural justice. Consequently, a hearing was given and the passport was returned to her. This is an example where the court adopted the principle of post decision-hearing, in situations of urgency where prior hearing is not feasible, and recognized that a chance of hearing cannot be debarred completely.

To deal with the questions of secrecy and related inefficiency and corruption in the administration, courts have adopted the judicial method of requiring disclosure of reasons in support of any order or decision delivered by the administration. This requirement holds good even when a statute or legislation does not provide for this requirement. Courts have emphasized that the right to provide reasons is an inherent part for justice delivery. Furthermore, judicial method of disclosure requirements deters the practice of arbitrary action by the officials and offers legal safeguard to the victims. Also, by notifying the aggrieved about the reasons, such disclosure satisfies the requirements of the principles of natural justice.

The courts have often used the principle of reasonableness in most cases that involve state action. The realm of contract law offers an example. Whenever states are parties to any contract, the courts attempt to distinguish such contracts with that of contracts entered between private individuals or parties. In that, private contracts concern personal interest;

state contracts concern public good and public interest and is expected to act reasonably and not with freedom of discretion.

Another principle frequently utilized by courts in administrative law, especially in service matters, is the principle of proportionality. Essentially, judicial review offers safeguards to the aggrieved against any sentence or punishment that is disproportionate and burdensome. *For example*, Supreme Court, in a case, has held that the quantum of penalty or punishment sentenced by a court martial on any army persons should not be disproportionate to the offence.

Basic Structure

The Supreme Court has extended the practice of judicial review to the matters concerning the constitutional amendments by developing the doctrine of the basic structure of the Constitution. Article 368 confers power to the Parliament to amend the Constitution: “...by way of addition, variation or repeal any provision of this Constitution...” This Article in its wordings does not provide any limitation on the power of the Parliament to amend the Constitution. And as discussed earlier, Article 13(2) states that “the State shall not make any law which takes away or abridges the rights conferred by Part III — Fundamental Rights.” Article 13(2) limits Parliament’s amending authority in matters of fundamental rights. In order to overcome this restriction, in 1971, the Parliament adopted the 24th Amendment to the Constitution altering Articles 13 and 368 in a way that allowed itself with unlimited powers of amendments including authority to amend the fundamental rights provisions.

The landmark 1973 Supreme Court case of ***Keshavananda Bharathi vs State of Kerela*** discussed the question about the unlimited constitutional amendment powers of the Parliament and established the doctrine of the basic structure or feature of the constitution. This doctrine invalidates any constitutional amendments that destroys or harms a basic or essential feature of the Constitution, like secularism, democracy and federalism. Supreme Court has also held judicial review to be the basic structure or feature of the Constitution; as a result, it can nullify any constitutional amendment that abolishes or disregards judicial review in issues concerning to fundamental rights of citizens.

MULTIPLE CHOICE QUESTIONS

- The highest and final judicial tribunal of India is:
 - President
 - Parliament
 - Supreme Court
 - Union cabinet
- Which of the following High Court has jurisdiction over more than one State/Union Territories?
 - Allahabad
 - Guwahati
 - Patna
 - Sikkim
- Who of the following decides the number of judges in a High Court?
 - The President
 - Chief Minister of the State
 - Prime Minister
 - Parliament
- The Chief Justice and other Judges of the High Court are appointed by the:
 - President
 - Chief Justice of the Supreme Court
 - Governor of the concerned state
 - Attorney General of India

5. The oath to a High Court Judge is administered by the:
 - A. Chief Justice of India
 - B. Chief Justice of High Court
 - C. President
 - D. Governor of the concerned state
6. The Supreme Court of India was set up under which of the following Act?
 - A. Pitt's India Act, 1784
 - B. Charter Act of 1833
 - C. Regulating Act, 1773
 - D. Indian Councils Act, 1892
7. In India, the power to increase the number of judges in the Supreme Court lies with:
 - A. The President of India
 - B. The Chief Justice of India
 - C. The Union Ministry of Law
 - D. The Parliament of India
8. Disputes between States of India comes to the Supreme Court under:
 - A. Original jurisdiction
 - B. Appellate jurisdiction
 - C. Advisory jurisdiction
 - D. None of these
9. Which of the following statements is correct with respect to retire judge of a High Court?
 - A. Cannot practice in the Supreme Court
 - B. Cannot practice in any High Court of India
 - C. Cannot practice in the High Court from where he has retired
 - D. None of the above
10. Who was the Chief Justice of India when public interest litigation (PIL) was introduced to the Indian Judicial System?

A. M. Hidayatullah	B. A.M. Ahmadi
C. A.S. Anand	D. P.N. Bhagwati
11. The civil affairs like marriage, divorce, inheritance etc. which has been authorized by the Constitution to make legal laws?
 - A. States, by the State List of the Constitution
 - B. Centre, by the Union List of the Constitution
 - C. Centre and States, by the Concurrent List of the Constitution
 - D. Religious authorities which have relation to individual affairs
12. Which of the following writs/orders of the High Court/Supreme Court is sought to get an order of an authority quashed?

A. Certiorari	B. Mandamus
C. Habeas Corpus	D. Quo Warranto
13. Why did one of the High Courts in India decree that "bandhs are unconstitutional and punitive"?
 - A. It adversely affects production
 - B. It is not part of a right to protest
 - C. It is not in exercise of a fundamental freedom
 - D. It infringes on the fundamental rights of some groups of people
14. Which of the following is at the apex of the subordinate criminal courts?
 - A. Supreme Court
 - B. High Court
 - C. Court of District Judge
 - D. Court of Sessions Judge
15. Preventive detention means:
 - A. Detention for interrogation
 - B. Detention after interrogation
 - C. Detention without interrogation
 - D. Detention for cognizable offence
16. Who is empowered to transfer a Judge from one High Court to another High Court?
 - A. President of India
 - B. Law Minister of India
 - C. The Union Cabinet
 - D. Chief Justice of India
17. The main function of the judiciary is:

A. Law execution	B. Law formulation
C. Law application	D. Law adjudication
18. The salaries and emoluments of the judges of the Supreme Court are charged on:
 - A. The Finance Commission
 - B. The Consolidated Fund of India
 - C. The Contingency Fund of India
 - D. The Reserve Bank of India
19. Which of the following "writs" of the High Court or the Supreme Court is sought to produce in the court a person, suspected to be missing/in custody?

A. Certiorari	B. Mandamus
C. Quo Warranto	D. Habeas Corpus
20. Where the High Courts in India first set up?
 - A. Delhi and Calcutta
 - B. Bombay, Madras, Calcutta
 - C. Bombay, Delhi and Calcutta
 - D. Madras and Bombay
21. What does the "Judicial Review" function of the Supreme Court mean?
 - A. Review its own judgement
 - B. Review the functioning of judiciary in the country
 - C. Undertake periodic review of the Constitution
 - D. Examine the constitutional validity of the laws
22. A writ of Mandamus can be issued by the Supreme Court to:
 - A. An official to perform public duty
 - B. The company to raise wages
 - C. The Prime Minister to dissolve the Cabinet
 - D. The Government to pay the salaries to employees

23. An appeal to the High Court lies in case the Session Court has awarded the punishment of:
 A. One year or more
 B. Two years or more
 C. Three years or more
 D. Four years or more
24. Under the Constitution, the power to issue a writ of Habeas Corpus is vested in:
 A. High Court alone
 B. Supreme Court alone
 C. Both Supreme Court and High Court
 D. All Courts down to the District Courts
25. A writ issued by the Supreme Court compelling a quasi-Judicial/public authority to perform its mandatory duty is:
 A. Mandamus
 B. Certiorari
 C. Prohibition
 D. Quo Warranto
26. How many types of writs can be issued by the Supreme Court?
 A. Three
 B. Four
 C. Five
 D. Six
27. The Supreme Court of India enjoys:
 A. Advisory jurisdictions
 B. Original jurisdictions
 C. Appellate and advisory jurisdictions
 D. Original, appellate and advisory jurisdictions
28. The Judges of the High Court hold office:
 A. During the pleasure of the Chief Justice of India
 B. Till they have attained 62 years of age
 C. Till they have attained 65 years of age
 D. As long as they desire
29. Which of the following is not the essential qualification for appointment as a Judge of the Supreme Court of India?
 A. Should be a citizen of India
 B. Should be at least 35 years of age
 C. Should be an eminent jurist
 D. Should have practiced for at least 10 years as an advocate in one or more High Courts
30. Judicial review in the Indian Constitution is based on:
 A. Rule of Law
 B. Due process of Law
 C. Precedents and Conventions
 D. Procedure established by Law

ANSWERS

1	2	3	4	5	6	7	8	9	10
C	B	D	A	D	C	D	A	C	D
11	12	13	14	15	16	17	18	19	20
C	D	C	D	C	A	D	B	D	B
21	22	23	24	25	26	27	28	29	30
D	A	D	C	A	C	D	B	B	D

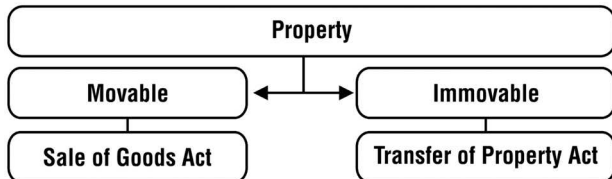
TOPICS OF LAW

LAW OF PROPERTY

Matters relating to property are governed by the Transfer of Property Act, 1882 in India. The object of the Transfer of Property Act (called the “TPA” under the unit of Property Law) is to regulate the transfer of property between living persons. It shall also serve as the code of contract law governing immovable property.

The Transfer of Property Act, 1882 provides clarity on the subject: it is a systematic and uniform law on the transfer of immovable property in India.

TYPES OF PROPERTY: MOVABLE AND IMMOVABLE



The term ‘Property’ or the term ‘Transfer of Property’ are not defined in the Act. Though not defined, the word ‘property’ has been used in a broad sense throughout the Act. Every interest or right that has an economic value denotes property. Property is of two kinds - movable and immovable. Movable property is one which can be transferred from one place to another and is governed by the Sale of Goods Act. Immovable property governed by the Transfer of Property Act is not defined in the Act. However, under Section 3, immovable property does not include standing timber, growing crops or grass. Immovable property includes lands, buildings and benefits arising out of land and things attached to the earth. In simple words, any property that is attached to the earth and cannot be transferred from one place to another is called immovable property.

In *Shanta Bai vs State of Bombay* (1958 SC 532), the distinction between movable and immovable property was observed. If the intention is to reap fruits from the trees, then it is regarded as an immovable property. But if the intention is to cut down the tree and use it as timber, it would be regarded as movable property.

In *Marshall vs Green* (33 LT 404), there was sale of trees wherein the trees were cut and taken away. The Court held that the sale was not that of immovable property.

TRANSFER

Who can transfer property?

Any person who is competent to contract (person above 18 years of age, having sound mind and not disqualified by any law in force) and authorized to dispose off property viz., owner of the property or any person authorized to sell the property, can make a transfer. The person who transfers the property is called the Transferor and the person to whom the transfer is made is called the Transferee.

How can property be transferred?

The mode of transfer of property varies according to the value of the property. If the value of the property is more than ₹ 100, then transfer has to be made only by a registered instrument. If the property is tangible and the value of the property is less than ₹ 100, irrespective of the value of the property, then transfer has to be made only by delivery; whereas for intangible property, irrespective of the value of the property, transfer has to be made only by registered instrument. (A registered instrument contains the records of the owner of the property - *for example*: shares, bonds, etc.)

A registered instrument has to be attested at least by two persons who are parties to the transfer. Attestation means affixing the signature in the registered instrument. The witnesses should mark their signature too on the instrument with an intention to attest. Registration of the instrument is an essential legal formality. During registration, the parties to the transfer must be present to affix their signatures in the document and complete the transaction with regard to immovable property. While doing so, the document containing the rights, obligations and liabilities of the parties should be clearly mentioned in the document which is registered. Registration shall take place by affixing a seal of the Registrar office which shall be subsequently included in the official records.

ESSENTIALS FOR A VALID TRANSFER

The following are the essentials for a valid transfer:

- In a transfer of property, the transfer should be between two or more living persons.
- The property that is going to be transferred should be free from encumbrances (hindrances of any form) and be of a transferable nature.
- The transfer should not be:
 - for an unlawful object or an unlawful consideration
 - involving a person legally disqualified to be a transferor or transferee.
- The transferor who transfers the property must:
 - be competent to make the transfer;
 - be entitled to the transferable property;
 - be authorized to dispose off the property if the property is not his own property.
- The transfer should be made according to the appropriate mode of transfer. Necessary formalities like registration, attestation, etc. should be complied with.
- In the case of a conditional transfer, where an interest is created on the fulfillment of a condition, the condition should not be illegal, immoral, impossible or opposed to public policy.

DOCTRINE OF ELECTION

According to the principle of Doctrine of Election [Section 35 of the TPA], a party to the transfer cannot accept as well as reject in a single transaction. In other words, while claiming advantage of an instrument, the burden of the instrument should also be accepted.

If a person to the transfer gets two selections (a benefit and a burden), then he has to accept both the benefit and the burden or none. He cannot accept the benefit and reject the burden in a single transaction.

Illustration: *A sells his garden as well as his house through one instrument to B. Whereas, B wants to retain only the house and wants to cancel the transfer regarding the garden. According to the Doctrine of Election, B has to retain the garden if he wants to retain the house, or cancel the whole transaction. B cannot retain the house and cancel the transfer regarding the garden.*

In *Cooper vs Cooper* (1874, LR 7 HL 53), the Court held that the doctrine of election applied on every instrument and all types of property.

DOCTRINE OF LIS PENDENS

The Doctrine of lis pendens emerged from the Latin maxim ‘*ut lite pendent nihil innovetur*’ meaning ‘nothing new should be introduced in a pending litigation’.

When a suit or litigation is pending on an immovable property, then that immovable property cannot be transferred.

To constitute lis pendens, the following conditions should be satisfied:

- A suit or proceeding involving the immovable property should be pending;
- The right to the immovable property must be in question in the suit or proceeding;
- The property in litigation should be transferred;
- The transferred property should affect the rights of the other person to the transfer.

Illustration: *A has a litigation in determining the title of the property with X. During the period of litigation, A initiates a sale of the property in favour of B. According to the Doctrine of Lis Pendens, the property cannot be sold because the property is involved in litigation.*

SALE

Sale means a transfer of ownership (right to possess something) of the property in exchange for a price (money) [Section 54 of the TPA]. Seller is the person who transfers the property and buyer is the person to whom the property is transferred. The consideration in a sale is usually money.

Illustration: *A sells his house for ₹ 2 lakhs to B. This is called sale. Here, A is the seller and B is the buyer. ₹ 2 lakhs is the consideration which is money.*

The following are the essentials for a sale to be valid:

- There should be two different parties—the seller and the buyer;
- Both the parties should be competent to transfer;
- The property to be transferred should be in existence;
- Consideration for the transfer should be money;
- The contract should be in accordance with law.

Rights and Liabilities of Buyer and Seller

Liabilities of Seller

- Disclose defects of the property which is known to the seller and is not known to the buyer;
- Produce to the buyer all documents of title (documents regarding ownership) relating to the property;
- Answer all the questions put to him by the buyer in relation to the property;
- Take care and preserve the property and the documents of title between the date of the contract of sale and the delivery of the property;
- Bear all public charges and rent with regard to the property up to the date of sale;
- To give the buyer possession of the property.

Rights of Seller

- Collect the rents and profits of the property till the ownership passes to the buyer;
- When ownership has passed on to the buyer from the seller before payment of money in full, claim the amount from the buyer that is due to him.

Liabilities of Buyer

- Disclose to the seller any fact with regard to the property that will increase the value of the property that is known to him;
- Pay to the seller purchase money at the time of completing the sale;
- To bear any loss that arises from the destruction, injury or decrease in value of the property after the ownership has passed to the buyer;
- To pay all public charges and rent that becomes payable after the ownership passed to the buyer.

Rights of Buyer

- After the ownership has passed to the buyer, perform any lawful action to increase the value of property and the rents and profits with regard to the property;
- Where the buyer has paid the purchase money, he can compel the seller for registration of sale.

In *Madam Pillai vs Badar Kali* (45 Mad 612 FB), the plaintiff being the first wife made a claim for maintenance to her husband. The husband orally transferred his lands of the value of ₹ 100 to the plaintiff. Later, he executed an instrument of sale in favour of the defendant for the same property. The plaintiff initiated a suit stating that the transfer was initially made in her favour and the subsequent sale to the defendant was not valid. The defendant stated that the transfer in favour of the plaintiff failed for want of a registered instrument. The Court held that the plaintiff acquired a title by way of oral transfer and she is entitled to the property though the instrument of sale was not registered.

LEASE

We must have observed some people in our locality give possession of the property to another for some period of time for money but does not constitute sale. It is called lease.

Lease is a transfer of right to enjoy a property for a specific period of time in consideration for a price. Lessor is the person who lets out the property for lease or transferor, and lessee is the person to whom the property is leased or the transferee in a lease. The lessee can also sublet the lease and the relation between the lessee and the sub-lessee will be that of lessor and lessee.

Illustration: *A for a period of 3 years lets out his property for use to B for a sum of ₹ 50000 this is called lease. A is the lessor and B is the lessee. If B sublets the property to C, then B will be the lessee and C will be the*

sub-lessee. The relation between B and C will be of that relation that is between A and B.

Rights and Liabilities of Lessor and Lessee

Rights and Liabilities of the Lessor

- Disclose defects of the property which is known to him and is not known to the lessee;
- Give possession of the property to the lessee;
- The lessor shall let out the property for lease to the lessee and make sure the lessee enjoys the property without any interruption upon payment of money.

Rights and Liabilities of the Lessee

- If any addition is made to the lease property during the lease period, then the addition can be comprised in the lease;
- If any part of the lease property is destroyed or made unfit by flood, fire, etc., then the lease shall be voidable by the lessee (the lessee gets a right to accept or reject depending on his wish);
- If the lessor fails to make repairs to the leased property, the lessee may make the repairs himself and recover the amount for the repairs from the lessor;
- If the lessor fails to make any payment with respect to the property and is recovered from the lessee, the lessee shall get it reimbursed from the lessor;
- At the time of completion of the lease, the lessee should hand over the property to the lessor in the state in which it was received;
- The lessee may transfer, rent or sublet the leased property with the consent of the lessor;
- Disclose to the lessor any fact that lies in the property that will increase the value of the property;
- The lessee should pay rent at a proper time and place as specified by the lessor;
- The lessee is bound to keep the leased property in good condition when he is in possession of the property;
- When notice of any defect is given to the lessee, he is bound to rectify it within a period of three months;
- The lessee may use the property and its products and must not do anything that is destructive to the property;
- The lessee should not erect any permanent structure in the property without the consent of the lessor;
- The lessee is bound to put the lessor in possession of the property for determination of lease.

In *Gajadhar vs Rombhaee* (1938 Nag. 439) a theatre was sub-leased and the sub-lessee was prevented from using the theatre by the original lessor on the ground that a notice was served on the lessee for determining the lease. The sub-lessee had to pay an additional amount to the proprietor (the original lessor) and then take the lease. It was held that there is violation on the part of the original lessor and the sub-

lessee can sue the original lessor for damages for violation of quiet enjoyment of the property.

EXCHANGE

When two persons transfer ownership of one thing for the ownership of another, it is called exchange [Section 118 of the TPA]. Transfer of property by exchange can be made only by way of sale. The rights and liabilities of the parties to exchange shall be that of the rights and liabilities of the buyer to the extent of receiving and that of the seller to the extent of giving.

Illustration: *A offers to sell his cottage to B. B in consideration of the cottage sells his farm to A. Instead of getting money for his cottage, A has received a farm from B. This is an example for Exchange. The rights and*

liabilities of A will be that of seller towards the sale of the cottage and will be that of buyer towards the sale of the farm. Similarly, the rights and liabilities of B will be that of buyer towards the sale of the cottage and that of seller towards the sale of the farm.

GIFT

A transfer of ownership of property that is made voluntarily and without consideration is called Gift [Section 122 of the TPA]. The person making the transfer is called the donor and the person to whom it is made is called the donee. If the donee expires before accepting the gift, it becomes void.

Illustration: *A gives his car to B. B accepts the car, but B does not pay anything in return for the car. This is known as Gift. In this case, A is the donor and B is the donee.*

Sale, Lease, Exchange and Gift

Basis	Sale	Lease	Exchange	Gift
Transfer	Transfer of ownership for price	Transfer of limited ownership for rent	Transfer of ownership for some other property	Transfer of ownership without consideration
Consideration	Price	Rent	Another Property	No consideration
Mode	Sale deed should be registered	Lease deed should be registered	Sale deed should be registered	Gift of immovable property should be registered.

INTELLECTUAL PROPERTY

Intellectual property is another kind of property which does not involve movable or immovable property. Any work such as invention, artistic work or literary work, design, symbol, name, image, etc. created by the knowledge or intellectual capacity of a person is called intellectual property. Such intellectual property can be protected by law.

The following are the types of intellectual property:

- Trademarks;
- Patents;
- Copyrights;
- Designs;
- Geographical indications.

Trademarks: Any mark put on the product such as the name of a product or service (Brand name) which helps people to distinguish it from other products and services is called a Trademark. The names of a products, companies, etc. are Trademarks. (*Example:* Apollo Pharmacy, Titan watches, etc.)

Patents: The right granted over the invention of a product is called Patent. In other words, when a person makes a new product, he can get a Patent for the product. The person who made the invention is called Patent owner. The Patent owner can decide upon the usage of the product and who should use the product.

Copyrights: Copyright is the right obtained over the creation of any literary or artistic work. Books, music, films, paintings, scriptures, etc. are covered under Copyright. Any

person who wants to write a book or make a film based on the writing or idea of another person should seek his permission for the idea that he has used.

Designs: Any design invented by a person shall be protected by Designs. Shape, colour, line, pattern, etc. are covered under Designs. (*Example:* Design of the wrapper of a biscuit or chocolate, Design of a car, Design of the shape of a cold drink bottle, etc.)

Geographical Indications: Certain products or goods have a specific geographical origin and possess characteristics that attribute to the place of origin. Such goods and products bear the name of the geographical origin. This is called geographical indication. (*Example:* Darjeeling tea, Tirupathi laddu, etc.)

A number of international treaties deal partly or entirely with the protection of geographical indications or appellations of origin. Below are links to relevant treaties administered by WIPO, as well as to the World Trade Organization's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

Relevant Treaties Administered by WIPO

- Paris Convention
- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods
- Lisbon Agreement
- Madrid Agreement
- Protocol Relating to the Madrid Agreement

LAW OF CONTRACTS

Law of Contracts in India defines contract as an agreement enforceable by law which offers personal rights, and imposes personal obligations, which the law protects and enforces against the parties to the agreement. The general law of contract is based on the conception, which the parties have, by an agreement, created legal rights and obligations, which are purely personal in their nature and are only enforceable by action against the party in default.

Section 2(h) of the Indian Contract Act, 1872 defines a contract as “An agreement enforceable by law”. The word ‘agreement’ has been defined in Section 2(e) of the Contract Act as ‘every promise and every set of promises, forming consideration for each other’.

Contracts have always been an indispensable part of our lives. Knowingly or unknowingly, we enter into a contract hundreds of times in a year. Even when we buy candy, we are entering into an agreement with the shopkeeper. Every time we visit a restaurant or book a cab, we are entering into a contract. Although the law of contract is developing with time, the jurisprudence of contract remains the same. We know what a contract is all about but new situations arise every day and a new question appears in the mind of whether this particular agreement should be regarded as a contract or not!

An Agreement (Section 2(e))

An agreement is a promise between two entities creating mutual obligations by law. Section 2(e) of the Indian Contract Act, 1872 defines an agreement as ‘Every promise and every set of promises, forming the consideration for each other, is an agreement’.

To form an agreement, the following ingredients are required:

- **Parties:** There need to be two or more parties to form an agreement.
- **Offer/ Proposal:** When a person signifies to another his willingness of doing or omitting to do something with a view to obtain other’s assent. [Section 2(a)]
- **Acceptance:** When the person to whom the proposal is made signifies his assent for the same thing in the same sense as proposed by the offeror. [Section 2(b)]
- **Promise:** When a proposal is accepted, it becomes a promise. [Section 2(b)]
- **Consideration:** It is the price for the promise. It is the return one gets for his act or omission. [Section 2(d)]

Contracts may come in many forms, each with its own use and purpose.

Express and Implied Contracts

An express contract has terms that are stated expressly, or openly, in either writing or orally, at the time of contract formation. These are the kinds of contracts that most people think of when they think of contracts.

Implied contracts, on the other hand, have terms that must be inferred by actions, facts, and circumstances that would indicate a mutual intent to form a contract. Such contracts may be as binding as express contracts, despite their lack of formal agreement, although if a court perceives doubts in minds of the parties as to whether or not a contract existed, it may choose not to enforce such a contract.

Unilateral and Bilateral Contracts

Unilateral contracts involve only one party promising to take action or provide something of value. These are also known as one-sided contracts, and a common example of them is when a reward is offered for something being found: the party to whom the reward is offered is under no obligation to find the lost item, but if they do find it, the offering party is under contract to provide the reward.

Bilateral contracts, on the other hand, involve both parties agreeing to exchange items or services of value. These are also known as two-sided contracts and are the kind of contract that is most commonly encountered.

Unconscionable Contracts

Unconscionable contracts are contracts that are considered unjust by being unfairly weighted to give advantage to one side over the other. Examples of elements that may make a contract unconscionable include:

- A limit on the damages a party may receive for breach of contract.
- A limit on the rights of a party to seek satisfaction in court.
- An inability to have a warranty honoured.

Whether or not a contract is unconscionable is a matter left for interpretation by the courts. They usually rule a contract to be unconscionable if it is perceived as being a contract that no mentally able person would sign, that no honest person would offer, or that would undermine the court’s integrity where it was enforced.

Adhesion Contracts

An adhesion contract is one that is drafted by a party with a great deal more bargaining power than the other party, meaning that the weaker party may only accept the contract or not. Often called “take it or leave it” contracts, these

contracts lack much, if any negotiation, since one party will have little to nothing to negotiate with. Such contracts should not be confused with unconscionable contracts, since a lack of bargaining power does not necessarily mean that the terms set out will be unfair. That said, courts may still not enforce adhesion contracts if they believe a meeting of the minds never existed.

Aleatory Contracts

Aleatory contracts are agreements that are not triggered until an outside event occurs. Insurance policies would be examples of this, as they are agreements involving fiscal protection in the face of unpredictable events. In such contracts, both sides assume risks: the insured that they are paying for a service they will never receive, and the insurer that they must pay out potentially more than they receive from the insured.

Option Contracts

Option contracts allow a party to enter another contract with another party at a later time. Entering into a second contract is called exercising the option, and a good example of this is in real estate, where a prospective buyer will pay a seller to take a property off the market, then, at a later date, have a new contract made to buy the property outright, should they choose to do so.

Fixed Price Contracts

Fixed price contracts involve a buyer and seller agreeing on a fixed price to be paid for a project. Also known as lump sum contracts, these contracts entail a great deal of risk for the seller, since if the project takes longer or is more extensive than anticipated, they will still only be paid the agreed-upon price.

When Does a Contract Exist?

When a party files a suit claiming a breach of contract, the first question the judge must answer is whether a contract existed between the parties. The complaining party must prove four elements to show that a contract existed:

1. **Offer:** One of the parties made a promise to do or refrain from doing some specified action in the future.
2. **Consideration:** Something of value was promised in exchange for the specified action or non-action. This can take the form of a significant expenditure of money or effort, a promise to perform some service, an agreement not to do something, or reliance on the promise. Consideration is the value that induces the parties to enter into the contract.

The existence of consideration distinguishes a contract from a gift. A gift is a voluntary and gratuitous transfer of property from one person to another, without something of value promised in return. Failure to

follow through on a promise to make a gift is not enforceable as a breach of contract because there is no consideration for the promise.

3. **Acceptance:** The offer was accepted unambiguously. Acceptance may be expressed through words, deeds or performance as called for in the contract. Generally, the acceptance must mirror the terms of the offer. If not, the acceptance is viewed as a rejection and counter-offer.

If the contract involves a sale of goods (*i.e.*, items that are movable) between merchants, then the acceptance does not have to mirror the terms of the offer for a valid contract to exist, unless:

- (a) the terms of the acceptance significantly alter the original contract; or
- (b) the offeror objects within a reasonable time.

4. **Mutuality:** The contracting parties had “a meeting of the minds” regarding the agreement. This means the parties understood and agreed to the basic substance and terms of the contract.

When the complaining party provides proof that all of these elements occurred, that party meets its burden of making a *prima facie* case that a contract existed. For a defending party to challenge the existence of the contract, that party must provide evidence undermining one or more elements.

How is a Contract Interpreted?

The court reads the contract as a whole and according to the ordinary meaning of the words. Generally, the meaning of a contract is determined by looking at the intentions of the parties at the time of the contract’s creation. When the intention of the parties is unclear, courts look to any custom and usage in a particular business and in a particular locale that might help determine the intention. For oral contracts, courts may determine the intention of the parties by considering the circumstances of the contract’s formation, as well as the course of dealing between the parties.

OFFER AND ACCEPTANCE

Offer/proposal (Section 2(a))

- The entire process of entering into a contract begins with the proposal or an offer made by one party to another. The proposal must be accepted to enter into an agreement.
- According to the Indian Contract Act 1872, proposal is defined in Section 2(a) as “when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer.”

Features of a valid offer

The person making the offer/proposal is referred to as the “promiser” or the “offeror”. And the person who accepts an offer is referred to as “promisee” or the “acceptor”.

- The offeror must express his willingness to do or abstain from doing an act. Only willingness is not adequate. Or just an urge to do something or not to do anything will not be an offer.
- An offer can either be positive or negative. It can be a promise to do some act, and can also be a promise to abstain from doing any act/service. Both are valid offers.

The element of a valid offer

Here are some essentials which make the offer valid:

There must be two parties: There have to be at least two parties: a person making the proposal and the other person agreeing to it. All the persons are included *i.e.*, legal persons as well as artificial persons.

Every proposal must be communicated: Communication of the proposal is mandatory. An offer is valid if it is conveyed to the offeree. The communication can either be expressed or implied. It can be communicated by terms such as word of mouth, messenger, telegram, etc. Section 4 of the Indian Contract Act says that the communication of a proposal is complete when it comes to the awareness of the person to whom it is made.

Example

‘A’ proposes to sell a car to ‘B’ at a certain price. Once ‘B’ receives the letter, the proposal communication is complete.

It must create legal relations: An offer must be such that when accepted it will result in a valid contract. A mere social invitation cannot be regarded as an offer, because if such an invitation is accepted it will not give rise to any legal relationship.

Example

‘A’ invited ‘B’ to dinner and ‘B’ accepted the invitation. It is a mere social invitation. And ‘A’ will not be liable if he fails to provide dinner to B.

It must be certain and definite: The terms of the offer must be certain and clear in order to create a valid contract, it must not be ambiguous.

It may be specific or general: The specific offer is an offer that is accepted by any specific or particular person or by any group to whom it is made. Whereas, the general offers are accepted by any person.

CLASSIFICATION OF OFFER

An offer can be of many types, ranging across the spectrum. There are basically 7 kinds of offers:

- Express offer
- Implied offer
- General offer
- Specific offer
- Cross offer
- Counter offer
- Standing offer

Express offer and Implied offer (Section 9)

Section 9 of The ICA, 1872 defines both of them as: *In so far as the proposal or acceptance of any promise is made in words, the promise is said to be expressed. In so far as such a proposal or acceptance is made otherwise than in words, the promise is said to be implied.*

Therefore, any offer that is made with words, it may be regarded as express. Any promise that is made otherwise than in words is implied. A bid at an auction is an example of an Implied offer.

General Offer

A General Offer is an offer that is made to the world at large. The genesis of a General Offer came about from the landmark case of *Carlill vs. Carbolic Smoke Ball Co.* A company by the name Carbolic Smoke Ball offered through an advertisement to pay 100 Pounds to anyone who would contract increasing epidemic influenza, colds or any disease caused by cold after taking its medicine according to the prescribed instructions. It was also added that 1000 Pounds have been deposited in Alliance Bank showing our sincerity in the matter. One customer Mrs Carlill used the medicine and still contracted influenza and hence sued the company for the reward. The Defendants gave the argument that the offer was not made with an intention to enter into a legally binding agreement, rather was only to puff the sales of the company. Moreover, they also contended that an offer needs to be made to a specific person, and here the offer was not to any specific person and hence they are not obliged to the Plaintiff.

Setting aside the arguments of the Defendant, the bench stated that in cases of such offers *i.e.*, general offers, there is no need for communication of acceptance, anyone who performs the conditions of the contract is said to have communicated his/her acceptance, and moreover, the money deposited by the Defendant in Alliance Bank clearly shows that they intended to create a legally binding relationship. Hence the Plaintiff was awarded with the amount. An Indian authority in this regard is *Lalman Shukla vs. Gauri Dutt*, wherein a servant was sent by his master to trace his missing nephew. In the meanwhile, he also announced a reward for anyone finding his nephew, this in itself is an example of an offer that is made to the world at large and hence a General Offer.

Valid acceptance based on fulfilment of condition.

This concept has been given statutory authority under section 8 of the ICA, 1872:

Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

This section was applied by YEARS CJ of Allahabad high court in the case of **Har Bhajan Lal vs. Har Charan Lal**, wherein the father of a young boy who ran from home issued a pamphlet for a reward for anyone who would find him. The Plaintiff found him at the railway station and sent a Telegram to his father. The Court held that the handbill was an offer that was made to the world at large and anyone who fulfilled the conditions is deemed to have accepted it. In the State of Bihar vs. Bengal Chemical and Pharmaceutical Works LTD, the Patna HC held that where the acceptance consists of an act, e.g., dispatching some goods, the rule that there shall be no communication of acceptance will come into play.

General offer of continuing nature

When a general offer is of continuing nature, like it was in a carbolic smoke ball case, it can be accepted by a number of people till it is retracted. However, when a similar offer requires information regarding a missing thing, it is closed as soon as the first information comes in.

Specific Offer

A specific offer is an offer that is made to a specific or ascertained person, this type of offer can only be accepted by the person to whom it is made. This concept was seen briefly in the case of **Boulton vs. Jones**, wherein the Plaintiff had taken the business of one Brocklehurst, the defendant used to have business with Brocklehurst and not knowing about the change in ownership of business, sent him an order for certain goods. The Defendant came to know about the change only after receiving an invoice, at which point he had already consumed the goods. The Defendant refused to pay the price, as he had a set off against the original owner, for which the plaintiff sued him.

The Judges gave a unanimous judgement holding the Defendant not liable. Pollock CB held that the rule of law is clear, if you intend to contract with A, B cannot substitute himself as A without your consent and to your disadvantage. It was also held that whenever a person makes a contract with a specific personality, a specific party, so to say, for writing a book, for painting a picture or for any personal service or if there is any set off due from any party, no one

has the authority to come in and maintain that he is the party contracted with.

Cross Offer

When two parties make an identical offer to each other, in ignorance of each other's offer, they are said to make cross offers. **Cross offers are not valid offers.** For example — if A makes an offer to sell his car for 7 lakhs to B and B in ignorance of that makes an offer to buy the same car for 7 lakhs, they are said to make a cross offer, and there is no acceptance in this case, hence it cannot be a mutual acceptance.

Basic essentials of a cross offer

- 1. Same offer to one another:** When the offeror makes an offer to the offeree and the offeree without prior knowledge makes the same offer to the offeror, then both the object and the party remain the same.
- 2. Offer must be made in ignorance of each other:** The two parties must make their offer in ignorance of each other.

An important case in this aspect is the English case of **Tinn vs. Hoffman**, the defendant wrote to the complainant an offer to sell him 800 tons of iron at 69s per ton, at the same time the complainant also wrote to the defendant an offer to buy the iron at similar terms. The issue in this case was that, was there any contract between the parties, and would simultaneous offers be a valid acceptance. The court held that these were cross offers that were made simultaneously without knowledge of one another and would not bind the parties.

Here it is imperative to deduce that for a valid contract to be formed there needs to be an offer and acceptance of the same, whereas in a cross offer there is no acceptance, but only simultaneous offers being and therefore a cross offer will not lead to the formation of a contract.

Counter Offer

When the offeree offers a qualified acceptance of the offer subject to modifications and variations in terms of the original offer, he is said to have made a counter offer. A counter offer is a rejection of the original offer. An example of this would be if A offers B a car for 10 lakhs, B agrees to buy for 8 lakhs, this amounts to a counter offer and it would mean a rejection of the original offer. Later on, if B agrees to buy for 10 lakhs, A may refuse. Sir Jenkins CJ in **Haji Mohd Haji Jiva vs. Spinner**, held that any departure from original offer vitiates acceptance. In other words, an acceptance with a variation is not acceptance, it is simply a counter proposal which must be accepted by the original offeror, for it to formulate into a contract.

The Bombay High Court gave this decision based upon the landmark judgement of *Hyde vs. Wrench*, in which an offer to sell a farm for 1000 pounds was rejected by the Plaintiff, who offered 950 for it. Subsequently the Plaintiff gave an acceptance to the original offer. Holding that the Defendant was not bound by a contract, the court said that the Plaintiff accepted the original offer of buying the farm at the price of 1000 pounds, it would have been a completely valid contract, however he gave a counter proposal to it, thus rejecting the original offer.

Partial acceptance

Counter offer also includes within its contours Partial acceptance, meaning that a party to the contract cannot agree to those conditions of the agreement that favour him and reject the rest, the acceptance should be of the complete agreement *i.e.*, all its parts. In *Ramanbhai M. Nilkanth vs. Ghashiram Ladli Prasad*, the plaintiff made an application for certain shares in a company with the underlying condition that he would be made the cashier in its new branch. The Company did not comply with this and hence the suit. The court held that the Petitioners application for shares was condition on him being made the cashier and that he would have never applied for the shares had there been no such condition.

Acceptance of a counter proposal

In *Hargopal vs. People's Bank of Northern India LTD*, an application for shares was made on a conditional undertaking by the bank that the applicant would be made the director of the new branch. The shares were allotted to him without fulfilling the condition. The applicant did not say anything and took his dividends, a subsequent suit by him failed as the court held that he through his conduct had waived the condition. **When a counter proposal is accepted the contract arises in terms of the counter proposal and not in terms of the original contract.**

Standing Offer

An offer which remains open for acceptance over a period of time is called a standing offer. Tenders that are invited for supply of goods is a kind of Standing Offer. In *Percival Ltd. vs. London County Council Asylums and Mental Deficiency Committee*, the Plaintiff advertised for tenders for supply of goods. The Defendant took the tender in which he had to supply to the company various special articles for a period of 12 months. In-between this the Defendant didn't supply for a particular consignment. The Court held that the Tender was a standing offer that was to be converted into a series of contracts by the subsequent acts of the company and that an order prevented the possibility of revocation, hence the company succeeded in an action for breach of contract.

Difference between an Offer and Invitation to Offer

Although Invitation to offer is not a type of offer *per se*, it is imperative to distinguish both to even construe what an actual offer is. An invitation to offer is an offer to negotiate, an offer to receive offers, offers to chauffeur. An offer is a final expression of willingness to get into a contract upon those following terms. The concept of Invitation to offer was explained in the Privy Council case of *Harvey vs. Facey*, the Plaintiffs in this asked two questions from the Defendant *i.e.*, Would you sell me your Bumper Hall pen, telegram at the lowest price, the Defendant only gave the answer to the latter question, post which he refused to sell. The Court held that the Defendant was not to sell as he had only answered the second question and reserved the same for his first question. Thus, this clearly shows the distinction between an offer and invitation to offer.

In *Adikanda Biswal vs. Bhubaneswar Development Authority*, when a development authority made an announcement for allotment of plots on first come first serve basis on payment of full consideration. An application against this with full consideration was only considered to be an offer, as the Development authority only gave an invitation to offer, and the offer can only be formalized into a contract when it is accepted by the development authority.

Legal rules and conditions for acceptance

- **Acceptance must be absolute and unqualified:** The offeree's approval cannot be conditional. *For example*, 'A' wants to sell her car to 'B' for ₹ 2 lakh, 'B' can't come back and says that she accepts the offer but will buy the same for ₹ 1 lakh.
- **Acceptance must be told to the offeror:** If the acceptor just accepts the offer in his head and he does not mention the same to the offeror, it can not be called an Acceptance, whether in an express manner or an implied manner.
- **Acceptance must be recommended in the following mode:** Acceptance is sometimes required in a prescribed/specified communication mode.
- **In a reasonable amount of time, the acceptance is given:** It's very rare that an offer is always to get acceptance at any time and at all times. Therefore, the offer defines a time limit. If it does not, it should not be acknowledged forever.

Mere silence is not acceptance

If the offeree fails to respond to an offer made to him, his silence can not be confused with acceptance. But, there is an exception to this rule. It is stated that, within 3 weeks of the date on which the offer is made, the non-acceptance

shall be communicated to the offeror. Otherwise, the silence shall be communicated as acceptance.

When communication is complete

- **Communication of acceptance (Section 4):** Communication of acceptance is complete when it is put in the course of transmission to him as to be out of the power of the acceptor to withdraw the same and when it comes to the knowledge of the proposer.

Time of revocation of acceptance

An acceptance may be revoked at any time, but not afterward, before the communication of the acceptance is complete as against the acceptor.

Acceptance with subsequent condition

In the Law of contract, the term “condition” is used in a loose sense and it is used synonymously as “terms”, “condition” or “clause”. In its proper sense, the term condition means some operative term subsequent to acceptance and prior to acceptance, it is a fact on which the rights and duties of the parties to the contract depend on. The fact can be any act or omission by any of the contracting parties, an act of the third party or happening or not happening of any natural event. Conditions are of three types, which are as follows:

- **Express condition:** In an express condition, certain facts can operate as condition as it has been expressly agreed upon by the parties to the contract;
- **Implied condition:** When certain facts which operate as a condition are not expressly mentioned by the parties but can be inferred by the conduct of the parties to contract is known as an implied condition;
- **Constructive condition:** When the court believes that the parties to a contract must have intended to operate certain conditions because the court believes that the Justice requires the presence of the condition. These conditions are known as constructive conditions.

A contract comes into force by the acts or conduct of one party to the other party. The acts or conduct of the party can be turned into a promise only by meeting of mind or an agreement between both the parties. An acceptance that carries a subsequent condition may not have the effect of counter-proposal. Thus, where a person ‘A’ accepted the terms of the contract for the sale of a good by accompanying the acceptance with the warning that if money was not delivered to him by a particular date, then the contract will remain repudiated. The acceptance of the offer would not be deemed to be a counter-proposal.

Acceptance of counter proposals

In certain cases, the person whose proposal or offer has not been accepted absolutely or unqualifiedly by the offeree as the

offeree attaches a counter-proposal to the original proposal, the offeror becomes bound by the counter-proposal. If, by the conduct of the offeror, he indicates that he has accepted the terms of the counter-proposal laid down by the offeree.

In the case of *Hargopal vs. People’s Bank of Northern India Ltd.*, an application for shares was made with a conditional undertaking by the bank that the applicant would be appointed as a permanent director of the local branch. The shares were allotted to the applicant by the Bank without fulfilment of the condition and the applicant was given his shares and the applicant accepted the same without any protest regarding the non-fulfilment of the terms of the contract. When there arose a dispute between the parties in a court of law, the applicant contended that the allotment was void on the ground of non-fulfilment of the conditions which were stipulated in the original contract. The court rejected the contention from the applicant’s side by holding that the same can not be pleaded by him as he has waived the condition by his conduct.

In *Bismi Abdullah and sons vs. FCI*, the court held that where tenders were invited subject to the deposit of money, it was open to the tenderers to waive the requirement and acceptance given to a tender without making the deposit is binding upon the tenderer.

In *D.S. Constructions Ltd vs. Rites Ltd*, the court held that where the tenderer made variations to the terms of his tender within the permissible period, but the variations were only partly accepted by the other side without the tenderer’s consent lead to repudiation of the contract and so there was no contract at all. Therefore, the earnest money deposited by the party can not be forfeited.

Provisional Acceptance

Provisional acceptance is the type of acceptance by the offeree which is made subject to the final approval. A provisional acceptance does not ordinarily bind either party to the contract until the final approval is given to the provisional acceptance made by the offeree. Until the approval is given, the offeror is at liberty to cancel the offer made to the offeree.

In *Union of India vs. S. Narain Singh*, the High Court of Punjab held that where the condition attached to the auction sale of the liquor was that the acceptance of the bid shall be subject to confirmation by the Chief Commissioner. The contract will not be complete till the highest bid is confirmed by the Chief Commissioner and till the confirmation is made the person whose bid is provisionally accepted is at liberty to withdraw the bid.

Essential Elements of a Contract

Section 10 of the Contract Act, 1872 provides for the essential elements of a valid contract. To constitute a valid contract, following elements are essential—

1. Offer and Acceptance: An offer or proposal is an expression of willingness to do or not to do something to obtain the assent of the other person. When an offer is made by one party and communicated to the other party to obtain his assent, the other party either accepts it or rejects it or he can make a counter offer. If he accepts, his act is known as 'acceptance', he becomes offeree or acceptor. An agreement comes into existence. If he makes a counter offer, he becomes the offeror or proposer and it is upon the original offeror to accept the offer and complete the agreement or reject it.

Offer and Invitation to Offer

Further an offer is different from an invitation to offer. *For example*, the display of goods in a shop window or the display of books in a book store is not an offer to sell the book rather it is an invitation for the buyer to make an offer to purchase the book. Therefore, the buyer cannot force a shopkeeper to sell particular goods which are displayed in his showcase. He can just make an offer to buy those goods, it is upon the shopkeeper to accept or reject the offer to make a contract.

Offer and General Offer

Further, an offer may be a specific offer or a general offer. A specific offer is an offer made to a particular person and it can be accepted only by him. A general offer is an offer to the world at large. Anyone can accept it, fulfil the terms of the offer and make it into an agreement. *For example*, Mr. X makes an offer that whoever finds his lost dog, will get ₹ 10,000 from him, through a newspaper advertisement. If Mr. V reads the advertisement and finds his lost dog, he is entitled to get the said amount, as a valid contract has been made.

Communication of Offer

One important thing has to be noted that an offer must be communicated to the other party *i.e.*, a valid acceptance is a must which can take place only after the knowledge of the offer. Take the above mentioned example and suppose Mr. V has not read the advertisement. He has just got the dog stray on the road and submitted it to the police. Can he claim the amount later on? Or, suppose Mr. Y happens to be the neighbour of Mr. X. He finds the dog during his morning walk. He takes it to the owner, Mr. X. Later on, he comes to know that a reward of ₹ 10,000 is announced for finding the lost dog. Can he claim so, from Mr. X? The answer to both the questions is negative. There was no communication of the offer to Mr. Y. Hence, there can not be a valid acceptance of the offer and hence, no contract is formed.

2. Intention to Create Legal Relationship: An offer must be made with an intention to create legal relationship. An offer is not a valid offer if it does not create a legal obligation upon the other party. Mere trifles do not constitute

an offer. *For example*, an offer to a friend to show movie or a dinner at a five star hotel cannot be a valid offer. This is because an intention to create legal relationship is not evident in such case.

3. Parties must be Competent to Contract: Every person who has attained the age of majority and who has not been disqualified from entering into a contract is competent to contract. Therefore, the following persons are parties incompetent to contract—

- A minor *i.e.*, a person below the age of 18 years,
- A person of unsound mind or insane,
- A person disqualified by any law to contract. Thus, an agreement with a minor is absolutely void.

In a very popular case, *Mohirt Bibee vs. Dharmodas Chose*, [ILR (1903) 30 Cal 539] a minor mortgaged his house in favour of a money-lender and received certain amount from him. The Privy Council held that the money-lender is not entitled to get the money back which was advanced to a minor. This is because only a person capable of entering into an agreement can make a contract. No contract took place in the above case. The agreement was void ab initio.

4. Lawful Consideration and Object: A contract cannot be made and enforced for an unlawful or illegal object, e.g. drug-trafficking or smuggling. Suppose, a trader in narcotics has an agreement with a supplier to supply one quintal of opium every month at a price pre-determined. If the supplier stops his supply without notice, to the financial loss of the trader, the trader can not sue the supplier for enforcement of the contract. This is only because of illegality of the object.

As per the Contract Act, the object and consideration of an agreement is unlawful, if—

- it is forbidden by law,
- it is of such nature that, if permitted, it would defeat the provisions of any law,
- it is fraudulent,
- it involves injury to the person or property of another, and
- the court regards it as immoral or opposed to public policy.

Similarly, a contract-killer can not sue the other party if he refuses to pay howsoever big amount, after the performance of the illegal contract *i.e.*, killing of someone.

5. Free Consent of the Parties entering into Contract: Consent is the essence of a contract and the consent must be free. A consent is said to be a free consent when it is not vitiated by—

- (a) coercion,
- (b) undue influence,

- (c) fraud,
- (d) misrepresentation, and
- (e) mistake.

6. Must not be Expressly Declared Void: Void agreements are those agreements which are not enforceable at law. The Indian Contract Act, 1872 declares certain agreements to be specifically void. These agreements are—

- (a) Agreement in restraint of marriage.
- (b) Agreement in restraint of trade.

- (c) Agreement in restraint of legal proceedings.
- (d) Agreement which is not certain or capable of being made certain.
- (e) Wagering agreements.
- (f) Agreements to do impossible acts.
- (g) Agreement with a minor.
- (h) Agreement without consideration.
- (i) Agreements which has been declared by laws as illegal or opposed to public policy.

LAW OF TORTS

FUNCTIONAL DEFINITION

‘Tort’ essentially means a ‘wrong’ and originates from the Latin word ‘tortum’, which means ‘twisted’ or ‘crooked’. In law, tort is defined as a civil wrong or a wrongful act, of one, either intentional or accidental, that results in the injury or harm to another who in turn has recourse to civil remedies for damages or a court order or injunction. The definitional features of tort are that it is a civil wrong as distinguished from criminal wrong; both the procedures and remedies are different in civil law and criminal law. In a criminal case, the state initiates legal proceedings in a criminal court on behalf of the victim and is punished when found guilty by the court. A civil action, like the tort suit, is pursued in a civil court where the victim or victim’s representatives or survivors prosecute the wrong-doer usually for compensation in the form of money payment and also at times for other liability or injunction. Generally, tort cases result in compensating the victim and criminal lawsuits are about punishments. Injunctions are court orders that, *for example*, may prohibit the wrong-doer from harming the victim or prevent the former from trespassing the latter’s property. Occasionally, courts may also grant punitive damages, which are costs or damages in excess of the compensation. Tort can be intentional or accidental and include wrongful acts of the kinds of battery and assault (physical or mental injury to the claimant), nuisance (intrusion with one’s enjoyment), defamation (where claimant’s reputation is injured), property damage, trespass (to claimant’s land or property), negligence (careless behaviour), and others; some of these are discussed in the paras below. These wrongs may also have aspects and overlaps with other areas of law like the criminal law and the contract law, examples of which may be found in the chapters on criminal law and contract law elsewhere; here, we are concerned only with the some of the basic features of tort law in relation to these wrongs.

Sources of Tort Law — Common Law Versus Statute Law

Torts are mostly a common law subject; it is common law in the sense that tort law or the rules of tort law developed not from a statute or an act passed by the Parliament, but from centuries of judicial decisions - case by case in English courts as well as in courts of other countries following common law system like India and the United States of America. In other words, *for example*, in India, both criminal law and contract law are based on statute laws like the Indian Penal Code and the Indian Contract Act respectively; however, there are no statutes that comprehensively deal with tort law as a separate area of law. A contract lawyer would look up the Contract Act to look for rules to be applicable in a given fact situation. A tort lawyer would look for rules as developed by courts in similar cases.

However, there are couples of areas of tort law where countries have enacted statute laws. In India for instance, automobile accidents as well as harms caused to consumers of goods and services are covered by the Motor Vehicle Act of 1988 and the Consumer Protection Act of 1986 respectively. What this means is that if a case involves a car accident or injury due to defective products or deficiency in services the set of rules of the respective statutes apply.

KINDS OF WRONGFUL ACTS

In tort cases, the victim or the claimant claims that the defendant or the wrong-doer has conducted the wrongful act or is liable for injury incurred by the claimant. Primarily, there are three kinds of wrongs in tort law - the wrongful acts can occur either **intentionally** or **negligently** on part of the wrong-doer, or the defendant is **strictly liable** for the wrongful act. These three are considered here.

Intentional Tort

An intentional tort requires the claimant to show that defendant caused the injury on purpose. Furthermore, the

claimant must show that he or she suffered a particular consequence or injury, and that the defendant's actions caused the consequence or injury. Different intentional torts deal in different consequences and intents. So depending on the contexts and situations, there are various kinds of intentional torts; they include assault, battery, false imprisonment, unlawful harassment, invasion of privacy and so on. These may also have aspects of criminal law, but treating them also as torts increases the possibility of higher compensation. The kinds of intentional torts are explained below.

Battery and Assault

The intentional tort of battery occurs when the defendant causes the touching of the claimant with the intent to cause harm or offense. Both 'intent' and 'causation' are required for the tort of battery to occur. *For example*, if the defendant intends to commit battery by hitting the claimant in the head but ends up killing him, this amounts to battery as his intentional act (intention to commit harm) caused the death. The act of touching doesn't necessarily have to be done with defendant's fist always, it could be anything touching plaintiff like throwing hot water at someone.

The intentional tort of assault occurs when the defendant intends to cause in the claimant a reasonable apprehension (feeling of anxiety or fear) of an imminent harmful or offensive touching to the claimant; and when this causes the claimant to suffer a reasonable apprehension of an imminent harmful or offensive. In other words, assault is when the defendant intends to make claimant think that he is about to suffer a battery and as a result the claimant does think that he is about to suffer a battery. Imminent means imminent and "in your face" — assault is about thinking that you are about to be touched. *For example*, if the defendant throws an iron ball at the claimant and misses his head as the claimant moves his head away from the direction of the iron ball, this amounts to assault. The perception of the claimant is important. So if the defendant points an unloaded gun at the claimant who does not know that it is unloaded and he thinks he is about to get shot, this amounts to assault, which can take place without battery. Likewise, battery can take place without assault; *for example*, someone may hit another person from behind.

False Imprisonment

The intentional tort of false imprisonment is satisfied whenever there is intent to unlawfully confine or restrain the claimant in a bounded area and when this actually causes the claimant to be knowingly confined or restrained in a bounded area unlawfully. *For example*, the defendant intentionally locks the claimant in the classroom without having the legal authority to do so, and the claimant knows he is trapped. Sometimes courts allow the actual harm to substitute for the awareness of the imprisonment — so even if the claimant

is unaware that he is trapped but suffers injury, the tort of false imprisonment is satisfied. However, the claimant should not be trapped willingly and consensually.

Trespass to Land

The tort of trespass to land occurs when the defendant has the intent to physically invade real property of the claimant and does invade physically without the claimant's approval or consent. The invasion can happen with objects or by people and includes invasion of some area of air above the land and some area below the land. *For example*, the defendant may litter the claimant's land, or may create a drainage outlet below the land of the claimant.

Trespass to Chattels

When the defendant has the intent to use or intermeddle with a chattel (moveable personal property), which was in the possession of the claimant and when this actually happens and causes significant or perpetual dispossession, deprivation of use, or damage as to condition, quality, or value of the chattel, or causes some other harm to claimant's legally secured interest, it amounts to the trespass to chattels. *For example*, if the defendant paints the car of claimant that was parked on the side of the street, without the consent of the claimant while the claimant was away, this amounts to trespass to chattels.

Conversion

The tort of conversion is somewhat related with the tort of trespass to chattels. Conversion occurs when the defendant intentionally uses or intermeddles with the chattel of the claimant in such a serious way that it becomes fair to ask for compensation or money payment for the total prior value of the chattel. In other words, the defendant is forced to buy the chattel for a purchase price based on the original value. So the remedy in conversion is forced sale. Conversion is applicable in many situations including where the chattel is taken, transferred to someone else, changed, misused or damaged.

Unlawful Harassment

Defendant may be held liable for any act of deliberate physical harm to the victim even where no battery or assault is involved. *For example*, if the defendant lies to the claimant that the latter's son met with a road accident, which causes nervous shock to the claimant resulting in illness, this constitutes tort of unlawful harassment. Sexual harassment may also amount to tort of unlawful harassment. *For example*, if one follows another person, sends unwanted messages or phone calls; although there is no violence or threat of violence involved, this act amounts to a tort of harassment.

Invasion of Privacy

Tort law with respect to invasion of privacy as a distinct entity is still underdeveloped. However, as many academics hold the view, there is potential for the development of tort of invasion of privacy. *For example*, one's right to personal life and family may fall under this category of tort law and may attract any deliberate invasion of privacy like, photographing the personal lives of the claimant without the latter's consent.

Negligence

The basic understanding of negligence is that wrong-doer or the defendant has been careless in a way that harms the interest of the victim or the claimant. *For example*, when the defendant carries out an act of constructing something on her premises, she owes a duty of care towards the claimant and that the standard of duty of care depends on whether the claimant was on the site or in the neighbourhood as well as whether the claimant was a lawful visitor or a trespasser. Generally, in order to argue successfully that the defendant has been negligent, the victim or the claimant must establish three elements against the defendant in a tort of negligence case— (1) the defendant owes a duty of care to the victim; (2) there has been a breach of duty of care on part of the defendant; and (3) the breach of the duty to care resulted in the harm suffered by the claimant. Let's consider these elements here.

Duty of Care

The duty of care principle can be explained by citing an actual case law. In a 1932 English case of *Donoghue vs Stevenson*, the claimant Donoghue drank a soft drink manufactured by the defendant Stevenson. The drink had a decomposed snail in the bottle that made the claimant ill. The court held that the manufacturer owed duty of care to those who are 'reasonably foreseeable' to be affected by the product. So the duty of care is owed to those whom one can reasonably foresee as being potentially harmed. This principle is applicable to numerous fact situations; as another *example*, a landlord owes a duty of care with reasonable foresight to his tenants and should ensure that no hazardous substance like petrol is stored by him in the basement of the apartment being dwelt by the tenants.

Breach of Duty of Care

Once the duty of care is proven the claimant then must establish that the duty of care was broken; *i.e.*, the defendant was unsuccessful in fulfilling the duty of care in accordance with the standard of 'reasonableness'. The standard is that of 'reasonable conduct' or 'reasonable foresight', however, the act need not be flawless. In the case of *Donoghue vs Stevenson* above, the court held that the manufacturers of products owe a duty of reasonable care to the consumers who use the products. Similarly, the standard of duty of

reasonable care will vary based on the peculiar fact situation of every case.

Harm to the Claimant

In the case of *Donoghue vs Stevenson*, the negligence on part of the manufacturer of the soft drink resulted in the illness or injury to the claimant. Or, in the second example, the apartment catches fire because of petrol being stored in the basement causing damage to the tenants.

Strict Liability

Strict liability torts do not care about the intention or carelessness of the defendant when the defendant caused the injury. The claimant does not have to establish any sort of or level of blame attributable to the defendant based on the intention or the degree of carelessness. Strict liability is available in a very limited context. *For example*, where the defendant's animals may cause an injury to the claimant or where the defendant is involved in an unusually hazardous activity like blasting dynamite. Let's elaborate these two examples. If the defendant possesses an animal with a known and unusual dangerous tendency, say a dog that bites, the defendant is strictly liable for the harm resulting from the dangerous tendency of the dog. But in the case of the defendant possessing a bull that harms the claimant is not strictly liable as the act of the bull is considered as, not unusual, rather a normal dangerous tendency.

The general rule with respect to ultra-hazardous activity is that when the defendant carries out or keeps an unusually hazardous situation or activity on his or her building or involves in an activity that offers an inevitable danger of injury to the claimant or his or her property, the defendant could be responsible for the damage caused even if the defendant has exercised reasonable care to prevent the harm.

In India, a related principle of **Absolute Liability** was introduced by the Supreme Court in the aftermath of the two instances of gas leaks from factories injuring many. The first case was about the infamous Bhopal gas leak disaster of 1984 where a factory of the Union Carbide Corporation located in Bhopal had a major leakage of the gas Methyl isocyanate that killed 2260 and injured around 600,000 people. In the second incident of 1985 in Delhi, a factory of the Shri Ram Foods and Fertilizer Industries leaked Oleum gas that killed one person that had few others hospitalized and created huge panic among the residents. The then Chief Justice of India P.N. Bhagwati, in the famous 1987 case of *M.C. Mehta vs Shri Ram Foods and Fertilizer Industries*, held: "We are of the view that an enterprise, which is engaged in a hazardous or inherently dangerous industry, which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to any one on account of hazardous or

inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm is done on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.”

SUMMARY OF THE KINDS OF HARMS

Here is the summary of the examples of the many ways in which the claimant may suffer injuries that have been discussed in this chapter.

Property Interests in land

The law of tort protects the claimant’s interests in her landed property by preventing intentional intrusions or trespass of the property by the defendant or the wrong-doer. The claimant may also suffer harm by the damage caused due to careless or negligence of the defendant. When the defendant interferes with the claimant’s right to enjoy his/her land, the defendant commits the tort of nuisance.

Other Types of Property

Tort law prohibits taking away of tangible property deliberately, which amounts to the tort of ‘conversion’. The damage to the property may also occur due to carelessness or negligence.

Bodily Injury

Tort law protects the claimant against any harm to his/her interests of bodily integrity. Tort of battery and assault applies to any intentional harm caused to the body. Harm may also be caused by negligence as well as any breach of statutory duty like, traffic laws, health laws and so on. Mental distress is an element in bodily injury which raises any compensation to the victim.

Economic Interests

To a lesser extent, the economic interests are also protected by the law of tort. Injury caused by both intentional as well as negligence can cause economic harm to the claimant.

PURPOSE OF TORT LAW

Three important objects of tort law are - deterrence, fair and just response, and loss-spreading.

Purpose of Tort Law	Explanation
1. Deterrence	Tort law ensures that the defendant compensates the victim for a wrongful act. This deters one from injuring others as it encourages defendants to be mindful and careful.
2. Loss-spreading	Tort law can be used as a tool to spread loss to a wider community. <i>For example</i> , where the manufacturer of a product has to pay compensation, the manufacturer may recover the costs by transferring this to the consumers by increasing the price of the product. In another <i>example</i> of automobile insurance, all drivers are required to pay auto insurance premiums, which are then used by the insurance companies to compensate the victims.
3. Fair and just response	Tort law ensures that the victim is compensated by the defendant to satisfy the demands of justice. The defendants are made liable for their wrongful act.

INTRODUCTION TO CRIMINAL LAWS IN INDIA

In plain terms, “*crime*” is an action (doing something not supposed to be done) or omission (not doing something which is supposed to be done) that is punishable by law.

Essentially, acting against or deviating from the norms of acceptable behaviour that exist in society constitutes the commission of a “crime”. For any act or omission to be called as a crime, it must necessarily be punishable under some law.

Remember, law is a codified form of logic which also takes into account the threshold/limit of what any society perceives to be acceptable or unacceptable.

Anything which is acceptable in the society will never be prohibited under law so it will never constitute a crime and

anything which is unacceptable may or may not constitute a crime depending upon whether a law has been made to punish the same.

Accordingly, certain acts which are though unacceptable still do not constitute a crime because the society is tolerant towards them and therefore has not chosen to have a law in place for punishing the carrying of these acts.

For example, **sneezing in public without covering your mouth** is not acceptable but if you do so, it is not a crime because there is no law punishing sneezing in public. No law is there for it only because sneezing in public is of an insignificant nature which the society tolerates to some extent.

On the other hand, the murder of a person is a crime because *firstly*, it is totally unacceptable in the society and *secondly*, a law has been made punishing the same.

Law of Crimes, as the name indicates, is the law governing prevention of crimes and providing a mechanism for punishing those persons who have committed a crime.

It has two parts namely,

1. **Substantive law** which provides as to what acts or omissions constitute a crime and also fixes punishment for the same depending on how severe the crime is, and
2. **Procedural law** which merely details the procedural aspects of catching a person who has supposedly committed a crime and thereafter holding a trial against him in a court of law to determine whether he is guilty or innocent.

In the Indian context, the Substantive law is the **Indian Penal Code, 1860 (IPC)** which lists out the various crimes punishable in India and the Procedural law is the **Code of Criminal Procedure, 1973** which makes provisions for aspects such as how any suspect should be arrested by police, how the police should conduct investigation of any crime, trial for which particular crime can be conducted by which court etc.

The provisions contained in the IPC and the Code of Criminal Procedure are commonly referred to as “Sections”.

Mens rea

Mens rea means a guilty mind or “*intention*” to commit a crime. “*Actus non facit reum nisi mens sit rea*” is a fundamental principle of criminal law. It means that an act is not a crime in itself unless done with a guilty mind.

The IPC makes mens rea an essential element of most crimes specified in the Code. *For example*, Section 321 which talks about voluntarily causing hurt begins with the words “*whoever does any act with the intention of thereby causing hurt to any person ...*”.

If you focus on the underlined words, it becomes clear that the intention of causing hurt must exist before it can be said that an act committed by a person has amounted to voluntarily causing hurt.

Theft

In simple language, theft means taking away another person’s property without their consent. The IPC defines **theft as moving any movable property with the intention of taking away that property out of the possession of any person without the person’s consent.**

Since it is not possible for a person to move immovable property like land or building without the help of any external force, the definition focuses only on movable property.

Also, note that the definition does not state that one must have taken the property completely out of possession of the concerned person but theft occurs even if the property has been moved only slightly with intent to take it out of possession.

For example, A cuts a tree on Z’s ground with the intention of taking it out of possession of Z without Z’s consent. Now even if the tree remains on Z’s ground after being cut, A will still be held liable for theft because he cut it without Z’s consent with the intention of removing it out of Z’s possession.

Since the definition uses the words “person” instead of “owner”, it will also cover cases where the concerned movable property is under the possession of some person other than owner such as a caretaker.

Extortion

In simple terms, extortion means **making threats to another person or forcing them to give up something they have in their possession.**

The IPC defines it, in section 383, as *intentionally* putting any person in fear of any injury to that person or to another and thereby inducing the threatened person (the person who has been put in fear) to deliver any property/valuable security/anything signed or sealed to any person.

For example, A threatens Z to keep Z’s child in wrongful confinement unless Z signs an agreement by which Z would be bound to pay some money to A and being pressurized by such threat, Z signs the agreement.

In this case, A has committed the offence of extortion. Here also, note that section 383 uses the word “intentionally” which means that it follows the principle of mens rea explained above.

Cheating

In simple terms, **cheating means acting dishonestly to take advantage.**

Section 415 of IPC defines cheating as deceiving any person and fraudulently/dishonestly inducing them to either

- deliver any property to any person, or
- give consent to the effect that any person will retain any property belonging to the deceived person or
- do or omit (meaning not do) anything which the deceived person would otherwise not do or omit where such doing or omission is likely to cause damage or harm to the person physically or mentally or damage or harm such person’s property.

For example, A deceives Z, a money-lender, to lend him some money by pledging as diamonds, certain articles which A knows are not diamonds. In this case, A has committed the offence of cheating.

So, as per IPC, cheating means fraudulent or dishonest inducement by any person to deceive another person into doing either of the acts mentioned in (a), (b) and (c) above in this sub-section.

Criminal Conspiracy: Act Done by Several Persons

Section 34 of the IPC lays down the principle of joint criminal liability.

It is worded in simple English and states that “*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*”.

In other words, it means that if two or more persons intentionally commit a crime jointly (meaning together), it is the same as if each of such persons had individually committed the crime.

For example, in the case of *Barendra Kumar Ghosh vs King-Emperor*, decided by Privy Council in the year 1925, 3 persons tried to commit robbery in a post office and killed the postmaster when he did not give them money on demand.

All 3 persons ran away without taking the money and were tried for offence of murder. During the trial, one of the accused pleaded that he was not guilty of murder as he was only standing on guard outside the post office where the postmaster was killed and had no intention of killing the victim.

However, the concerned trial court held that since the killing took place as a result of the “common intention” of all 3 accused persons, this plea of standing on guard outside could not be accepted and the accused making such plea was also held guilty of murder even though he had not personally fired the pistol which caused the death of postmaster.

In the appeal against the judgement given by the trial court, the concerned High Court and Privy Council also took the same view as the trial court and held all 3 accused guilty of murder.

Kidnapping

In a layman’s terms, kidnapping means **forcibly taking away and detaining a person without his/her consent**.

The IPC classifies kidnapping into two kinds:

1. kidnapping from India and
2. kidnapping from lawful guardianship and defines both these types.

In CLAT, questions are often asked on kidnapping from lawful guardianship. Section 361 of the IPC defines

kidnapping from lawful guardianship to mean taking away a minor person who is under **16 years of age** (in case of male) or under **18 years of age** (in case of female) or taking away any person of unsound mind out of the lawful custody of such minor/unsound person’s lawful guardian.

The section also defines the term “lawful guardian” to mean any person lawfully entrusted (meaning kept in charge of or made responsible for) the care or custody of such minor or person of unsound mind who is being kidnapped.

So, kidnapping will include not only parents of a child but any other person who is lawfully acting as guardian of the child for a temporary period or forever.

Attempt to Commit Offences

The IPC not only makes offences punishable but even the attempt to commit any offence which is punishable under IPC is also made an offence under section 511 of IPC.

So, merely attempting to commit an offence is also punishable under IPC even if the attempt fails and no offence is actually committed due to such failure.

For example, A is a pickpocket who tries to steal money from the pocket of Z’s pants which later turns out to be empty. Even though A could not actually steal any money because the pocket was empty, A will be guilty of attempting to steal and liable to punishment accordingly.

Generally, for most of the offences defined under the IPC, the punishment for attempting to commit a particular offence is provided in the same section which provides punishment for actually committing the offence or is provided in a separate section. In all other cases, punishment is computed as per section 511.

Assault

In layman’s terms, **assault means physically attacking another person**. The IPC defines assault in **Section 351** as making any gestures or any kind of preparation with the *intention or knowledge* that such gestures or preparation *are likely* to make any person present nearby to apprehend use of criminal force by the person who makes the gestures or preparation.

For example, A shakes his fist at Z knowing it to be likely that by shaking his fist, he will cause Z to believe that A is going to hit Z. In this case, A has committed assault.

Note that the section does not actually require that the person to whom gestures/preparation were made must have actually gotten threatened about the possible use of force before it can be concluded that assault has been committed.

The likelihood is the key focus in the provision hence merely making gestures or preparation *with the*

intention of causing apprehension of use of force *or with the knowledge* that such gestures or preparation are likely to cause apprehension of use of force will constitute assault.

Private Defence

The IPC gives the right of private defence which means that certain acts done in order to defend oneself shall not constitute an offence. This right is given in section 96 of IPC which states that no act which is done in the exercise of right of private defence will be considered as an offence.

What constitutes the right of private defence is defined in section 97 of IPC which states that a person has a right to defend

- (a) his/her own body and the body of any other person against offences affecting human body, and
- (b) movable/immovable property belonging to him/her or any other person against the offences of theft, robbery, mischief or criminal trespass or the attempt to commit any of these offences.

Offences affecting human body referred in point (a) here include murder, assault, kidnapping, rape etc.

It is important to remember that the right of private defence has to be exercised reasonably and hence force used by the victim who chooses to exercise the right of private defence to save himself/herself from an imminent threat must be proportional to the force used by the perpetrator of the threat/attack.

For example, suppose A is chasing B, a thief who has stolen A's wallet. Now, A has a right to chase and catch hold of the thief in order to recover his wallet.

Suppose A catches the thief and recovers his wallet after which the thief starts apologizing and begging to let go of him. Now, at this stage, if A gets angry and kills the thief in anger, A will be charged for murder and cannot take the plea of private defence because this right was available to A only upto the stage of being able to recover his wallet from the thief.

Once the wallet got recovered, the right to private defence would not continue to exist unless the thief makes an entirely new threat like, for instance, beating and killing A for recovering his wallet.

General Exceptions

The IPC provides certain exceptions which can be pleaded by a person, accused of committing a punishable offence, before the concerned court of law to prove his innocence or to convince the court to impose less severe punishment on the accused.

The exceptions relevant to be studied for CLAT are as follows:

(1) *Act of a child under 7 years* – The IPC states that no act done by a child under 7 years of age shall constitute an offence. This is because a child under 7 years of age is regarded as incapable of properly being able to understand the true consequences of his/her actions.

For example, if a child of 6 years playfully throws a stone in the air which accidentally hits another person and kills him, the child will not be put on trial before a court of law for the accusation of murder.

(2) *Intoxication* – The IPC states that no act done by a person is an offence if

- (a) he/she was affected by intoxication at the time of doing the act and
- (b) by virtue of such intoxication, he/she was incapable of knowing the nature of the act or being able to understand that the act which he/she is doing is wrong or contrary to law and
- (c) the intoxication was administered to the concerned person without his/her knowledge or against his/her will.

So, *for example*, if A forces B to consume alcohol at gunpoint as a result of which B gets severely drunk and thereafter shoots and kills C in a state of drunkenness, then B can take the defence of intoxication.

Note that there are 3 conditions (a), (b) and (c) mentioned here and all of these conditions must simultaneously be satisfied in order for the accused to plead intoxication as a defence.

So, suppose B consumed alcohol willingly and not against the will or without the knowledge or suppose B killed C after the drunkenness got subsided, in that case, he will not be able to plead intoxication as a defence.

3. *Unsoundness of mind* – The IPC states that no act done by a person is an offence if

- (a) he/she was affected by unsoundness of mind (that is – insanity) at the time of doing the act and
- (b) by virtue of such unsoundness of mind, he/she was incapable of knowing the nature of the act or being able to understand that the act which he/she is doing is wrong or contrary of law.

So, if A who is a mentally ill person and unable to understand the consequences of his actions, kills B by shooting him with a pistol, A can plead unsoundness of mind as a defence while being charged for murder by a concerned court of law.

MULTIPLE CHOICE QUESTIONS

1. Before the commencement of the Transfer of Property Act, 1882, the transfer of immovable properties in India were governed by the:
 - A. Principles of English law and equity
 - B. Indian Registration Act, 1908
 - C. British State of Goods Act, 1880
 - D. Indian Contract Act, 1872
2. The courts, before the enactment of the Transfer of Property Act, 1882, were forcing to decide property disputes according to their own notion and justice and fairplay:
 - A. Because judges were making own laws
 - B. Because of absence of any specific statutory provisions on the property matters
 - C. Because British Judges were confused with Indian property disputes
 - D. Because judges were educated in British property laws
3. Law Commission for the Transfer of Property matters was appointed in England and the Draft Bill prepared by the Commission was introduced in Legislative Council in:

A. 1870	B. 1875
C. 1877	D. 1882
4. The Bill on Transfer of Property was referred to:
 - A. First Law Commission
 - B. Second Law Commission
 - C. Third Law Commission
 - D. Fourth Law Commission
5. Which of the following instruments have been excluded by the application of section 137 of the TPA, 1882?
 - A. Shares
 - B. Bill of Exchange
 - C. Both (A) and (B)
 - D. Neither (A) nor (B)
6. The Transfer of Property Act received its assent on:
 - A. 17th February, 1882
 - B. 22nd February, 1882
 - C. 23rd February, 1882
 - D. 27th February, 1882
7. First Amendment was made in the Transfer of Property Act, 1882 in the year:

A. 1880	B. 1883
C. 1884	D. 1885
8. The Transfer of Property Act, 1882, came into effect from:
 - A. 17th February, 1882
 - B. 27th February, 1882
 - C. 17th March, 1882
 - D. 1st July, 1882
9. Which of the following is the time limit given under section 17 of the TPA, 1882?
 - A. Life of the transferee
 - B. A period of 18 years from the date of transfer
 - C. Either (A) or (B) whichever is longer
 - D. Neither (A) nor (B)
10. According to the Transfer of Property Act, 1882 any State Government may from time to time exempt either any part of territories from all or any of sections:
 - A. 54, paragraphs 2 and 3, 59, 107 and 123
 - B. 54, 107 and 123
 - C. 54, 107 and 120
 - D. 54, 107 and 113
11. Within the meaning of provisions of the Transfer of Property Act, 1882, the immovable property does not include:
 - A. Standing timber or grass
 - B. Standing timber, jewellery and crops
 - C. Standing timber, growing crops or grass
 - D. Only grass
12. According to Transfer of Property Act, 1882:
 - A. Instrument means a non-testamentary instrument
 - B. Testamentary instrument
 - C. Both testamentary and non-testamentary instrument
 - D. None of the above
13. Under the Transfer of Property Act, 1882, the term “attested” means:
 - A. Attested by two or more witnesses
 - B. Attested by one witness only
 - C. Attested by two witnesses only
 - D. No condition prevails
14. Under the Transfer of Property Act, 1882, registered pertains to:
 - A. Registration of property
 - B. Registration of documents
 - C. Registration of parties
 - D. None of the above
15. Under the Transfer of Property Act, 1882, “attached to earth” means:
 - I. Routed in the earth, as in the case of trees and shrubs;
 - II. Imbedded in the earth as in the case of walls and buildings; or
 - III. Attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.
 - A. Only (I) and (II) are correct
 - B. Only (II) and (III) are correct
 - C. Only (I) and (III) are correct
 - D. All (I), (II) and (III) are correct

16. The chapters and sections of the Transfer of Property Act, 1882, which relate to contracts shall be part of:
 - A. Indian Registration Act, 1908
 - B. Sale of Goods Act, 1930
 - C. General Clauses Act, 1897
 - D. Indian Contract Act, 1872
17. Within the meaning of section 4 of the Transfer of Property Act, 1882 the provisions of sections 54, paragraphs 2 and 3, sections 59, 107 and 123 shall be read as supplemented to:
 - A. Indian Contract Act, 1872
 - B. Indian Registration Act, 1908
 - C. General Clauses Act, 1897
 - D. Sale of Goods Act, 1930
18. Chapter II of the Transfer of Property Act shall not be deemed to effect any rule of:
 - A. Mohammadan law
 - B. Christian law
 - C. Parsi law
 - D. None of the above
19. According to section 5 of the Transfer of Property Act, 1882, living person includes:
 - A. Company or association or body of individuals
 - B. Individual human being only
 - C. Only important company or associations
 - D. None of the above
20. Under the provisions of section 6 of the Transfer of Property Act, 1882, the chance of an heir-apparent succeeding to an estate, the chance of a relation abstaining a legacy on the death of a kinsman, or any other mere possibility of like nature:
 - A. Cannot be transferred
 - B. Can be transferred
 - C. Can be transferred subject to certain conditions
 - D. None of the above
21. Under the provisions of section 6 of the Transfer of Property Act, 1882, a mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby:
 - A. The statement is true
 - B. The statement is false
 - C. The statement is partly true
 - D. None of the above
22. Under the provisions of the Transfer of Property Act, 1882, an easement cannot be transferred apart from the dominant heritage:
 - A. The statement is true
 - B. The statement is false
 - C. The statement is partly true
 - D. None of the above
23. Under the provisions of section 6 of the Transfer of Property Act, 1882:
 - A. a right to future maintenance can be transferred
 - B. a right to future maintenance cannot be transferred
 - C. no such provision is made in the Act
 - D. None of the above
24. Under the provisions of the Transfer of Property Act, 1882:
 - A. a mere right to sue can be transferred
 - B. a mere right to sue cannot be transferred
 - C. no such provision is made in the Act
 - D. None of the above
25. Under the Transfer of Property Act, 1882:
 - A. The salary of a public officer can be transferred
 - B. The salary of a public officer cannot be transferred
 - C. No such provision is found in the Act
 - D. None of the above
26. Under the Transfer of Property Act, 1882:
 - A. A public office cannot be transferred
 - B. A public office can be transferred
 - C. Such provision is absent in the Act
 - D. None of the above
27. Under the provisions of section 6 of the Transfer of Property Act, 1882, no transfer can be made for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872:
 - A. The statement is false
 - B. The statement is true
 - C. The statement is partly true
 - D. None of the above
28. Under the provisions of section 7 of the Transfer of Property Act, 1882, the competent person to transfer means:
 - I. Every person competent to contract only;
 - II. Every person entitled to transferable property or authorised to dispose of transferable property.
 - A. Only (I) is correct
 - B. Both (I) and (II) are correct
 - C. (II) is correct
 - D. Neither is correct
29. The term "transfer" under the Transfer of Property Act, 1882, refers to:
 - A. Partly or whole transfer
 - B. Absolute or conditional transfer
 - C. Contingent transfer
 - D. Both (A) and (B) are correct
30. Under section 8 of the Transfer of Property Act, 1882 the legal incidents also includes-
 - A. Machinery attached to earth and the moveable parts thereof
 - B. Only machinery attached to earth
 - C. Only moveable parts of the machinery attached to earth
 - D. None of the above

31. When can a proposal be revoked?
 - A. Once a proposal is made, it cannot be revoked
 - B. Any time before or after the communication of acceptance is complete
 - C. Any time before the communication of its acceptance is complete as against the proposer, but not afterwards
 - D. Any time before the proposal comes to the knowledge of the other party, but not afterwards
32. Which of the following feature is not essential for a contract?
 - A. It should be in writing only
 - B. Free consent of parties competent to contract
 - C. Lawful consideration and with a lawful object
 - D. It should not be declared void expressly
33. Which of the following act does not constitute fraud?
 - A. where a person stands in a fiduciary relation with the other and induces the other person to act on his directions
 - B. the active concealment of a fact by one having knowledge or belief of the fact
 - C. a promise made without any intention of performing it
 - D. the suggestion as a fact, of that which is not true, by one who does not believe it to be true
34. Where the parties to a contract are under the mistake as to matter of fact / essential to the agreement, the agreement is?
 - A. Voidable at the option of the party making the proposal
 - B. Voidable at the option of the party accepting the proposal
 - C. Considered valid
 - D. Void
35. Which of the following agreement is void?
 - A. Agreement in restraint of marriage
 - B. Agreement which is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other
 - C. Agreement to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do
 - D. Agreement made in writing and signed by the person to be charged therewith or by his agent generally or specially authorised in that behalf, to pay wholly or in part debt of which the creditor might have enforced payment but for the law for the limitation of suits
36. Contingent contract means:
 - A. A suit entrusted to any person to abide by the result of any game or other uncertain event on which may wager is made
 - B. A contract to do or not to do something, if some event, collateral to such contract, does or does not happen
 - C. Agreements which are not certain, or capable of being made certain
 - D. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract
37. Which of the following **does not** constitute misrepresentation?
 - A. any breach of duty which, without an intent to deceive, gains an advantage to the person committing it
 - B. the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true
 - C. causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is subject of the agreement
 - D. any act fitted to deceive the other party wilfully
38. When two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons must fulfil the promise:
 - A. Jointly
 - B. Severally
 - C. Jointly or severally
 - D. Jointly and severally
39. X owes ₹ 10,000 to Y under a contract. It is agreed between X, Y & Z that Y shall henceforth accept Z as his debtor instead of X for the same amount. Old debt of X is discharged and a new debt from Z to Y is contracted. This is:
 - A. Alteration of contract
 - B. Rescission of contract
 - C. Novation of contract
 - D. Change in contract
40. When is the communication of a proposal complete?
 - A. When it comes to the knowledge of the person to whom it is made
 - B. Only when the proposal, acceptance or revocation of the proposal is recorded in writing
 - C. When the other party gives his assent or dissent to the proposal
 - D. Only when a clear verbal communication of such proposal is made
41. Who among the following is **not** competent to contract?
 - A. Person who has acquired the age of 18
 - B. Person who has acquired the age of 16
 - C. Person is of sound mind
 - D. Person who is disqualified from contracting by any law
42. Which of the following is **not** a necessary feature for free consent?

- A. When the consent is not caused by coercion
 - B. When the consent is not caused by undue influence
 - C. When the consent is not caused by mistake
 - D. When the consent is not caused by misunderstanding
43. Which of the following statement regarding coercion is **not** true?
- A. Coercion involves unlawful detaining or threatening to detain any property
 - B. The act of coercion may be directed at any person and not necessarily at the other party to the agreement
 - C. Coercion gives one person an advantage of a position of power over another person
 - D. The act of coercion must be done with the object of inducing or compelling any person to enter into an agreement
44. In which of the following cases is a contract **not** voidable at the option of the party whose consent was so caused?
- A. When the consent was caused by coercion
 - B. When the consent was caused by misrepresentation
 - C. When the consent was caused by silence but the party had the means of discovering the truth
 - D. When the consent was caused by fraud
45. Agreement to do an impossible act is:
- A. Voidable at the option of the promisor
 - B. Void
 - C. Valid
 - D. Voidable at the option of the promise
46. The correct sequence in formation of a contract is:
- A. Offer, acceptance, consideration, agreement
 - B. Offer, consideration, acceptance, agreement
 - C. Agreement, consideration, offer, acceptance
 - D. Offer, acceptance, agreement, consideration
47. The Indian Contract Act, 1872 is divided into Chapters.
- A. 3
 - B. 8
 - C. 10
 - D. 12
48. Every promise and every set of promise forming the consideration for each other is a/an
- A. Contract
 - B. Agreement
 - C. Offer
 - D. Acceptance
49. A promises to deliver his watch to B and, in return, B promises to pay a sum of ₹ 2,000. This is a/an
- A. Agreement
 - B. Proposal
 - C. Acceptance
 - D. Offer
50. A sells his car to B. A has a right to recover the price of the car from B. This right is a
- A. Right in rem
 - B. Right in personam
 - C. Right in rem as well as right in personam
 - D. Moral right
51. All illegal agreements are
- A. void ab-initio
 - B. valid
 - C. voidable
 - D. enforceable
52. Which of the following is **not** a feature of a Wagering Agreement?
- A. Chances of gain or loss
 - B. Uncertainty of future event
 - C. Neither party have control over future event
 - D. Neither parties should have an interest in the event
53. If either of the parties may win but cannot lose, or both may lose and can not win, it is
- A. a Wagering Agreement
 - B. not a Wagering Agreement
 - C. a Voidable Agreement
 - D. an Illegal Agreement
54. A contract entered into during war with an alien enemy is
- A. Ineffective
 - B. Valid
 - C. Voidable
 - D. Void-ab-initio
55. A promises to pay B ₹ 30,000 if B procure for him the title "Padma Shri". The agreement is
- A. Enforceable
 - B. Void
 - C. Valid
 - D. Voidable
56. An agreement to remain unmarried is
- A. Valid
 - B. Void
 - C. Voidable
 - D. Enforceable
57. An agreement with lawful object but for an unlawful consideration, is _____
- A. Void
 - B. Voidable
 - C. Wager
 - D. Partially unlawful
58. A collateral transaction to an illegal agreement is
- A. Valid
 - B. Voidable
 - C. Void
 - D. Uncertain
59. A agrees to pay ₹ 20,000 to B if he produces false evidence in his favour. This agreement is
- A. Valid
 - B. Void
 - C. Enforceable
 - D. Voidable
60. A agrees to pay ₹ 30,000 to B, a rival shopkeeper, if he closes his business in A's locality only. This agreement is
- A. Valid
 - B. Voidable
 - C. Void
 - D. None of the above
61. Which of the following is correct?
- A. Quasi contracts are intentionally made by the parties
 - B. Quasi contracts are imposed by law
 - C. Quasi contracts are based on implied intentions of the parties
 - D. Both (B) and (C)
62. A contracts with B to beat his business competitor. This is an example of

- A. Valid Contract B. Illegal Agreement
C. Voidable Contract D. Unenforceable Contract
63. is forbidden by law. The Court will not enforce such a contract.
A. Valid Contract B. Illegal Agreement
C. Voidable Contract D. Unenforceable Contract
64. A promised to pay his son B a sum of ₹ 1 lakh if B passed CA exams in the first attempt. B passed the exam in the first attempt, but A failed to pay the amount as promised. B files a suit for recovery of the amount. State whether B can recover the amount under the Indian Contract Act, 1972.
A. B can sue A
B. B has to pay ₹ 1 Lakh to A
C. B has no remedy against A
D. B has to write the exam again, to claim the reward
65. When is the promise said to be express?
A. When the proposal or acceptance of any promise is made in words
B. When the proposal or acceptance of any promise is made through visual representation
C. When the proposal or acceptance of any promise is made in any way other than words
D. When the proposal or acceptance is made by either in words or in any way other than words
66. In which of the following circumstances is undue influence **not** exercised?
A. Where one person holds a real or apparent authority over the other
B. Where he stands in a fiduciary relation with the other
C. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress
D. When something is said or done in a dishonest way to trick people
67. Which of the following is **not** a necessary feature to convert a proposal into a promise?
A. The acceptance must be absolute
B. The acceptance must be within the prescribed time limit
C. The acceptance must be unqualified
D. The acceptance must be expressed in some usual and reasonable manner
68. 'P' a wholesale dealer in sugar, sells sugar to 'Q' with a condition that 'Q' shall not sell the sugar beyond one kilometer of 'P's godown. The agreement is
A. valid
B. without free consent
C. in restraint of trade and thus void
D. voidable at the option of 'P'
69. An agency can be terminated by
A. the principle revoking his authority
B. the agent renouncing the business of agency
C. either the principle or agent dying
D. All these
70. A contracts to B ₹ 10,000 if B's house is burnt. The contract is
A. Simple B. Contingent
C. Conditional D. None of the above
71. In the following cases which case relates to general offers?
A. Lalman Shukla vs. Gauri Datt
B. Carlill vs. Carbolic Smoke Ball Comp.
C. Both A and B
D. None of the above
72. Satyabrata Ghose vs. Mugneeram Bangur (1954 S.C) is a case on
A. Minor's contract B. Consideration
C. Frustration D. Contingent contract
73. Which one of the following is **not** essential for a contract?
A. Consideration
B. Valuable consideration
C. Lawful consideration
D. Adequate consideration
74. "A" promises to obtain for "B" an employment in the public service and "B" promises to pay ₹ 1000 to "A", the agreement is
A. Legal
B. Can be enforced at the option of the parties
C. Void
D. None of the above
75. A for natural love and affection, promises to give his son, B, ₹ 1,000. A puts his promise to B in writing and registers it. This is a
A. Contract B. Voidable contract
C. Void contract D. None of the above
76. Hadley vs. Baxindale is a case on
A. Frustration of contract
B. Damages for breach of contract
C. Discharge of contract
D. Contract is restraint of trade
77. Tort is a:
A. Civil wrong
B. Criminal wrong
C. Civil as well as criminal wrong
D. None of the above
78. Tort means a civil wrong which is not exclusively a breach of contract or breach of trust. This definition is from statutory:
A. The Limitation Act

- B. The Specific Relief Act
C. The Indian Contract Act
D. None of the above
79. Section 2(m) of Limitation Act defines tort as:
A. a civil wrong which is not exclusively breach of contract or breach of trust
B. a civil wrong which includes breach of contract or breach of trust
C. a civil wrong which includes breach of contract but not breach of trust
D. a civil wrong which includes breach of trust but not breach of contract
80. Who said, "Tortious liability arises from the breach of a duty primarily fixed by the law, this duty is towards persons generally and its breach is redressable by an action for unliquidated damages"?
A. Lord Atkin B. Winfield
C. John Salmond D. Fraser
81. Salmond has defined 'tort' as:
A. a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of trust or other merely equitable obligation
B. tortious liability arises from the breach of a duty primarily fixed by the law towards the persons generally and its breach is redressible by an action for unliquidated damages
C. an infringement of a right in rem of a private individual giving a right of Compensation at the suit of the injured party
D. None of the above
82. The duty under the Law of tort is:
A. towards a specific individual
B. towards a group of individuals
C. towards the world at large
D. Both (A) & (B)
83. Tort is a violation of:
A. a right in personam
B. a right in rem
C. Both right in personam & a right in rem
D. Neither a right in personam nor a right in rem
84. Law of tort has developed mainly through
A. customs & precedents
B. judicial decisions
C. enactments
D. All the above
85. The propounder of pigeon hole theory is:
A. Salmond B. Winfield
C. Clerk & Lindsell D. Austin
86. 'Ubi jus ibi remedium' means:
A. where there is a right, there is a remedy
B. there is no remedy without a wrong
C. there is no wrong without a remedy
D. there is no right without a remedy
87. The maxim injuria sine damno has been explained in:
A. Danoghue vs Stevenson
B. Winterbottom vs Wright
C. Ashby vs White
D. Lumley vs Gye
88. Liability in tort depends upon:
A. Quantum of damages suffered
B. Involvement of Intention
C. Infringement of legal right
D. Effect on public interest
89. Where the plaintiff in action sues for a predetermined and inelastic sum of money, he is said to have claimed:
A. Unliquidated damages
B. Confined damages
C. Liquidated damages
D. Unlimited damages
90. In a breach of contract, damages may be:
A. Liquidated
B. Unliquidated
C. Liquidated or unliquidated
D. None of the above
91. Who among the following holds that there is no law of tort but there is Law of Torts?
A. Winfield B. Salmond
C. Austin D. Blackstone
92. The main supporter of the theory that it is a law of Tort and not law of Torts is:
A. Winfield B. Salmond
C. Fleming D. Heuston
93. Gloucester Grammer School case explains:
A. injuria sine damno
B. damnum sine injuria
C. respondents superior
D. remoteness of damages
94. Malice in law means:
A. wrongful act done intentionally
B. wrongful act done intentionally with just
C. wrongful act done intentionally with good motive
D. wrongful act done intentionally with evil without just cause or excuse cause & excuse motive
95. The decision in Ashby vs White Furthers:
A. Salmond theory
B. Winfield theory
C. Both (A) & (B)
D. Neither (A) nor (B)
96. Volenti non fit injuria is:
A. a defence in an action for torts
B. a ground for initiation action for torts
C. not a defence in an action for torts
D. Both (B) & (C) above

97. The maxim 'volenti non fit injuria' applies:
A. when one is compelled to do work despite his protest
B. when one adopts a risky method of work under his own free will
C. when one works under constant risk of life but during the accident, he was not warned though he is aware of the risk
D. Both (A) & (C)
98. The defence of volenti non fit injuria, is not available:
A. if the consent is obtained by compulsion
B. if the consent is obtained by fraud
C. if the consent is obtained under a mistake
D. All the above
99. The scope of availability of the defence of volenti non fit injuria:
A. has been restricted in rescue cases
B. has been restricted by the Unfair Contract Term Act, 1977 in England
C. cannot be restricted except in cases consent without free will
D. (A) & (B) above
100. In tort the private defence is:
A. not available
B. is available to protect one's person under criminal law
C. is available to protect one's property under criminal law
D. Both (B) & (C)
101. The following are actionable torts as well as criminal offences:
A. Assault
B. Battery
C. False imprisonment
D. All of the above
102. Which of the following is a leading case relating to employer's liability?
A. Illot vs Wilkies (1820)
B. Fetter vs Beale (1701)
C. Farrant vs Barnes (1862)
D. Bell vs Stone (1798)
103. Act of State means:
A. an exercise of power against an alien and neither intended nor purporting to be legally founded
B. an exercise of power against his own subjects
C. an exercise of Power against the alien as well as his own subjects
D. None of the above
104. An act done as Act of State has to be justified:
A. on positive law of the land
B. on political expediency
C. Both on positive law & political expediency
D. None of the above
105. When two or more persons commit some tort against the same person they are:
A. independent tort feorsors
B. joint tort feorsors
C. either independent tort feorsors or joint tort feorsors
D. neither (A) nor (B)
106. The liability of independent tort feorsors:
A. joint only
B. several only
C. joint & several
D. neither joint nor several
107. Indian Penal Code is divided into
A. xix chapters
B. xxiii chapters
C. xxii chapters
D. xxiii schedules
108. Which one of the following is the date of enforcement of the Indian Penal Code, 1860?
A. January 1, 1860
B. July 1, 1860
C. January 1, 1861
D. January 1, 1862
109. 'A' a foreigner stabled 'B' another foreigner in a foreign vessel on the high seas. Both 'A' and 'B' were brought to Bombay for treatment where 'B' died, 'A' is also available in Bombay. Which one of the following propositions is correct in respect of applicability of Indian penal code to the trial of 'A'.
A. As both the deceased and the accused belong to foreign countries and the occurrence of offence has taken place on the high seas, IPC is not applicable to 'A' and hence he cannot be prosecuted in India.
B. I.P.C. is absolutely not applicable to a foreigner and hence 'A' cannot be tried in India.
C. As the offence is completed in Indian territories and accused 'A' is available in India, I.P.C. is applicable and he should be tried at Bombay.
D. As I.P.C. is applicable to Indians as well as to foreigners 'A' must be tried in India.
110. Who of the following are exempted from the application of Indian Penal Code?
A. The President of India
B. Diplomats
C. Alien enemy
D. All of the above
111. What is the prime object of criminal law?
A. To punish the forbidden conduct.
B. To protect public property.
C. To protect public and private property.
D. To protect public by maintenance of law and order.
112. Which are the exceptions to the maxim 'Actus no facit reum, nisimens sit rea'?'
A. strict liability
B. absolute liability
C. public nuisance
D. all of the above

113. If a citizen of India commits any offence on foreign place, he
 A. Can be prosecuted in India in any place where he found
 B. Can not be prosecuted in India, as the offence was not committed in India.
 C. Can be prosecuted in country where he committed the offence.
 D. Can not be prosecuted in India but can be prosecuted in any other country.
114. The principle of criminal liability "Actus non facit reum nisi mens sit rea" was developed and adopted by.
 A. The equity courts
 B. The Indian Courts
 C. The common law courts
 D. None of these
115. Common intention implies
 A. Presence of common knowledge
 B. Common object
 C. Pre-arranged planning
 D. Similar intention
116. Which of followings words used in IPC is not related to the concept of mens rea.
 A. Dishonestly B. Fraudulently
 C. Logically D. Voluntarily
117. Which one of following cases is a case relating to section 34 of I.P.C.
 A. R. vs. Govinda
 B. K.M. Nanavati vs. State of Maharashtra
 C. Barinder Kumar Ghosh vs. King Emperor
 D. All of the above
118. A intentionally causes B's death. Partly by illegally omitting to give B food, and partly by beating B. A has committed.
 A. culpable, homicide B. murder
 C. attempt to murder D. no offence
119. Which one of the following statements is correct?
 Injury is any harm whatever illegally caused to any person in his
 A. body or mind only
 B. body, mind, reputation or property
 C. body or reputation only
 D. body or property only
120. The different kinds of Mens-rea are:
 A. Intention B. Malice
 C. Negligence D. All of these
121. How many types of punishments have been prescribed under the Indian Penal Code, 1860?
 A. Three B. Four
 C. Five D. Six
122. 'A' intentionally cause 'B' death partly by illegally omitting to give B food and partly by beating A has committed the offence of
 A. Culpable homicide not amounting to murder
 B. Murder
 C. Grievous hurt
 D. Hurt
123. 'A' instigate 'B' to murder 'C' refuses to do so. A is guilty of
 A. Murder B. Culpable homicide
 C. Abetment of murder D. No offence
124. 'A' takes some ornaments belonging to 'B' out of B's possession without B's consent with the intention of keeping it until he obtains money from 'B' as a reward for its restoration. 'A' is
 A. Guilty of criminal misappropriation
 B. Guilty of extortion
 C. Not guilty of theft or extortion
 D. Guilty of theft
125. An act is not an offence if it is committed by a person, who is a
 A. 6 years old boy B. 18 years old girl
 C. 21 years of old boy D. 11 year old girl
126. 'A' a police officer tortures 'B' to induce 'B' to confess that he has committed a crime. A is guilty under which of the following provision of I.P.C?
 A. Section 327 B. Section 328
 C. Section 329 D. Section 330
127. A instigates his six-year old daughter B to take away from C, a purse containing ₹ 1500. In this case which one of the following statements is correct?
 A. B commits theft and A abets theft.
 B. A commits no offence but B commits theft.
 C. Both A and B commit no offence.
 D. B does not commit any offence but A commits abetment of theft.
128. X, applied for the post of Lecturer in Delhi University and submitted his application along with degree of Ph.D, interview call was issued to X and 2nd Feb., 1992 was the date fixed for the interview of X. But on 10th Jan., 1992 the University came to know that the copy of degree attached with the application was bogus and cancelled the interview.
 A. X is guilty of cheating.
 B. X is guilty of attempt to cheat.
 C. X is not guilty of cheating because the University has not been cheated.
 D. None of the above
129. 'X', a person above the age of 18 years asks 'Y' to shoot him to death as 'X' is suffering from incurable disease. 'Y' is the domestic servant of 'X'. As a loyal servant, 'Y' shoots 'X' to death. In the context of the above, which one of the following statements is correct?

- A. 'Y' has committed no offence.
 B. 'Y' can take up the defence of good faith.
 C. 'Y' can take up the defence of consent.
 D. Y's act is culpable homicide not amounting to murder.
130. 'X' and 'Y' swimming in the sea, after a shipwreck got hold of plank. The plank was not large enough to support both, 'X' with no other option, pushed 'Y's, who was drowned. 'X' has committed:
 A. Culpable homicide.
 B. Murder.
 C. The offence of causing death by negligence.
 D. No offence
131. In which of the following cases, the offence of 'house-breaking' is not committed.
 A. A commit house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door.
 B. A finds the key of Z's house-door, which A had lost, and commits house-trespass, by entering Z's house through that key.
 C. Z, the doorkeeper of Y, is standing in Y's doorway. A commit house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him.
 D. Where a hole was made by burglars in the wall of a house but their way blocked by beams on the other side.
132. A tries to pickpocket B, B has a loaded pistol in his pocket. A's hand touches the pistol and triggers, it resulting in the death of B.
 A. A is guilty of B's murder.
 B. A is guilty of culpable homicide by negligence.
 C. A is guilty of grievous hurt.
 D. A is guilty only of pick pocketing.
133. The defendant husband agree to pay ₹ 400 per month to his plaintiff wife in consideration of her giving up prosecution against his under Section 494 IPC., an offence compoundable with the leave of the court. With the leave to the court, the offence was compounded and the husband was acquitted. In an action by the wife to enforce the agreement, the husband contends that the agreement is one to stifle prosecution and hence unlawful. In the light of the above, which one of the following is correct?
 A. The agreement is one of stifle prosecution and hence the husband's contention will prevail.
 B. It is against public policy to give up prosecution in a criminal case by receiving consideration for it and so the wife cannot enforce the agreement against the husband.
 C. The wife can enforce the agreement against the husband because the agreement is supported by consideration.
 D. The wife can enforce the agreement against the husband agreement is not one for stifling prosecution as the offence is one compoundable with the permission of the court and has been so compounded.
134. **Assertion (A):** Bail, not jail, is the general rule in bailable offence in India.
Reason (R): Person liberty is the most cherished right of a human being.
Code:
 A. Both A and R are individually true and R is the correct explanation of A.
 B. Both A and R are individually true, but R is not the correct explanation of A.
 C. A is true, but R is false.
 D. A is false, but R is true.
135. In which of the following cases, an error or omission in charge is not material:
 A. A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction.
 B. A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence.
 C. Both (A) and (B)
 D. None of the above
136. In relation to first information report, which of the following statements is not correct:
 A. It is not substantive evidence.
 B. It merely marks the beginning of the investigation.
 C. It cannot be used as a previous statement for any purpose.
 D. The informant need not be an eye-witness.
137. Which one of the following is not a characteristic of an offence of theft?
 A. Dishonest intention to take property
 B. The property must be movable
 C. It should be taken out of the possession of another person.
 D. Movement of property is not necessary.
138. Insanity produced by drunkenness is a
 A. good defence to the crime charged
 B. weak defence to a crime charged
 C. way to reduce the gravity of crime charged
 D. way to increase the gravity of crime charged.
139. Good character of a person is relevant in criminal proceedings.
 A. true
 B. false
 C. partly true and partly false
 D. None of these

140. The term 'unlawful assembly' means:
 A. An assembly of five or more persons
 B. An assembly of five or more persons armed with lethal weapons
 C. An assembly of five or more persons with a common object of doing a crime
 D. An assembly of minimum two persons having common intention to commit a crime
141. A is tried for causing grievous injury and convicted. The injured person afterwards dies:
 A. A may be tried again for culpable Homicide
 B. A may be tried again for culpable Homicide with the consent of State Government
 C. A cannot be tried again
 D. A may be tried again for culpable Homicide with the consent of High Court.
142. Ordinary place of trial is:
 A. Where the offence has been committed
 B. Where the victim resides
 C. Where the accused resides
 D. Where the F.I.R. is lodged
143. A incites a dog to spring upon Z without Z consent with intention to annoy Z. Here A has committed the offence of:
 A. Criminal force B. Assault
 C. Attempt to cause hurt D. Defamation
144. A police officer tortures Z in order to induce Z to confess that he committed a crime. Here A is guilty of the offence of:
 A. Assault
 B. Causing hurt to extort confession
 C. Causing criminal force
 D. Attempt to cause hurt
145. The right of private defence does not extend to cause death of the offender, in which of the following offences:
 A. Rape
 B. Kidnapping
 C. Gratifying un-natural lust
 D. Causing miscarriage
146. When a woman was taking bath in her bathroom, X capture the image in his mobile and upload it on her facebook page. What offence has been committed by X?
 A. Sexual assault
 B. Insulting the modesty of a woman
 C. Voyurism
 D. Stalking
147. Which of the following is not a "sine que non" for making a person criminally liable:
 A. Actus reus B. Mens rea
 C. Motive D. All the above
148. A under the influence of unsoundness attempt to kill B. B in attempting to defend himself caused grievous hurt to A. Here:
 A. A is liable for attempt to murder and B is liable for causing hurt
 B. A commits no offence and B is liable for grievous hurt
 C. B commits no offence and A is liable for attempt to murder
 D. Both (A) and (B) are excused from liability
149. The maximum 'Ignorantia juris non excusat' means
 A. Ignorance of law is an excuse
 B. Ignorance of law is not an excuse
 C. Ignorance of law may be an excuse
 D. Ignorance of fact is an excuse
150. A, an officer of a court of justice, being ordered by that court to arrest Y, and after due inquiry, belonging Z to be Y arrests Z. A has committed.
 A. the offence of wrongful confinement.
 B. the offence of wrongful restraint
 C. no offence, because he is protected under section 76, I.P.C.
 D. liable for doing negligence in his duty.
151. Under which of the following enactments, is the use of mobile phone while driving made punishable?
 A. The Information Technology Act
 B. The Indian Penal Code
 C. The Motor Vehicles Act
 D. The Criminal Procedure Code
152. The word 'Unsoundness of mind' includes
 A. a person incapable of knowing the nature of the act
 B. morally insane person
 C. an eccentric person
 D. an irresistible impulse
153. Legal insanity is a defence only if
 A. there is a total loss of cognitive faculties
 B. total loss of cognitive faculties
 C. congenital insanity
 D. all of the above
154. A child of 9 years of age stole a gold necklace, and immediately afterwards sold it to the accused.
 A. The child is not guilty, as he lacked a sufficient maturity of understanding.
 B. The child is guilty, as he has attained a sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.
 C. The child is not guilty, as he was below 12 years of age
 D. None of the above

155. A person has right to defend:
- his own body
 - his own property
 - his own body and his own property
 - his own body and bodies of others and his own property and property of other persons.
156. The law on private defence in India
- is wider than the one in England
 - is the same as in England
 - is narrower than the one in England
 - is wider in some respect and owner in respect of certain circumstances.
157. A person has right to private defence of property of himself or of any other person against any act which is an offence falling under the definition of
- theft
 - theft and robbery
 - theft, robbery and mischief
 - theft, robbery, mischief and criminal trespass or attempt of these offences.
158. Which one of the following is not correct in case of defence of intoxication?
- Defence of intoxication is available both in case of involuntary and voluntary intoxication.
 - Intoxication is a defence when the intoxicated person is incapable of knowing the nature of the act at the time of doing it.
 - Intoxication is a defence when the intoxicated person is incapable of knowing what he was doing was either wrong or contrary to law.
 - Particular intention and not knowing is attributed to the accused who has acted under involuntary intoxication.
159. A is in the house which is on fire, with Z, a child. People below hold out a blanket. A drops the child in good faith intending the child's benefit. But the child is killed by the fall. A has committed a, murder.
- Murder
 - Culpable homicide not amounting to murder.
 - Culpable homicide as an exception to section 300 of the Indian Penal code, 1860.
 - No offence
160. A, armed with a sword, is of a great distance from B. A threatened to kill B. B shot at A, and killed him.
- B could plead private defence, as he has a reasonable apprehension of being attacked by A's sword.
 - B could not plead private defence, as it cannot be said that he has present and reasonable apprehension of being attacked by A.
 - B could not plead private defence, as such a right is available only when one is being attacked by another.
 - None of the above
161. 'A' is at work with a hatchet; the head flies off and kills a man who is standing by. Here, there was no want of proper care and caution on the part of 'A', 'A' is guilty of which of the following?
- Murder
 - Causing death by negligence
 - Culpable homicide not amount to murder
 - No offence
162. Nothing is an 'offence' which is done by a child under:
- eight years
 - ten years
 - seven years
 - twelve years
163. Consider the following statements.
- The accused at the time of committing the act because of intoxication, which was administered to him without his knowledge or against his will, is incapable of knowing.
- the nature of the act.
 - that the act is wrong or contrary to law
 - that the act is immoral or wrong
 - that the act is of the nature which may be ignored.
- To claim the benefit of section 85 of I.P.C., which of the above need to be proved?
- 1 and 4
 - 1 and 3
 - 1 and 2
 - 2 and 4
164. A person is compelled to join a gang of dacoits by reason of threat of being beaten. Which one of the following suggestions is correct in this case?
- He is not liable for any offence.
 - He is liable for the offence even though he joined the gang out of fear.
 - He is not liable as there was instant fear of his death of the hands of dacoits.
 - He will be liable for all dacoities committed by that gang.
165. Insanity produced by drunkenness is a
- good defence to the crime charged
 - weak defence to a crime charged
 - way to reduce the gravity of crime charged
 - way to increase the gravity of crime charged
166. 'A' pulls down houses in good faith of saving human lives and property in a great fire. In this case, which of the following statement is correct?
- He has committed an offence of mischief.
 - He has committed an offence of house trespass
 - He has committed an offence of house breaking
 - He has committed no offence

ANSWERS

1	2	3	4	5	6	7	8	9	10
A	B	C	C	C	A	A	D	B	A
11	12	13	14	15	16	17	18	19	20
C	A	C	A	D	D	B	A	A	A
21	22	23	24	25	26	27	28	29	30
A	A	B	B	B	A	B	B	D	A
31	32	33	34	35	36	37	38	39	40
C	A	A	D	A	B	D	D	C	A
41	42	43	44	45	46	47	48	49	50
B	D	C	C	B	A	C	B	A	B
51	52	53	54	55	56	57	58	59	60
A	D	B	D	B	B	A	C	B	C
61	62	63	64	65	66	67	68	69	70
B	D	B	C	A	D	B	C	D	B
71	72	73	74	75	76	77	78	79	80
C	C	D	C	A	B	A	A	A	B
81	82	83	84	85	86	87	88	89	90
A	C	B	B	A	C	C	C	C	A
91	92	93	94	95	96	97	98	99	100
B	A	B	A	B	A	B	D	D	D
101	102	103	104	105	106	107	108	109	110
D	A	A	B	C	B	B	D	A	D
111	112	113	114	115	116	117	118	119	120
D	C	A	C	C	C	C	B	B	D
121	122	123	124	125	126	127	128	129	130
C	B	C	D	A	D	D	B	D	B
131	132	133	134	135	136	137	138	139	140
D	D	D	A	A	C	D	B	A	C
141	142	143	144	145	146	147	148	149	150
B	A	A	B	D	C	C	D	B	C
151	152	153	154	155	156	157	158	159	160
C	A	A	B	D	A	D	A	D	B
161	162	163	164	165	166				
D	C	C	D	B	D				

EXPLANATORY ANSWERS

31. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance to any time before or at the moment when B posts his letter of acceptance, but not afterwards.

32. Written agreements are any form of agreements, which are reduced to writing, in a particular format. It is the

set of promises and terms of an agreement, reduced on paper, in simple composition of text, and is express in nature. Valid written agreements have a greater evidentiary value in the court of law, since it is easier to peruse and understand. It also has easier and greater enforceability in the court of law or in a dispute.

Oral agreements, on the other hand, consists of words, gestures, symbols by which one party conveys a promise or a set of promises to another, which, on acceptance by the other party, becomes a valid oral agreement. They maybe express or implied in nature. Valid oral agreements are legally enforceable in the court of law. However, it is not of great evidentiary value as the agreement is understood through the word of mouth and obtained via second hand knowledge. In case of a dispute or a suit, it is a difficult task for the court to ascertain the true nature of facts and terms of the agreement, without the invasion of bias.

An oral agreement is as equally valid as a written one. The legality, of an oral agreement, cannot be questioned, if it falls under the ambit of the requirements stated in section 10 of the Indian Contract Act, 1872.

33. “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

1. the suggestion as a fact, of that which is not true, by one who does not believe it to be true;
2. the active concealment of a fact by one having knowledge or belief of the fact;
3. a promise made without any intention of performing it;
4. any other act fitted to deceive;
5. any such act or omission as the law specially declares to be fraudulent.

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations

- (a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse’s unsoundness. This is not fraud in A.
- (b) B is A’s daughter and has just come of age. Here the relation between the parties would make it A’s duty to tell B if the horse is unsound.

34. Void agreements are those agreements which are not enforced by law courts. Section 2(g) of the Indian Contract Act defines a void agreement as, “an agreement not enforceable by law”. Thus the parties to the contract do not get any legal redress in the case of void agreements.

35. In India, contractual relationships between two or more parties are mainly dealt with by the **Indian Contract Act, 1872** enacted by the British imperial government which exercised control over the country at that time. **Section 26** of the Indian Contract Act of 1872 states that every agreement in restraint of marriage, except those in restraint of marriage of minors, is void.

36. A “contingent contract” is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration: A contracts to pay to B ₹ 10,000 if B’s house is burnt. This is a contingent contract.

37. “Misrepresentation” means and includes:

1. the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
2. any breach of duty which, without an intent to deceive, gains and advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;
3. causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

38. When two or more person have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor the representatives of all jointly, must fulfill the promise.

39. Section 62 of the Indian Contract Act, 1872 deals with the doctrine of novation. The expression “Novation” means substitution of a new contract in the place of an existing contract. With the creation of the new contract, the existing contract stands extinguished/terminated.

Novation means substitution of an existing contract with a new one. When, by an agreement between the parties to a contract, a new contract replaces an existing one, then already existing contract is thereby discharged, and in its place, the obligation of the parties in respect of the new contract comes into existence.

Novation takes place when:

1. a new contract is substituted for an existing one between the same parties, or
2. there is a change of parties, the contract remaining the same.

The consideration for the new contract is the discharge of the old contract. It is essential for the principle of novation to apply that there must be the mutual or tripartite consent of all the parties concerned.

40. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration: A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance to any time before or at the moment when B posts his letter of acceptance, but not afterwards.

41. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.
42. Consent is said to be free when it is not caused by:
1. coercion, as defined in section 15, or
 2. undue influence, as defined in section 16, or
 3. fraud, as defined in section 17, or
 4. misrepresentation, as defined in section 18, or
 5. mistake, subject to the provisions of sections 20, 21, and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

43. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.

Illustration: A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code (45 of 1860).

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code (45 of 1860) was not in force at the time when or at the place where the act was done.

44. Consent is said to be free when it is not caused by:
1. coercion, as defined in section 15, or
 2. undue influence, as defined in section 16, or
 3. fraud, as defined in section 17, or
 4. misrepresentation, as defined in section 18, or
 5. mistake, subject to the provisions of sections 20, 21, and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

45. The section 2(j) of the Contract Act defines a void contract as "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". This makes all those contracts that are not enforceable by a court of law as void.

Example: A agrees to pay B a sum of ₹ 10,000 after 5 years against a loan of ₹ 8,000. A dies of natural causes in 4 years. The contract is no longer valid and becomes void due to the non-enforceability of the agreed terms.

46. An Offer is usually understood as a Proposal. According to Section 2(a) of the Contract Act-

"An individual is said to have made the offer when he implies to another his readiness to do or to avoid doing anything with a perspective to getting the consent of that other to such act or restraint."

Parties: The parties involved in offer are:

Offeror: The person who is making an offer to other is called Offeror or Proposer.

Offeree: The person to whom the offer has been made is called Offeree or Proposee.

In order to convert a proposal into a promise the acceptance must:

1. be absolute and unqualified.
2. be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance

is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

According to Section 2(d) of Contract Act, Consideration is defined as: “When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such **act** or abstinence or promise is called **consideration** for the promise”.

According to Section 2(e) of the Indian Contract Act, 1872, “Every promise and every set of promises forming the consideration for each other is an agreement”.

Example: A promises to B to sell his laptop for ₹ 25,000 and B accepts to purchase it for the said amount, here ‘A’ and ‘B’ entered into an agreement.

For the formation of an agreement there must be two or more persons / parties, there must be a proposal from one person / party and acceptance from the other person / party. The person making the proposal is called the “**Promisor**”, and the person accepting the proposal is called “**Promisee**”.

In the above example, ‘A’ is Promisor and ‘B’ is Promisee.

47. The Indian Contract Act was passed and implemented to control various kinds of commercial and business contracts. The preamble of the Contract Act states where it is expedient to define and amend certain parts of the law relating to contracts. Therefore, this act is not a complete code of contracts. It deals with general principles of the Law of Contract and Special Contract. The Contract Act is divided into 10 chapters.

The Contract Act came into force on 1 September, 1872.

48. According to Section 2(e) of the Indian Contract Act, 1872, “Every promise and every set of promises forming the consideration for each other is an agreement”.

Example: A promises to B to sell his Laptop for ₹ 25,000/- and B accepts to purchase it for the said amount, here ‘A’ and ‘B’ entered into an agreement.

For the formation of an agreement there must be two or more persons / parties, there must be a proposal from one person / party and acceptance from the other person / party. The person making the proposal is called the “**Promisor**”, and the person accepting the proposal is called “**Promisee**”.

In the above example ‘A’ is Promisor and ‘B’ is Promisee.

49. For explanation See Qs. 48.

50. An in personam right is a personal right attached to a specific person, such as contract rights, a tort award against a defendant, or a license. In rem rights are property rights enforceable against the entire world (such as property rights) whereas an in personam judgment binds only the litigants.

51. *A void ab initio agreement is Latin for “void from the beginning.”* This means that legally, a contract was void as soon as it was created. The parties of the contract are not legally related based on what was written in the agreement because the agreement in question was never valid. *This means that legally, a contract was void as soon as it was created.*

52. **Definition of wagering contract:** A contract by which a promisor agrees that upon the occurrence of an uncertain event or condition he or she will render a performance for which there is no agreed consideration exchanged, and under which the promisee or the beneficiary of the contract is not made whole for any loss caused by such occurrence (insurance contracts, trading in futures, or betting contracts).

53. For explanation See Qs. 52.

54. A void ab initio agreement is Latin for “void from the beginning”. This means that legally, a contract was void as soon as it was created. The parties of the contract are not legally related based on what was written in the agreement because the agreement in question was never valid.

55. Void agreements are those agreements which are not enforced by law courts. Section 2(g) of the Indian Contract Act defines a void agreement as, “an agreement not enforceable by law”. Thus the parties to the contract do not get any legal redress in the case of void agreements.

Qs. 56, 57, 58, 59, 60. For explanation See Qs. 55.

61. A quasi contract is a retroactive arrangement between two parties who have no previous obligations to one another. It is created by a judge to correct a circumstance in which one party acquires something at the expense of the other.

The contract aims to prevent one party from unfairly benefiting from the situation at the other party’s expense. These arrangements may be imposed when goods or services are accepted, though not requested, by a party. The acceptance then creates an expectation of payment.

62. An **unenforceable contract** or transaction is one that is valid but one the court will not enforce. **Unenforceable** is usually used in contradiction to void (or void ab initio) and voidable. If the parties perform the agreement, it

will be valid, but the court will not compel them if they do not.

63. An illegal agreement under the common law of contract, is one that the court will not enforce because the purpose of the agreement is to achieve an illegal end.
64. According to the provisions of the Indian Contract Act, 1872 the problem asked in the question is based on Section 10 of the Act. As per the provision, the parties must intend their agreement to result in legal relations. Agreements of a social or domestic nature do not contemplate legal relationship and, as such are not contract and it cannot be enforced by the law. The leading case on this point is *Balfour vs. Balfour* (1912 2KB.571). Thus by applying the above provisions in the case it was held that the son cannot recover the amount of ₹ 1 lakh from the father, because of the reason explained above.
65. An express contract is an exchange of promises in which the terms by which the parties agree to be bound are declared either orally or in writing, or a combination of both, at the time it is made.

66. Indian Contract Act, 1872

16. "Undue influence" defined

1. A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
2. In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another:
 - (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
 - (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
3. Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

Illustrations

- (a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.
- (b) A, a man enfeebled by disease of age, is induced by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services, B employs undue influence.
- (c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

67. Indian Contract Act, 1872

3. Communication, acceptance and revocation of proposals: The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Indian Contract Act, 1872

5. Revocation of proposals and acceptances: A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance to any time before or at the moment when B posts his letter of acceptance, but not afterwards.

68. Indian Contract Act, 1872

27. Agreement in restraint of trade, void: Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1: Saving of agreement not to carry on business of which goodwill is sold—One who sells the goodwill of a business may agree with the buyer to

refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the court reasonable, regard being had to the nature of the business.

69. Termination of Agency

An agency can be terminated or is terminated in 5 different ways:

1. When the agent's authority is revoked by the Principal
2. When the agent renounces the business of the agency
3. When the business of the agency is completed
4. When either of the parties dies or becomes mentally disabled
5. When the Principal is adjudicated an insolvent

Indian Contract Act, 1872

201. Termination of agency: An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

70. Indian Contract Act, 1872

31. "Contingent contract" defined: A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration

A contracts to pay to B ₹ 10,000 if B's house is burnt. This is a contingent contract.

- 71. General Offer:** A general offer is one that is made to the public at large. It is not made any specified parties. So any member of the public can accept the offer and be entitled to the rewards/consideration. Say, *for example*, you put out a reward for solving a puzzle. So if any member of the public can accept the offer and be entitled to the reward if he finishes the act (solves the puzzle.)

Carlill vs. Carbolic Smoke Ball Company [1892] EWCA Civ 1 is an English contract law decision by the Court of Appeal, which held an advertisement containing certain terms to get a reward constituted a binding unilateral offer that could be accepted by anyone who performed its terms. It is notable for its curious subject matter and how the influential judges (particularly Lindley LJ and Bowen LJ) developed the law in inventive

ways. *Carlill* is frequently discussed as an introductory contract case, and may often be the first legal case a law student studies in the law of contract.

The case concerned a flu remedy called the "carbolic smoke ball". The manufacturer advertised that buyers who found it did not work would be awarded £100, a considerable amount of money at the time. The company was found to have been bound by its advertisement, which was construed as an offer which the buyer, by using the smoke ball, accepted, creating a contract. The Court of Appeal held the essential elements of a contract were all present, including offer and acceptance, consideration and an intention to create legal relations.

Lalman Shukla vs. Gauri Datt, 1913 40 ALJ 489

Judgment: It was held by the Honorable Court that knowledge and assent about a proposal is must in order to convert a proposal into enforceable agreement and in the present case plaintiff was neither aware nor has assent about the particular act. It was also said by the Honorable Judge that plaintiff was merely fulfilling his obligations at the time when he was tracing the boy.

- 72. Doctrine of Frustration:** As general rule parties to contract are having an intention towards the fulfillment of their part and in case of breach, party breaching is liable to compensate for the same. But an exception to this rule is laid down in Section 56 of the Indian Contract Act, 1872. Section 56 deals with the doctrine of frustration as being acts which cannot be performed. Under this doctrine a promisor is relieved of any liability under a contract in the event of the breach of contract and contract will be deemed to be void.

Section 56 is based on the maxim "les non cogit ad impossibilia" which means that the law will not compel a man to do what he cannot possibly perform.

The basis of the doctrine of frustration was explained by Supreme Court in the case of *Satyabrata Ghose vs. Mugneeram Bangur* in which Justice Mukherjee held that the basic idea upon which doctrine of frustration is based is that of the impossibility of performance of the contract and the expression frustration and impossibility can also be used as synonyms.

The doctrine of frustration is however applicable only in 2 cases

- If the object of the contract has become impossible to perform

Or

- An event has occurred making the performance of the contract to be impossible beyond the Control of promisor.

73. Basic Understanding of Consideration: According to Section 2(d) of the Indian Contract Act, 1872, consideration is defined as follows:

“When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promisee.”

According to Section 2(d) of the Indian Contract Act, 1872, the following features are essential for a valid consideration:

(i) Consideration must move at the desire of the promisor: Consideration can be offered by the promisee or a third-party only at the request or desire of the promisor. If an action is initiated at the desire of the third-party, it is not a consideration.

Peter is going back home from work. On his way, he sees that his neighbour John's house is on fire. He immediately arranges for a water hose and manages to douse the fire. Peter cannot claim any reward for his effort because it was a voluntary act and was not done at the desire of John (promisor).

(ii) Consideration may move from the promisee to any other person: If you look at the definition of consideration according to section 2 (d) of the Indian Contract Act, 1872, it explicitly states the phrase ‘promisee or any other person...’ This essentially means that in India, consideration may move from the promisee to any other person. However, it is important to note that there can be a stranger to consideration but not a stranger to the contract.

Peter gifted his son, Oliver an apartment in the city with a condition that he pays a fixed amount of money to his uncle, John, every year. On the same day, Oliver executed a deed to pay a fixed amount of money to John every year. However, Oliver failed to pay and John filed a suit for recovery. Oliver pleaded that he was not liable since no consideration had moved from John. However, the court held the words ‘promisee or any other person...’ and allowed John to maintain his suit for recovery.

(iii) It can be in the past, present or future

(a) Past: Since consideration is the price of a promise, it is normally given to induce the promise. However, it can be given before the promise is made by the promisor. This is past consideration. It is important to note that past consideration is not considered for a new promise since it is not been given in lieu of the promise. According to Indian law, ‘past considerations’ is ‘good consideration’ if it was given at the desire of the promisor.

Peter employs John to work on his field during the months of agricultural harvesting. He promises to pay John an amount of ₹ 5,000 for his services when he sows the new crop in the fields. The services of John in the past constitute a valid consideration.

Past Voluntary services: At times, a person might render voluntary services without any request or promise from another. If the person receiving the services makes a subsequent promise to pay for the services, then such a promise is enforceable in India under Section 25(2) of the Indian Contract Act, 1872 which states:

‘An agreement made without consideration is void, unless it's a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.’

Peter finds John's wallet on the road. He returns it to him and John promises to pay Peter ₹ 500 for his services. This is a valid contract.

(b) Present: If the promise and consideration take place simultaneously then it is present or executed consideration. An example is Peter goes to a shop, buys a bag of chips and pays for the same on-spot.

(c) Future: When the consideration for a promise moves after the contract is formed, it is a future or executor. It is also valid if it depends on the condition.

Peter promises to create architectural plans for John's new house. John promises to pay Peter an amount of ₹ 50,000 provided the plans are approved by his wife.

(iv) It must have value in the eyes of the law: While the law allows the parties to decide an ‘adequate’ consideration for them, it must be real and have value in the eyes of law. While the Court will not consider inadequacy, it will look at it to determine if the consent was given by the party with free-will or not.

Peter's wife agrees to withdraw the suit she has filed against him in return for his promise to pay her a monthly maintenance amount. This is a good consideration and holds value in the eyes of law.

(v) It should be over and above the Promisors' existing obligations: If the promisor is already obligated either by his promise or law to perform or abstain from a certain act, then it is not a good consideration for a promise.

Peter receives a summons from the Court to appear before it as a witness for John. John promises to pay him ₹ 10,000 to appear in the Court. This contract

is not valid because Peter is obligated by law to appear in the Court on receiving a summons.

- (vi) **It cannot be Unlawful:** A consideration that is against the law or public policies is not valid.

Peter offers ₹ 10,000 to John to beat up his business rival. John beats him up but Peter refuses to pay him. John cannot file a suit for recovery since the consideration is against the law.

74. Indian Contract Act, 1872

23. What consideration and objects are lawful, and what not: The consideration or object of an agreement is lawful, unless:

- it is forbidden by law; or
- is of such nature that, if permitted it would defeat the provision of any law or is fraudulent; or
- involves or implies, injury to the person or property of another; or
- the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations

- (a) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house and A's promises to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.
- (b) A promises to pay 10,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it, B promises to grant time to C accordingly. Here, the promises of each party is the consideration for the promises of the other party, and they are lawful considerations.
- (c) A promises, for a certain sum paid to him by B, to make goods to B the value of his ship of it is wrecked on a certain voyage. Here, A's promises is the consideration for B's payment and B's payment is the consideration for A's promise, and these are lawful considerations.
- (d) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.
- (e) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

- (f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

75. Indian Contract Act, 1872

25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.

An agreement made without consideration is void, unless:

1. it is expressed in writing and registered under the law for the time being in force for the registration of [documents], and is made on account of natural love and affection between parties standing in a near relation to each other; or unless
2. it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless
3. it is a promise, made in writing and signed by the person to be charged therewith or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1 : Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2: An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

- (a) A promises, for no consideration, to give to B ₹ 1,000. This is a void agreement.
- (b) A, for natural love and affection, promise to give his son B, ₹ 1,000. A puts his promise to B into writing and registers it. This is a contract.

76. Hadley vs Baxendale [1854] EWHC J70 is a leading English contract law case. It sets the leading rule to determine consequential damages from a breach of contract: a breaching party is liable for all losses that the contracting parties should have foreseen, but is not liable for any losses that the breaching party could not have foreseen on the information available to him.

107. The Indian Penal Code of 1860, consist of (xxiii) chapters and sub-divided into 23 chapters, comprises 511 sections. The Code starts with an introduction, provides explanations and exceptions used in it, and covers a wide range of offences.

108. The **Indian Penal Code (IPC)** is the official criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law. The code was drafted on the recommendations of first law commission of India established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Thomas Babington Macaulay. It came into force in British India during the early British Raj period in 1862.

109. Indian Penal Code is extended to the whole of India and not outside India.

110. Article 361 Constitution of India

Protection of President and Governors and Rajpramukhs

1. The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties: Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61: Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Governor of India or the Government of a State.

2. No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

111. Criminal law aims to identify, acknowledge, punish and educate the greater community and would be offenders about the consequences of their actions through the criminal justice system.

There are five key purposes of criminal law:

1. Retribution
2. Deterrence
3. Incapacitation (Incarceration)
4. Rehabilitation
5. Restoration

112. *Actus Non Facit Reum Nisi Mens Sit Rea* explains that for any act to be illegal in nature it must be done with a guilty mind.

The two basic components of criminal law is *Actus Reus* and *Mens Rea*. *Actus Reus* is the wrongful act committed and *Mens Rea* is the state of mind behind such acts. The Latin maxim *Actus Non Facit Reum Nisi Mens Sit Rea* is derived from *Mens Rea*. *Actus Non Facit Reum Nisi Mens Sit Rea* further explains as to how *Mens Rea* is applicable in criminal law. It states that a person is guilty of a criminal act only if such acts are accompanied by a criminal intention. This maxim is used to determine whether an act committed is criminal in nature or not.

113. The language of Section 188 CrPC is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India.

114. In law, **common law** (also known as judicial **precedent** or judge-made law, or **case law**) is the body of law created by judges and similar quasi-judicial tribunals by virtue of being stated in written opinions. The defining characteristic of “common law” is that it arises as precedent. In cases where the parties disagree on what the law is, a common law court looks to past precedential decisions of relevant courts, and synthesizes the principles of those past cases as applicable to the current facts. If a similar dispute has been resolved in the past, the court is usually bound to follow the reasoning used in the prior decision (a principle known as *stare decisis*). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a “matter of first impression”), and legislative statutes are either silent or ambiguous on the question, judges have the authority and duty to resolve the issue (one party or the other has to win, and on disagreements of law, judges make that decision).

115. 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 IPC).

116. *The term logically has not been defined in the IPC.*

117. *Barinder Kumar Ghosh's case relates to common intention.* Common intention implies a pre-arranged plan and acting in concert pursuant to the plan. Common intention comes into being prior to the commission of the act, which need not be a long gap.

118. Section 36 IPC

Effect caused partly by act and partly by omission.—Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

- 119. Section 44 of I.P.C. injury means any harm whatever illegally caused so any person, in body, mind, reputation or property.**

“Injury”.—The word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

- 120. All are kinds of mens rea are intention, malice, negligence**

- 121. 53, IPC. Punishments**—The punishments to which offenders are liable under the provisions of this Code are— First.—Death; Secondly.—Imprisonment for life; 3 * * * * Fourthly.—Imprisonment, which is of two descriptions, namely:— (1) Rigorous, that is, with hard labour; (2) Simple; Fifthly.—Forfeiture of property; Sixthly. —Fine.

- 122. Murder** is the unlawful killing of another human without justification or valid excuse, especially the unlawful killing of another human with malice aforethought.

- 123.** 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.

1. Illustrations

- (a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
- (b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation—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.

2. Illustrations

- (a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

125. Section 82 in The Indian Penal Code

Act of a child under seven years of age.—Nothing is an offence which is done by a child under seven years of age.

127. Section 108 in The Indian Penal Code

Abettor—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.

Explanation— (1) 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. (2) 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.

Illustrations

- (a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
- (b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

128. Section 415 in The Indian Penal Code

Cheating—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”.

Explanation—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

- (a) 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.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

129. Section 299 in The Indian Penal Code

Culpable homicide—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.

Illustrations

- (a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that

death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

- (b) A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

130. Section 300 in The Indian Penal Code

Murder—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly)—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, or—

(Thirdly) —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, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

- (a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- (b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. 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.
- (c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

- (d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception—(1) When culpable homicide is not murder.—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 causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—

(First)—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.

Explanation—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

- (a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.
- (b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.
- (c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.
- (d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.
- (e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was

given by a thing done in the exercise of the right of private defence.

131. Section 445 in The Indian Penal Code

House breaking—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—

(First)—If he enters or quits through a passage by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

(Secondly)—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.

(Thirdly)—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.

(Fourthly)—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.

(Fifthly)—If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

(Sixthly)—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.

Explanation—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

(a) A commits house-trespass by making a hole through the wall of Z’s house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

132. Section 378 in The Indian Penal Code

Theft—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.

Explanation—(1) A thing so long as it is attached to the earth, not being movable 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. (2) A moving effected by the same act which affects the severance may be a theft. (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. (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. (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.

Illustrations

(a) A cuts down a tree on Z’s ground, with the intention of dishonestly taking the tree out of Z’s possession without Z’s consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

133. Section 494 in The Indian Penal Code

Marrying again during lifetime of husband or wife—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(Exception)—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

134. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately.

135. Section 215 in The Code of Criminal Procedure, 1973

Effect of errors. No error in stating either the offence or the particulars required to be stated in the charge, and

no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

- (a) A is charged under section 242 of the Indian Penal Code (45 of 1860), with “having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit,” the word “fraudulently” being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.
- (b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

136. Section 154 in The Code of Criminal Procedure, 1973

Information in cognizable cases.

1. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
2. A copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the informant.
3. Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

137. Section 378 in The Indian Penal Code

Theft—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.

Illustrations

- (a) A cuts down a tree on Z’s ground, with the intention of dishonestly taking the tree out of Z’s possession without Z’s consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.
- (b) A puts a bait for dogs in his pocket, and thus induces Z’s dog to follow it. Here, if A’s intention be dishonestly to take the dog out of Z’s possession without Z’s consent. A has committed theft as soon as Z’s dog has begun to follow A.
- (c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

139. Section 53 in The Indian Evidence Act, 1872

In criminal cases, previous good character relevant—In criminal proceedings, the fact that the person accused is of a good character, is relevant.

140. Section 141 in The Indian Penal Code

Unlawful assembly—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, 1[the Central or any State Government or Parliament or the Legislature of any State], 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.

Explanation—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

141. MURDER: The term “Murder” traces its origin from the Germanic word “morth” which means secret killing. Murder means when one person is killed by another person or a group of persons who have a pre-determined intention to end life of the former. An offence will not amount to ‘Murder’ unless it includes an offence which falls under the definition of culpable homicide as per the definition of ‘Murder’ under IPC. All murders are culpable homicide but all homicides are not murders. Section 299 and Section 300 of Indian Penal Code deal with murder.

HOMICIDE: The word homicide is supposedly derived from Latin where “homo” means man and “cida” means killing. Thus, homicide means the killing of a man by a man. Homicide can be lawful or unlawful. Culpable homicide is punishable by law and is further divided into two categories:

- Culpable homicide amounting to murder
- Culpable homicide not amounting to murder.

142. Section 177 in The Code of Criminal Procedure, 1973

Ordinary place of inquiry and trial. Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

143. Section 350 in The Indian Penal Code

Criminal force.—Whoever 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.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person’s part. A has therefore intentionally used force to Z; and if he has done so without Z’s consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

144. Section 330, IPC. Voluntarily causing hurt to extort confession, or to compel restoration of property.—Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause

the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

- (a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
- (b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.
- (c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.
- (d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

145. The right of private defence is absolutely necessary for the protection of one’s life, liberty and property. It is a **right** inherent in a man. But the kind and amount of force is minutely regulated by law. The use of force to protect one’s property and person is called the **right of private defence**.

146. Voyeurism is the sexual interest in or practice of spying on people engaged in intimate behaviours, such as undressing, sexual activity, or other actions usually.

147. Motive is the term used to explain why a person committed a crime. It isn’t the same as intent, which relates to whether an action was accidental or intentional.

Intent is an element of just about every crime, meaning that the prosecution must establish that the defendant intended to commit the criminal act. (Sometimes it’s enough to prove that the defendant didn’t act intentionally, but was reckless or criminally negligent.) But motive usually isn’t a criminal element—the prosecution doesn’t *have* to prove the defendant had it. Instead, prosecutors try to establish motive in order to convince the jury that the defendant is guilty.

Example: John and Sue have been happily married for 30 years. John is diagnosed with a terminal illness and is in constant pain. After living in agony for several months, he repeatedly asks Sue to kill him. After much deliberation, Sue shoots and kills John. Sue’s intent was to kill. Her motive was to stop her husband’s pain. She’s guilty of murder even though her motive may have been compassionate.

148. 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 Indian Penal Code, 1860 (hereinafter “IPC”) defines hurt as: “whoever reasons bodily pain, disorder or disease to any man or woman is said to have caused harm.” The section does not outline the offence of inflicting harm. It defines best the time period hurt and does not describe the situations underneath which it can be brought on.

To constitute any one or more of essentials of simple hurt must be present:

- Bodily Pain
- Infirmity to another
- Disease

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.

- 149.** *The maximum ‘Ignorantia juris non excusat’ means Ignorance of law is not an excuse.*

The legal principle of *ignorantia juris non excusat* (ignorance of the law excuses not) or *ignorantia legis neminem excusat* (ignorance of law excuses no one) is derived from Roman law. Essentially, it means that if someone breaks the law, he or she is still liable even if they had no knowledge of the law being broken.

150. Section 76 in the Indian Penal Code

Act done by a person bound, or by mistake of fact believing himself bound, by law.—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, 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.
- (b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

- 151.** Section 80 of IPC deals with Accident in doing a lawful act - 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.

153. Section 84 in the Indian Penal Code

Act of a person of unsound mind.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

154. Section 83 in The Indian Penal Code

Act of a child above seven and under twelve of immature understanding—Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

155. Section 97 in The Indian Penal Code

Right of private defence of the body and of property—Every person has a right, subject to the restrictions contained in section 99, to defend—

(First)—His own body, and the body of any other person, against any offence affecting the human body;

(Secondly)—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

- 156.** In India a person has right to defend his own body and bodies of others and his own property and property of others.

158. Section 85 in the Indian Penal Code

Act of a person incapable of judgment by reason of intoxication caused against his will—Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

- 159.** According to Section 81 of IPC, Act likely to cause harm, but done without criminal intent, and to prevent other harm – 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, to person or property.

It is question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

160. A is at a great distance from B and he has not a present and reasonable apprehension of being attacked by A.

161. Section 80 in The Indian Penal Code

Accident in doing a lawful act.—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.

164. Section 94 in The Indian Penal Code

Act to which a person is compelled by threats.—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—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.

165. Section 85, IPC. Act of a person incapable of judgment by reason of intoxication caused against his will—Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

166. Section 81 in The Indian Penal Code

Act likely to cause harm, but done without criminal intent, and to prevent other harm—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.

Explanation—It is question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down to boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act. A is not guilty of the offence.

ARBITRATION, TRIBUNAL ADJUNCTION AND ALTERNATIVE DISPUTE RESOLUTION

ADVERSARIAL AND INQUISITORIAL SYSTEMS

Every legal system in this world can be broadly classified into two models: Adversarial and Inquisitorial. Both the systems aim at dispensing justice, but they differ in their techniques of adjudication and justice delivery mechanisms. Therefore, this classification becomes important.

In an adversarial system, the parties in a legal proceeding develop their own theory of the case and gather evidence to support their claims. The parties are assisted by their lawyers who take a proactive role in delivering justice to the litigants. The lawyers gather evidence and even participate in cross-examination and scrutiny of evidence presented by the other disputing party. The role of the judge/decision maker is rather passive as the judge decides the claims based solely on the evidences and arguments presented by the parties and their lawyers.

In an inquisitorial system, the judge/decision maker takes a centre-stage in dispensing justice. The role of the judge/decision maker is active as he/she determines the facts and issues in dispute. The judge/decision maker also decides the manner in which the evidence must be presented before the court. *For example*, the judge may decide for presentation of a specific form of evidence, *i.e.*, oral (witness statement) or documentary (correspondence between the parties through letters/emails) or a combination of both. The judge then evaluates the evidence presented before him/her and decides upon the legal claims. Therefore, this model of adjudication is also known as the interventionist/investigative model. Furthermore, in such a system, less reliance is placed on cross-examination and other techniques often used by lawyers to evaluate evidences of their opposing counsel.

The adversarial system is generally adopted in common law countries. Major common law jurisdictions include the UK, US, Australia and India. On the other hand, continental Europe which follows the civil law system (*i.e.*, those deriving from Roman law or the Napoleonic Code) has adopted the inquisitorial system.

Having understood the basic framework of functioning of the two models of legal systems, let us analyse their advantages and disadvantages.

The main advantages of an adversarial system include:

- The use of cross-examination can be an effective way to test the credibility of witnesses presented;
- The parties may be more willing to accept the results when they are given effective control over the process.

The disadvantages of an adversarial system are the following:

- The cost of the justice system falls upon the parties. This creates an in-built discrimination amongst the litigants. Parties with better resources are able to access justice by hiring competent lawyers and presenting sophisticated evidences which may not be immediately available for parties that lack these resources. Accessibility and affordability to justice are important challenges for the adversarial system of dispute resolution.
- The role of lawyers and the procedural formalities, *e.g.*, cross examination may prolong the trial and lead to delays in several matters.
- Judges play less active role; a judge is not duty bound to ascertain the truth but only to evaluate the matter based on the evidences presented before him/her.

Peter Murphy in his book, **Practical Guide to Evidence** recounts an instructive example. A frustrated judge in an English (adversarial) court finally asked a barrister after witnesses had produced conflicting accounts, 'Am I never to hear the truth?' 'No, my lord, merely the evidence', replied counsel.

On the other hand, the advantages of an inquisitorial model include:

- The system offers procedural efficiency as the active role of judges prevents delays and prolonged trials.
- The system preserves equality between the parties as even the stronger party with more resources and expert lawyers may not be able to influence the judges.

The disadvantages of this model include:

- In an inquisitorial system, since the judge steps into the shoes of an investigator, he/she can no longer remain neutral to evaluate the case with an open mind.
- There may be a lack of an incentive structure for judges to involve themselves in proper fact finding.

INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION

Meaning and Scope

Alternative Dispute Resolution (ADR) system refers to the use of non-adversarial techniques of adjudication of legal disputes.

The history of ADR in India pre-dates the modern adversarial model of Indian judiciary. The modern Indian judiciary was introduced with the advent of the British colonial era, as the English courts and the English legal system influenced the practice of Indian courts, advocates and judges. Courts in India were established to have in place a uniform legal system on the lines of the English Courts. However, even before the advent of such formalistic models of courts and judiciary, Indian legal system was characterised by several native ADR techniques.

The Vedic age in India, witnessed the flourishing of specialised tribunals such as Kula (for disputes of family, community, tribe, castes, races), Shreni (for internal disputes in business, corporation of artisans) and Puga (for association of traders/commerce branches). In these institutions, interest-based negotiations dominated with a neutral third party seeking to identify the underlying needs and concerns of the parties in dispute. Similarly, 'People's courts' or 'Panchayat' continued to be at the centre of dispute resolution in villages.



A typical view of village panchayat in India

Benefits of ADR

The ADR methods are speedier, informal and cheaper modes of dispensing justice when compared to the conventional

judicial procedure. ADR provides a more convenient forum to the parties who can choose the time, place and procedure, for conducting the preferred dispute redressal process. Furthermore, if the dispute is technical in nature, parties have an opportunity to select the expert who possesses the relevant legal and technical expertise. It is interesting to note that ADR provides the flexibility to even refer disputes to non-lawyers. *For example*, several disputes of technical character e.g., disputes pertaining to the regulation of the construction industry are usually referred to engineers rather than lawyers.

ADR is also encouraged amongst the disputants to reduce delays and high pendency of court cases. The rise of ADR is further supported, as the law courts are confronted with following problems, such as:

1. The lack of number of courts and judges which creates an inadequacy within the justice delivery system;
2. The increasing litigation in India due to increasing population, complexity of laws and obsolete continuation of some pre-existing legal statutes;
3. The increasing cost of litigation in prosecuting or defending a case, increasing court fees, lawyer's fees and incidental expenses;
4. Delay in disposal of cases resulting in huge pendency in all the courts.

In the light of the apparent need and benefits provided by ADR, it has emerged as a successful alternative to court trials. Further, the rise of the ADR movement in India indicates that it is contributing tremendously towards reviving the litigant's faith in justice delivery mechanisms. In the modern era, several new and sophisticated forms of ADR techniques have developed. The different forms of ADR models/techniques are discussed below.

TYPES OF ADR

Arbitration

Arbitration is a term derived from the nomenclature of Roman law. Arbitration is a private arrangement of taking disputes to a less adversarial, less formal and more flexible forum and abiding by judgment of a selected person instead of carrying it to the established courts of justice.

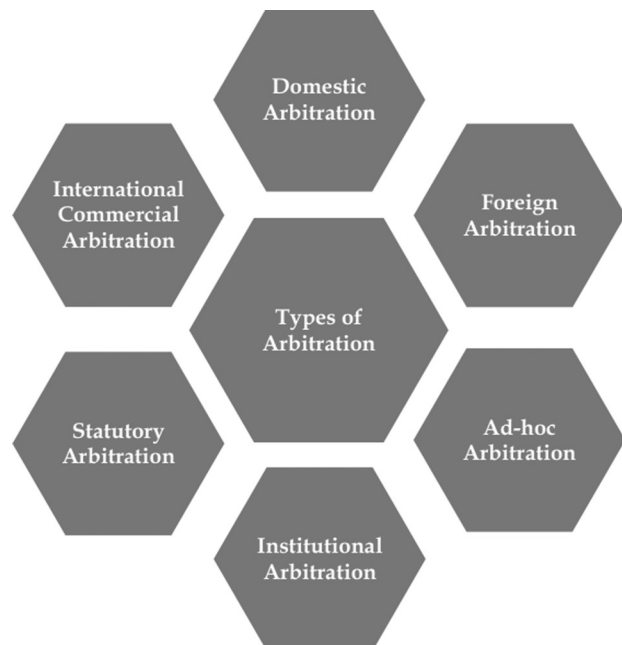
Process of Arbitration

Arbitration can be chosen by the parties either by way of an agreement (Arbitration Agreement) or through the reference of the Court. The parties in an arbitration have the freedom to select a qualified expert known as an arbitrator. The process of dispute resolution through arbitration is confidential, unlike the court proceedings which are open to the public. This feature of arbitration makes it popular especially for commercial disputes where business secrets revealed during the process of dispute resolution are protected and preserved.

Similarly companies can maintain their commercial reputation, as they can prevent the general public or their customers from discovering the details of their on-going legal disputes.

The decision rendered by an arbitrator is known as an arbitral award. Similar to a judgment given by a judge, the arbitral award is binding on the disputing parties. Once an arbitral award is rendered, it is recognised and enforced (given effect to) akin to a court pronounced judgment or order. In addition to an arbitral award, the arbitrator also holds power and authority to grant interim measures, like a judge in the court. These interim measures are in the nature of a temporary relief and may be granted while the legal proceedings are on-going in order to preserve and protect certain rights of the parties, till the final award is rendered. Therefore, an arbitral award holds several similarities with a court order or judgment. However, unlike a judgment rendered by a judge in the court, the award does not hold precedential value (the doctrine of stare decisis which means “stand by the decision”) for future arbitrations. Arbitrators are free to base their decisions on their own conception of what is fair and just. Thus unlike judges, they are not strictly required to follow the law or the reasoning of earlier case decisions.

Types of Arbitration



- **Domestic Arbitration:** An arbitration with Indian parties, where the place of arbitration is in India and rules applicable are Indian.
- **Foreign Arbitration:** An arbitration where proceedings are conducted in a place outside India and the award is required to be enforced in India.
- **Ad-hoc Arbitration:** An arbitration which is governed by parties themselves, without recourse to a formal arbitral institution. It may be domestic or international in character.

- **Institutional Arbitration:** An arbitration where parties select a particular institution, which in turn takes the arbitration forward by selecting an arbitrator and laying out the rules applicable within an arbitration, e.g., mode of obtaining evidence, etc. There are several institutions to govern arbitration. Examples of prominent institutions of arbitration include, The London Chamber of International Arbitration (LCIA) which has its offices across the world, including New-Delhi, India.
- **Statutory Arbitration:** An arbitration which is mandatorily imposed on the parties by operation of a particular law or statute, applicable to them. *For example*, the Defence of India Act, 1971 is one such legislation that mandates a recourse to arbitration in case of any dispute arising within the Act.
- **International Commercial Arbitration:** An arbitration in which atleast one of the disputing parties is a resident/body corporate of a country other than India. Arbitration with the government of a foreign country is also considered to be an international commercial arbitration. This form of arbitration has been defined specifically under section 2(1)(f) of the Arbitration and Conciliation Act, 1996.

An Overview of the Laws on Arbitration

The Arbitration and Conciliation Act of 1996 is the relevant legislation that governs the process of arbitration in India. The statute provides for an elaborate codified recognition of the concept of arbitration, which has largely been influenced by significant movements of judicial reforms and conflict management across the world. In this regard, a special reference must be made to an international convention entitled, United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration, 1985. After the birth of this international treaty, the United Nations General Assembly, recommended that all countries must give due consideration to the said model law, in-order to bring uniformity in the law and practice of international arbitration. The Indian Arbitration and Conciliation Act of 1996 is similarly modelled on the UNCITRAL model law.

The Arbitration and Conciliation Act, 1996 repealed several pre-existing Arbitration statutes such as The Arbitration Act, 1940; The Arbitration (Protocol and Convention) Act, 1937 and The Foreign Awards (Recognition and Enforcement) Act, 1961. Thus, arbitration has for long been a part of the Indian legal system.

The Arbitration and Conciliation Act, 1996 has ushered a new era of dispute resolution for domestic and commercial legal issues. On these lines, the Supreme Court of India has also affirmed that the Arbitration and Conciliation Act, 1996 was introduced in order to attract the ‘international mercantile

community'. The Supreme Court has thus emphasised that the Act should be interpreted and applied, keeping the commercial sense of the dispute in mind (Konkan Railways Corp. Ltd. vs Mehul Construction Co. (2000) 7 SCC 201).

Glossary of Terms

Arbitration agreement: An agreement whereby parties agree to submit their present or future disputes/differences to arbitration. This may be in writing or via other means of communication.

Court referral to arbitration: If a party to the dispute approaches the Court despite the presence of an arbitration agreement, the other party may raise a claim before the Court. The Court then must refer the dispute back to arbitration, if it has been previously agreed by the parties. This method of initiating arbitration is known as court referral to arbitration.

Statement of claim: The initial documents filed by the claimants enlisting the issues raised to be resolved in an arbitration.

Counter-claim/defense: Respondent's reply to the claim presented by the claimant.

Setting aside of an arbitral award: An arbitral award rendered in an arbitration may be struck down or invalidated by the courts. The grounds of such invalidation are limited to: incapacity of a party to enter into arbitration agreement in the first place, improper appointment of arbitrator, dispute falling outside the terms of the arbitration agreement, bias on the part of arbitrator, award violating public policy at large.

ADMINISTRATIVE TRIBUNALS

The 42nd Amendment Act, 1976 added Articles 323-A and 323-B to the Constitution of India. These articles empower the Parliament to set up tribunals for adjudication of specialised disputes. The range of disputes mentioned in the Constitution refers to:

- disputes pertaining to service conditions of the government officers,
- collection and enforcement of tax,
- industrial and labour disputes,
- matters concerning land reforms,
- elections disputes,
- ceiling on urban property, and
- production, procurement, supply and distribution of food-stuffs or other essential goods.

Thus the 42nd Amendment Act ushered the era of 'tribunalisation of Indian judiciary'. Further, the enactment of Administrative Tribunals Act, 1985 took the constitutional objective further and set-up the Central Administrative Tribunal (CAT) and State Administrative Tribunals.

The CAT was set up pursuant to the Act of the Legislature in 1985. The tribunals exercise jurisdiction of service matters of employees covered by it. The appeals against the orders of the administrative tribunals lie before the Division bench of the concerned High Court.

The tribunals are procedurally flexible and this flexibility increases their efficiency. *For example*, The Administrative Tribunals Act, 1985 allows the aggrieved persons to appear directly before the tribunals. The overall objectives of the tribunals are to provide speedy and inexpensive justice to the litigants. Since government is a major litigant in the courts and government related litigation has increased in the delay and pendency of litigation, such tribunals over the past three decades have significantly contributed in supplementing the role of the courts in adjudication of service disputes. The tribunals however are not meant to replace the Courts. This has been explained by the seven judge bench of the Supreme Court in L Chandra Kumar case [JT 1997 (3) SC 589] where it was held that tribunals would not take away the exclusive jurisdiction of the courts, and their decisions could be scrutinised by the Division bench of the High Courts.

One may also note that these administrative and state tribunals are not an original invention of the Indian political and legal system. Such tribunals are now well established in the member countries of the European Union and the United States.

- Today, CAT has 17 regular benches, 15 of which operate at the principal seats of High Courts and the remaining two at Jaipur and Lucknow. It also consists 21 circuit benches.
- The tribunal consists of a Chairman, Vice-Chairman and Members.
- The members of the tribunal are drawn both from judicial as well as administrative streams so as to give the tribunal the benefit of expertise both in legal and administrative spheres.

MEDIATION AND CONCILIATION

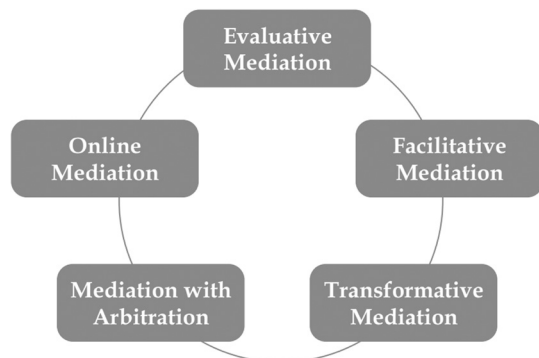
Mediation

Mediation is a method of ADR in which parties appoint a neutral third party who facilitates the mediation process in order to assist the parties in achieving an acceptable, voluntary agreement. Mediation is premised on the voluntary will of the parties and is a flexible and informal technique of dispute resolution.

Mediation is more formal than negotiation but less formal than arbitration or litigation. Unlike litigation and similar to arbitration, mediation is relatively inexpensive, fast, and confidential. Further, mediation and arbitration differ on the grounds of the nature of an award rendered. The outcome of mediation does not have similar binding like an arbitral award. However, though non-binding, these resolution agreements

may be incorporated into a legally binding contract, which is binding on the parties who execute the contract.

Mediation can be classified into the following categories:



Evaluative mediation: Evaluative mediation is focused on providing the parties with an evaluation of their case and directing them toward settlement. During an evaluative mediation process, when the parties agree that the mediator should do so, the mediator will express a view on what might be a fair or reasonable settlement. The evaluative mediator has somewhat of an advisory role in that s/he evaluates the strengths and weaknesses of each side's argument and makes some predictions about what would happen should they go to court.

Facilitative mediation: Facilitative mediators typically do not evaluate a case or direct the parties to a particular settlement. Instead, the facilitative mediator facilitates the conversation. These mediators act as guardian of the process, not the content or the outcome. During a facilitative mediation session the parties in dispute control both what will be discussed and how their issues will be resolved. Unlike the transformative mediator, the facilitative mediator is focused on helping the parties find a resolution to their dispute. The facilitative mediator further provides a structure and agenda for the discussion.

Transformative mediation: Transformative mediation practice is focused on supporting empowerment and recognition shifts, by allowing and encouraging deliberation, decision-making, and perspective-taking. A competent transformative mediator practices with a micro-focus on communication, identifying opportunities for empowerment and recognition as those opportunities appear in the parties' own conversations, and responding in ways that provide an opening for parties to choose what, if anything, to do with them.

Mediation with arbitration: Mediation has sometimes been utilized to good effect when coupled with arbitration, particularly binding arbitration, in a process called 'mediation/arbitration'. The process begins as a standard mediation, but if mediation fails, the mediator becomes an arbiter.

This process is more appropriate in civil matters where rules of evidence or jurisdiction are not in dispute. It

resembles, in some respects, criminal plea-bargaining and Confucian judicial procedure, wherein the judge also plays the role of prosecutor.

Despite their benefits, mediation/arbitration hybrids can pose significant ethical and process problems for mediators. Many of the options and successes of mediation relate to the mediator's unique role as someone who wields no coercive power over the parties or the outcome. The parties' awareness that the mediator might later act in the role of judge could distort the process. Using a different individual as the arbiter addresses this concern.

Online Mediation: Online mediation employs online technology to provide disputants access to mediators and each other despite geographic distance, disability or other barriers to direct meeting.

Process of Mediation

The neutral third party facilitating the process of mediation is known as a mediator. Mediation does not follow a uniform set of rules, though mediators typically set forth rules that the mediation will observe at the outset of the process. Successful mediation often reflects not only the parties' willingness to participate but also the mediator's skill. There is no uniform set of rules for mediators to become licensed, and rules vary by state regarding requirements for mediator certification.

Broadly speaking, mediation may be triggered in three ways:

- (i) Parties may agree to resolve their claims through a pre-agreed mediation agreement without initiating formal judicial proceedings (pre-litigation mediation).
- (ii) Parties may agree to mediate, at the beginning of formal court proceedings (popularly known as court referrals).
- (iii) Mediation may be taken recourse of, after formal court proceedings have started, or even post trial, i.e., at the appellate stage.

Under the Indian law, contractual dispute (including money claims), similar disputes arising from strained relationships (from matrimonial to partnership), disputes which need a continuity of relationship (neighbour's easement rights) and consumer disputes, have been held to be most suited for mediation.

For example, a suburban homeowner might find that the formal legal system offers no realistic way to deal with his neighbour's overly bright driveway lights that shine in his bedroom window. Such disputes however can be mediated. Mediation gives the participants an opportunity to raise and discuss any issues they might wish to settle. *For example*, it might turn out that the neighbour lit his driveway because the homeowner's dog went on his lawn, or because the homeowner's tree was encroaching upon his property. Because mediation can handle any number of outstanding gripes or

issues, it offers a way to discuss (and solve) the problems underlying a dispute and create a truly lasting peace.

The Supreme Court of India in its judicial decision has expressly clarified the ambit of mediation. According to *Afcons Infrastructure Ltd. vs Cherian Varkey Construction Co. (P) Ltd.*, [(2010) 8 SCC 24] representative suits, election disputes, criminal offenses, case against specific classes of persons (minors, mentally challenged) have been excluded from the scope of mediation.

Conciliation

Conciliation is a process similar to mediation as parties out of their own free will appoint a neutral third party to resolve their disputes. The key difference between mediation and conciliation lies in the role of the neutral third party. A mediator merely performs a facilitative role and provides platform for the parties to reach a mutually agreeable solution. The role of a conciliator goes beyond that of a mediator. A conciliator may be interventionist in the sense that he/she may suggest potential solutions to the parties, in order to resolve their claims and disputes.

Laws on Mediation and Conciliation

Both Mediation and Conciliation are governed by Section 89, a provision inserted by the 2002 amendment of the Civil Procedure Code, 1908 ("CPC"). The Code is the primary legislation governing the method, procedure and legal practice of civil disputes. Section 89 of the Code only deals with court referred mediation. Pre-litigation mediation is not yet governed by any law in India.

Similarly, conciliation only finds a reference in Section 89, Civil Procedure Code, 1908. The process and methods within conciliation have been described in the Arbitration & Conciliation Act, 1996. Further, the Industrial Disputes Act, 1947 also provides for conciliation as a viable means of resolving disputes in the labour sector.

LOK ADALATS

The concept of Lok Adalat (People's Court) is an innovative Indian contribution to the global legal jurisprudence. "Lok" stands for "people" and the term "Adalat" means "court". India has a long tradition and history of such methods being practiced in the society at grassroots level.

In ancient times the disputes were referred to "panchayats" which were established at village level. Panchayats used to resolve the dispute through arbitration. It has proved to be a very effective alternative to litigation. This very concept of settlement of dispute through mediation, negotiation or through arbitral process known as decision of "Nyaya-Panchayat" is conceptualized and institutionalized in the philosophy of Lok Adalat. It involves people who are directly or indirectly affected by dispute resolution. The evolution

of movement called Lok Adalat was a part of the strategy to relieve heavy burden on the Courts with pending cases and to give relief to the litigants who were in a queue to get justice.

The modern institution of Lok Adalat is presided over by a sitting or retired judicial officer such as the chairman, with usually two other members — a lawyer and a social worker. A Lok Adalat has jurisdiction to settle any matter pending before any court, as well as matters at pre-litigative stage, *i.e.*, disputes which have not yet been formally instituted in any Court of Law. Such matters may be in the nature of civil or non-compoundable criminal disputes. The salient features of Lok Adalat are participation, accommodation, fairness, voluntariness, neighbourliness, transparency, efficiency and lack of animosity.

The benefits of Lok Adalat include:

- There is no court fee and even if the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat.
- There is no strict application of the procedural laws and the disputing parties can directly interact with the judges.
- The decision of Lok Adalat is binding on the parties and its order is capable of execution through legal process.

The first Lok Adalat was held on March, 14, 1982 at Junagarh in Gujarat. Lok Adalats have been very successful in settlement of claims including - motor accident claims, matrimonial/family disputes, labour disputes, disputes relating to public service such as telephone, electricity, bank recovery cases etc.

An Overview of Laws on Lok Adalat

Pursuant to Article 39-A of the Constitution of India, the Parliament has enacted The Legal Services Authorities Act, 1987. The Act provides for various provisions of dispute settlement through Lok Adalat. The Act constitutes legal services authorities to provide free legal aid and competent legal services to the weaker sections of the society. In 2002, the Act was amended to establish permanent Lok Adalats for public utility services.

Furthermore, the National Legal Services Authority (NALSA), a statutory body constituted under the National Legal Services Authorities Act, 1987 is responsible for laying down policies and principles for making legal services under the Act and frame the most effective and economical schemes for legal services. NALSA is engaged in providing legal services, legal aid and speedy justice through Lok Adalats. It also disburses funds and grants for implementing legal aid schemes, literacy camps and programs. Similarly, the State Legal Services Authorities and District Legal Services Authorities have been constituted in every state capital and districts respectively.

OMBUDSMAN

An indigenous Swedish, Danish and Norwegian term, Ombudsman is etymologically rooted in the word *umboðsmaðr*, essentially meaning “representative”.

Whether appointed by a legislature, the executive, or an organization, the typical duties of an ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation. Ombudsmen sometimes also aim to identify systemic issues leading to poor service or breaches of people’s rights. At the national level, most ombudsmen have a wide mandate to deal with the entire public sector, and sometimes also elements of the private sector (*for example*, contracted service providers). Further redress depends on the laws of the country concerned, but this typically involves financial compensation.

The Government of India has designated several ombudsmen sometimes called Chief Vigilance Officer (CVO) for the redress of grievances and complaints from individuals in the banking, insurance and other sectors being serviced by both private and public bodies and corporations. *For example*, the CVC (Central Vigilance Commission) was set up on the recommendation of the Santhanam Committee (1962-64). CVC has been conceived to be the apex vigilance institution, free of control from any executive authority, monitoring all vigilance activity under the Central Government and advising various authorities in Central Government organizations in planning, executing, reviewing and reforming their vigilance work.

The major advantage of an ombudsman is that he or she examines complaints from outside the offending state institution, thus avoiding the conflicts of interest inherent in self-policing. However, the ombudsman system relies heavily on the selection of an appropriate individual for the office, and on the cooperation of at least some effective official from within the apparatus of the state.

LOKPAL AND LOKAYUKTA

Meaning and Origin

A Lokpal (caretaker of people) is an ombudsman in India. The Lokayukta (appointed by the people) is a similar anti-corruption ombudsman organization in the Indian states.

The institutions of Lokpal and Lokayukta were given formal recognition by the passing of The Lokpal and Lokayukta Act, 2013. The legislation aims to combat acts of bribery and corruption of public-servants—a term that has been given a fairly wide interpretation in the Act. The Act applies to the public servants in and outside India. It is important to note that the Act includes in its purview even the current and ex-prime ministers of India except in matters pertaining to international relations, external and internal security, public order, atomic energy and space. At least two-thirds of the members of Lokpal must approve of such

inquiry. It further provides that any such inquiry shall be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone.

Besides the Prime Minister, it brings within its purview any person who is or has been a Minister of the Union and any person who is or has been a Member of either House of Parliament. The Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of either House of Parliament in respect of anything said or a vote given by him/her in Parliament or any committee thereof covered under the provisions contained in clause (2) of Article 105 of the Constitution.

With respect to bureaucracy, it includes any Group ‘A’, ‘B’, ‘C’ or ‘D’ official or equivalent from amongst the public servants defined in the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union.

The Act also provides for the manner in which the public-servants must declare their assets.

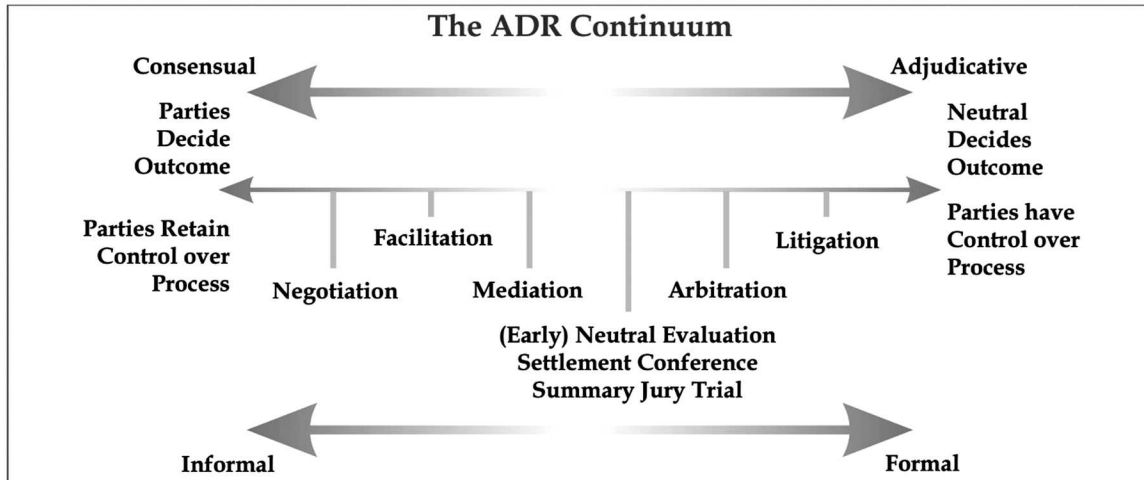
According to the Act, the Lokpal shall consist of:

- A chairperson who has been a Chief Justice of India or is or has been a Judge of the Supreme Court or is an eminent judicial member of impeccable integrity and outstanding ability having special knowledge and expertise of not less than 25 years in matters relating to anti-corruption policy, public administration, vigilance or finance.
- Further, the total members of Lokpal shall not exceed 8, out of whom 50% shall be Judicial Members.

Furthermore, the powers of the Lokpal are extensive, and equivalent to the superintendence, inquiry and investigative powers of the police and the Central Vigilance Commission. The Lokpal shall consist of an inquiry and prosecution wing to take necessary steps in prosecution of public servants in relation to offences committed under the Prevention of Corruption Act, 1988. Further, Lokpal can even recommend the government to create special courts to decide cases arising from the Prevention of Corruption Act, 1988.

Likewise, the Lokpal and Lokayuktas Act, 2013 provides for the establishment of Lokayukta at every state in-order to deal with complaints of corruption against public functionaries. The Act provides that all states must institute Lokayuktas within one year of from the date of the commencement of The Lokpal and Lokayuktas Act, 2013.

It is important to note that even before the enactment of this Act, some states in India have Lokayuktas. It must be noted that the institution of Lokayukta was established first in Maharashtra in 1971. Although Odisha had passed the Act in this regard in 1970, it came into force only in 1983. Till now 21 states and 1 UT (Delhi) have established the institution of Lokayuktas.



MULTIPLE CHOICE QUESTIONS

- In a case relating to arbitration, the arbitral award was remitted under section 16 of the Arbitration Act, 1940. The date of award was 1st June, 1992. The Arbitration and Conciliation Act came into force on 22 August, 1996. The validity of award can be challenged under the:
 - Limitation Act, 1963
 - General Clauses Act, 1897
 - Arbitration Act, 1940
 - Arbitration and Conciliation Act, 1996 only
- Which of the following model law was used by the Indian Arbitration and Conciliation Act, 1996?
 - Constitution of India
 - Guidelines of Supreme Court of India
 - European Commercial Arbitration Procedure
 - UNCITRAL, 1985.
- Which among the following is the main objective of the Arbitration Act, 1996?
 - To comprehensively cover international commercial arbitration
 - To ensure that arbitral tribunal within the limits of court's jurisdiction
 - To minimize the supervisory role of courts in the arbitral process
 - None of the above
- The power of court to refer parties for arbitration would and must necessarily include, imply and inhere in it:
 - the power and jurisdiction to advise the parties
 - the power and jurisdiction to review the award
 - the power and jurisdiction to appoint the arbitrator
 - the power and jurisdiction to call for another arbitrator.
- Part I of the Arbitration and Conciliation Act, 1996 applies where:
 - the place of arbitration is in India
 - the place of arbitration is outside India, but is in Asia
 - the place of arbitration is outside India, but is in Europe
 - the place of arbitration is anywhere in the world
- An arbitral award made under Part I of the Arbitration and Conciliation Act, 1996 shall be considered as a:
 - domestic award
 - foreign award
 - general award
 - international award
- In the matters governed by Part I of the Arbitration and Conciliation Act, 1996:
 - a judicial authority can intervene generally
 - a judicial authority shall not intervene under any circumstances
 - a judicial authority cannot intervene except where so provided in this Part
 - either (A) or (C)
- Arbitral proceedings commence:
 - on the date on which a request for a dispute to be referred to arbitration is received by the respondent
 - on the date when the respondent gives consent to the appointment of the arbitrator
 - on the date when the arbitrator issues notice of the parties
 - on the date when the statement of claim and written submission of defence is made
- The provisions of 1996 Act have to be interpreted being uninfluenced by principles underlying under 1940 Act. This observation was laid down in:
 - M.M.T. C. Ltd. vs Sterlite Industries (India) Ltd, AIR 1997 SC 605
 - Sundamm Finace Ltd. vs N.E.P.C. India Ltd., AIR 1999 SC 565.

- C. Olympus Super Structures Pvt. Ltd. vs Meemz Vijay Khetan, AIR 1999 SC 2102.
- D. Orma Impex Pvt. Ltd. vs Nissuri Arb. Pte. Ltd., AIR 1999 SC 2871.
10. The validity of an arbitration agreement does not depend on the number of arbitrators specified therein, as the Act does not suggest the requirement of the number of arbitrators for an arbitration agreement': this was laid down in:
- A. Orma Impex Pvt. Ltd. vs Nissuri Arb. Pte Ltd., AIR 1999 SC 2871
- B. Olympus Super Structures Pvt. Ltd. vs Meena Vijay Khetan, AIR 1999 SC 2102
- C. M.M.T.C. Ltd. vs Sterlite Industris (India) Ltd., AIR 1997 SC 605
- D. None of the above
11. An arbitrator:
- A. is chosen and paid by the disputant
- B. acts in accordance with privately chosen procedure so far as that is not repugnant to public policy
- C. Only (A) is correct
- D. Both (A) and (B) are correct.
12. An arbitral award:
- A. must be connected with the subject-matter of the dispute arbitrated
- B. must be founded on principle of trust
- C. Both (A) and (B) are correct
- D. Only (A) is correct
13. An arbitral award:
- A. has to be in writing but need not be signed
- B. has to be in writing and signed by the members of the arbitral tribunal
- C. may be oral
- D. either (A) or (B) or (C)
14. An arbitral award:
- A. must state the reasons upon which it is based
- B. must state the reasons upon which it is based only when the parties have agreed for the same
- C. need not state the reason upon which it is based
- D. may state or may not state the reasons upon which it is based as per discretion of the members of the arbitral tribunal
15. After the arbitral award is made, each party shall be delivered:
- A. the original award
- B. a signed copy of the award
- C. a photocopy of the award
- D. an unsigned copy of the award
16. A sum directed to be paid by an arbitral award shall carry interest:
- A. @ 6% per annum from the date of the award till the date of payment
- B. @ 12% per annum from the date of the award till the date of payment
- C. 18% per annum from the date of the award till the date of payment
- D. 24 % per annum from the date of the award till the date of payment
17. Finality to arbitral awards within meaning of section 35 of the Arbitration and Conciliation Act, 1996 shall:
- A. not be binding on parties
- B. be binding on government authority
- C. be binding on first party only
- D. be binding on the parties and person claiming under them respectively
18. An arbitral award shall be enforced in the same manner as if it were a decree of:
- A. local authority
- B. the court
- C. the tribunal
- D. Both (B) and (C)
19. An arbitral award becomes enforceable when:
- A. the time for making an application for setting aside the arbitral award has expired and no such application has been made
- B. an application for setting aside the arbitral award has been refused
- C. either (A) or (B)
- D. neither (A) nor (B)
20. Which of the following is the correct statement:
- A. an arbitral award can be inferred with if it is contrary to the substantive provisions of the Act or against the terms of the contract
- B. an arbitral award can be set aside if the arbitral tribunal has not followed the mandatory procedure prescribed under the Act
- C. an arbitral award can be set aside if it is contrary to fundamental policy of Indian law, or the interest of India, or justice or morality
- D. All of the above
21. In the Arbitration & Conciliation Act, 1996, Conciliation is covered in:
- A. Part 1 of the Act
- B. Part 2 of the Act
- C. Part 3 of the Act
- D. Part 4 of the Act
22. A dispute resolution method where a person facilitates parties to exchange information, ideas and possible alternative solutions:
- A. arbitration
- B. negotiation
- C. mediation
- D. litigation
23. A mediator should not have which of the following qualities?
- A. Prejudiced
- B. Flexible
- C. Permissive
- D. Imaginative
24. Which of the following matters cannot be referred to ADR?
- A. customer complaints

- B. civil cases
C. criminal cases
D. cases of trade disputes
25. While drafting a contract _____.
- A. it would be a bad idea to include a mediation clause as it would delay the resolution of the dispute
B. it would be a good idea to include a mediation clause so that the dispute could be resolved quickly
C. it is not necessary to include a mediation clause
D. there is no such thing called as a mediation clause there is only a mediation settlement agreement
26. The number of conciliators, unless otherwise agreed by the parties, shall _____.
- A. not be even B. be even
C. one D. three
27. In _____, a neutral third party assists the disputing parties in reaching a settlement of their dispute.
- A. Arbitration
B. Mediation
C. Negotiation
D. Infiltration
28. Mediation is not _____.
A. recognised by legislation in India
B. recognised as an alternate dispute resolution mechanism for all disputes in India
C. recognised as an alternate dispute resolution mechanism for certain kinds of disputes approved by legislation
D. not an alternative dispute resolution mechanism
29. Conciliation proceeding come to an end when _____.
A. it appears to the conciliator that there exists the possibility of a settlement
B. the conciliator formulates the terms of a settlement
C. the parties along with the conciliator draw up a plan for settlement
D. the settlement agreement signed by the parties comes into existence
30. ADR stands for _____.
A. Automated Discovery Response
B. Alternate Dispute Resolution
C. Alternative Dispute Resolution
D. Automated Dispute Resolution

ANSWERS

1	2	3	4	5	6	7	8	9	10
C	D	C	C	A	A	C	A	B	C
11	12	13	14	15	16	17	18	19	20
D	D	B	A	B	C	D	C	C	D
21	22	23	24	25	26	27	28	29	30
C	C	A	C	B	B	B	C	D	B

HUMAN RIGHTS IN INDIA

INTERNATIONAL CONTEXT

Historically, varied religious and social traditions as well as philosophical writings have recognized in different ways and with diverse perspectives the inherent rules of being humans, particularly the principles that ensure respect for human dignity. Such principles have commonly been understood as basic and unalienable. For example, traditions like Christianity, Islam, Hinduism, Buddhism, and Confucian have made reference to ‘respect’ and ‘well-being’ for others, which mean that human beings must conduct themselves in particular ways.

The modern society, also, has recognized certain rules of respecting human dignity and their well-being and formulated them in the form of human rights. Generally, the word ‘rights’ denote that these rules are entitlements or claims of all to be recognized and protected through duties and obligations, and the State ensures that human rights of all are guaranteed. The modern concept of human rights emerged from the Western politics and philosophy. The English legal documents of *Magna Carta* of 1215 and The English Bill of Rights of 1689 are some of the earliest examples of the human rights laws. The *Magna Carta* of 1215 was an agreement between the English King John and the barons who were unhappy about the taxation policies of the Monarch. The *Magna Carta* included clauses in the form of rights language; it granted the barons the right to legal trial and prevented their arrest or imprisonment or outlawing or abuse or denial of ownership of property without legal trial.

The *English Bill of Rights* of 1689 was an agreement between the Parliament and the King that prevented the latter from abusing the Protestants. It included clauses that prohibited levying of money by the Crown, and provided right to petition the King, right to fair trial, right against cruel and unusual punishments or excessive fines, and right to parliamentary privileges (speech, vote, etc.) to the members of Parliament. Besides these laws, the late 17th and 18th century writings of many Western thinkers influenced the definition

The Bill of Rights 1689: An Act Declaring the Rights and Liberties of the Subject, and Settling the Succession of the Crown.

Rights include:

- Parliamentary privileges—free elections and freedom of speech in the Parliament
- Right not to be taxed without the approval of the Parliament
- Freedom from intrusion of the Government
- Right to petition in courts
- Right to fair treatment in courts

of human rights like, John Locke, Jean-Jacques Rousseau, and Thomas Paine.

Modern Constitutions of most democratic countries have recognized and adopted similar ideals of human rights as guiding principles. The two earliest and influential examples are that of the United States of America and France. In 1776, when United States of America was formed as a new nation, it adopted the 1776 *American ‘Declaration of Independence’* which included in its preamble the human rights values and stated:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness.”

Again in 1789, at the beginning of the French Revolution, the National Constituent Assembly of France adopted the French *‘Declaration of the Rights of Man and of the Citizen’*, which, drawing upon the United States ideals of human rights, laid the foundation of human rights principles still valid in the present French Constitution. The French Declaration stated in its first two clauses:

“Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good. The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.”

These declarations recognize the inherent dignity and the equal and inalienable rights of human beings, and they form the basis of achieving freedom, justice and peace in a modern democratic State.

INTERNATIONAL HUMAN RIGHTS

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) as 'a common standard of achievement for all peoples and nations. The Universal Declaration of Human Rights provides and defines the various kinds of human rights that are applicable to all human beings. They include the fundamental civil, political, economic, social and cultural rights, for example—freedom of speech, assembly, conscience and religion; right to education; right to livelihood and decent standard of living; right to life, liberty and security of person; right to equality; freedom from all forms of discriminations including based on gender and race; and so on. The Declaration has been embraced by almost all member States of the United Nations to respect and protect the basic human rights values provided therein.

Pursuant to this Declaration, the United Nations adopted a series of international human rights laws on a wide range of themes as well as those with regional specifics that bind signatory countries with obligations and duties provided in these laws to protect and respect human rights. In order to operationalize these rights, many countries have incorporated them in their Constitutions and other domestic legislations.

The international human rights practice also provides for complaint mechanisms and procedures for receiving complaints or communications ensuring that these rights are respected, protected, implemented, and enforced within each party State.

Few examples of international human rights treaties are:

International Covenant on Civil and Political Rights, 1976	Based on the ideals of free human beings enjoying civil and political freedom and freedom from fear and want. E.g., freedom of speech, assembly, conscience and religion; right to life, liberty and security of person; right to equality; freedom from all forms of discriminations including based on gender and race; and so on.
International Covenant on Economic, Social and Cultural Rights, 1976	Examples : right to education; right to livelihood and decent standard of living; right to health, right to shelter, and so on.
Convention on the Rights of the Child, 1990	The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.

Convention on the Elimination of All Forms of Discrimination Against Women, 1979

Discrimination against women is defined as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Convention Relating to the Status of Refugees, 1954

It provides legal safeguards to a refugee/a person who is granted asylum/shelter in another country : "A refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.."

CONSTITUTIONAL FRAMEWORK AND RELATED LAWS IN INDIA

Like in many other countries (e.g., US, South Africa, and so on), in India too human rights are rooted in the Constitution. The Indian constitutional human rights framework involve the following parts :

1. The Preamble,
2. Part III of the Constitution containing the Fundamental Rights provisions,
3. Part IV offering the Directive Principles and
4. Part IV(A) consisting of the Fundamental Duties.

1. The Preamble: The Constitution of India begins with the Preamble affirming its aims, objectives, and the guiding principles. The principles laid out in the Preamble are used for interpreting provisions of the Constitution that are vague and ambiguous. Preamble is the 'basic structure' of the Constitution. The doctrine of 'basic structure' takes away the amendment power of the Parliament with regards to certain features of the Constitution such as democracy, rule of law, secularism, separation of powers and judicial review. Some of these features appear in the Preamble. The Preamble states as follows:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity and to promote among them all;

FRATERNITY < assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

The Preamble proclaims the rights and freedoms, provisions of which are contained in the Constitution in various parts and clauses aimed ‘to secure to all its citizens’ those rights and freedoms.

2. Part III—Fundamental Rights: Articles 12-35 in Part III of the Constitution contain the provisions on fundamental rights. Before we discuss what rights constitute fundamental rights, it is important to note some of the salient features of fundamental rights that are spelt out here:

- They are enforceable by the higher courts in India.
- Article 32 provides the right to the aggrieved ones, whose fundamental rights have been violated or denied, to petition the Supreme Court for the enforcement of fundamental rights.
- Article 13 elevates the authority of fundamental rights. It ensures that the State or other competent authority do not make laws including ordinances, orders, bye laws, rules, regulations, notifications, customs or usages that contradicts or takes away or breaches the fundamental rights.
- Fundamental rights are mostly enforceable against the State and in some cases against private persons. An example of the former is the right to freedom of speech and expression; for the latter is the prohibition of employment of children below the age of fourteen years in factories, mines, and in places of hazardous activities.
- The term ‘State’ includes the Government, Parliament, State Legislatures, District Boards, Panchayats, Municipalities, and other authorities or organizations that are an instrument or agency of the state like, the Indian Oil Limited, Karnataka State Road Transportation Authority, Delhi Jal Board, and so on.

Fundamental rights are largely civil and political rights and consist of the right to equality (Articles 14-18),

right to freedom (Articles 19-22), right against exploitation (Articles 24 and 25), right to freedom of religion (Articles 25-28), Cultural and Educational rights (Articles 29-30), and right to constitutional remedies (Articles 32-35).

(i) Right to Equality: Equality Principle: Article 14 provides to all the right to equality before law and equal protection of the law. It prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It means that law treats everyone equally without consideration of their rank or status or other backgrounds. The principle of equality means that one uniform law cannot be applied to all equally as some may not be similarly placed as others. So ‘equality’ treats equals similarly and unequals differently. For example, the Prohibition of Child Marriage Act, 2006 prescribes the marriage age of girl as 18 years and that of boy as 21 years; this restricts a minor from getting married. This example draws a distinction based on age in relation to the question of the prohibition of child marriage. However, if the marriage between two parties were to be disallowed based on the classification of religion, race, caste, sex or place of birth, it would amount to discrimination and breach of the right to equality.

Discrimination & access to public places : Article 15 is based on the equality principle. It prohibits State from discriminating anyone based on grounds of religion, race, caste, sex or place of birth. Also, it prohibits anyone and the State from using these grounds to restrict any citizen from entering shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort.

Reservation and affirmative action: Article 16 is also based on the equality principle of Article 14. It provides for equality of opportunity in matters of public or State employment and bars any discrimination to any citizen on grounds of religion, race, caste, sex, descent, place of birth, or residence. However, this article allows State to provide reservation or affirmative action programs for government jobs to backward classes like Schedule Castes and Scheduled Tribes who because of historical and continued disadvantages based on caste status and otherwise have not been adequately represented in the services under the State.

Abolition of untouchability: Under Article 17 “Untouchability” is abolished and its practice in any form is forbidden. This article can be enforced against both the State as well as private individuals and the offence is punishable in accordance with special laws like the Protection of Civil Rights Act, 1955 and the Scheduled Caste and Scheduled Tribe

(Prevention of Atrocities) Act, 1989. The abolition of untouchability in article 17 is made operationalized by these two special laws that attempt to remove any form of harassments and abuses to 'Dalits' and 'Adivasis' by the State or private individuals.

(ii) Right to Freedom: Freedoms : Article 19 prescribes and protects the following kinds of freedoms to all citizens:

- (a) Freedom of speech and expression.
- (b) Freedom to assemble peaceably and without arms.
- (c) Freedom to form associations or unions.
- (d) Freedom to move freely throughout the territory of India.
- (e) Freedom to reside and settle in any part of the territory of India; and

- (f) Freedom to practice any profession, or to carry on any occupation, trade or business.

Reasonable Restrictions: However, Article 19 also provides 'reasonable restrictions' on these freedoms, which means that these rights are conditional. The State can 'reasonably' limit or take away the right to 'freedom of speech and expression' when there is a threat to the sovereignty and integrity of India, or the security of the State, or friendly relations with foreign States, or public order, or decency or morality, or in relation to contempt of court, or defamation, or incitement to an offence. For example, the State can prohibit someone from making inciting speeches that may provoke others to commit violence. The chart below presents the various conditions under which State can limit or take away the freedoms.

Freedoms	Restrictions (grounds)
Freedom of speech and expression	Sovereignty and integrity of India, or the security of the State, or friendly relations with foreign States, or public order, or decency or morality, or contempt of court, or defamation, or incitement to an offence.
Freedom to assemble peaceably and without arms	Sovereignty and integrity of India, or public order
Freedom to form associations or unions	Sovereignty and integrity of India, or public order or morality
Freedom to move freely throughout the territory of India	Interests of the general public, or for the protection of the interests of any Scheduled Tribe
Freedom to reside and settle in any part of the territory of India	
Freedom to practice any profession, or to carry on any occupation, trade or business	Interests of the general public; or the State prescribed professional or technical qualifications; or State-run trade, business, industry or service, that excludes participation of citizens or others either completely or partially.

However, at times Supreme Court can invalidate State's restrictions if it finds them to be unreasonable. As an instance, State cannot put restriction as an excuse because it is unable to maintain public order, e.g., application of aforementioned restrictions on the sale of a book because of a few unruly protesters; such restrictions are unreasonable and breach the right to freedom of speech and expression of the author.

Rights of persons accused of crimes: Article 20 provides for safeguards to persons who are accused of having committed crimes. This article provides the human rights framework to the criminal justice system, which was discussed in an earlier Unit in grade IX;. The rights of persons accused of crimes are: firstly, article 20 provides that no person can be convicted for the commission or omission of an act that does not amount to an offense by any law in force at the time of such act. For example, sodomy law in section 377 of the Indian Penal Code (IPC)

treates consensual homosexual conduct between same-sex adults as a criminal offense. In 2009, Section 377 was declared invalid and unconstitutional by the Delhi High Court to protect rights to privacy, non-discrimination, and liberty of lesbian, gay, bisexual and transgender people. But in 2013, the Supreme Court reversed the High Court's decision. In this example, sodomy law will not apply to any consensual homosexual conduct committed in 2011, but will apply to commissions that take place post-Supreme Court judgment of 2013. Article 20 prohibits application of laws retrospectively and prospectively. Secondly, article 20 provides that any person who is convicted of a crime should not receive a penalty greater than what is provided in the law in force at the time of the act of offence.

Thirdly, it provides for another important right: "no person shall be prosecuted and punished for the same offence more than once." This means that

if someone commits an offence, that person should not be harassed and punished repetitively (more than once) for the same offence.

Fourthly, it states that: “no person accused of any offence shall be compelled to be a witness against himself.” This provision safeguards the accused’s right against self-incrimination. An accused may give information based on own knowledge if he or she chooses to, but cannot be forced to be self-witness against himself or herself. Every accused has a right to fair trial.

Right to life and personal liberty: Article 21 states as follows : “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

This article is most fundamental; it is expansive and covers many other rights and is applicable to both the citizens as well as non-citizens. The meaning of ‘right to life’ includes right to human dignity, right to basic requirements of life, right to participate in activities and expression, right to tradition, heritage, and culture, and so on. ‘Personal liberty’ means various rights that provide for personal liberty of a person, *i.e.*, everyone has right to do his or her will freely. The meaning of ‘right to life and personal liberty’ is broad and embraces many aspects including see the box below.

‘Right to Life & Personal Liberty’

Human dignity, basic necessities of life, engaging in activities and expression, tradition, heritage, and culture, privacy, pollution free environment, livelihood, against sexual harassment, against solitary confinement, legal aid, speedy trial, against delayed execution in capital punishment; against custodial violence, shelter, healthcare and medical provisions, against bonded labour, against cruel and unusual punishment.

The second part of the article describes how one’s right to life and personal liberty be taken away. A person can be deprived of his or her ‘right to life or personal liberty’ only by *procedure established by law*. This means that any law that limits or takes away one’s right to life and personal liberty must contain a procedure that is fair and reasonable and not arbitrary. For example, the Indian Penal Code prescribes death penalty for certain crimes. This involves established procedures like, (1) death penalty is awarded only in ‘rarest of rare’ cases, and (2) there should not be delay in executing the prisoner waiting in death row. Also, Indian Penal Code allows for appeal where the wait period is longer than five years.

Right to education: Article 21A states that—“The State shall provide free and compulsory education

to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” This article provides for right to education to all between the age of six and fourteen and obligates State to implement this.

Prior to 2002, the Indian Constitution considered elementary education for children between age six and fourteen as a policy goal provision in the Directive Principles of State Policy.

Directive Principles of State Policy are not enforceable in a court of law as they are aspirational goals to be achieved over a period of time. In 1992-93, however, the Supreme Court affirmed that depriving one from education amounts to depriving one’s right to life. This meant that elementary education was raised to the status of fundamental right from that of a policy goal (directive principles) and hence enforceable. Accordingly, in 2002, Article 21A providing the right to elementary education was created as a fundamental right. However, implementing this right requires State’s financial and budgetary expenditures of enormous amount to meet the demand of a high illiteracy rate, which so far has been inadequate.

Protection against arrest and detention: Article 22 provides safeguards against of arrest and detention in following ways:

- No one can be detained in custody without providing grounds for arrest.
- The arrested and detained person has a right to consult and to be defended by a legal practitioner of his or her choice.
- A person who is arrested and detained in custody should be produced before the nearest magistrate within a period of twenty-four hours. The travel time is not counted towards the twenty-four hours time frame.
- No such person can be detained in custody beyond twenty-four hours without the authority of a magistrate.

The above safeguards do not apply to a person from an enemy country. Also, they do not apply to persons arrested or detained under preventive detention laws. Generally, preventive detention laws allows for detaining persons on suspicion who have not been found guilty of any crime but their release may be detrimental to society like, they may commit more crimes if released or affect adversely investigations by State or they are mentally ill and so on. However, preventive detention laws can be misused resulting in violations of human rights of the person detained. For example, the Maintenance of Internal Security Act of 1971 was enacted during the Indira Gandhi

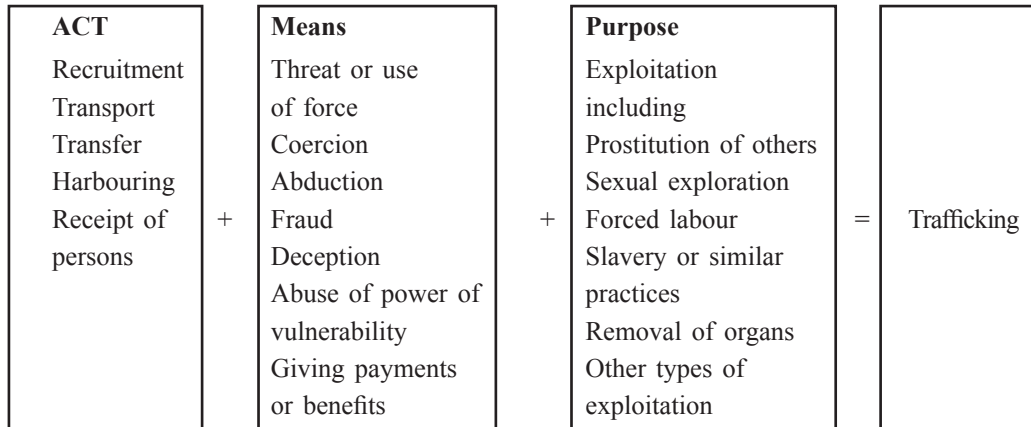
administration, popularly known as “emergency”, and many political opponents were detained without safeguards against arrest and detention and other human rights.

(iii) Right against exploitation: Prohibition of traffic in human beings and forced labour: Article 23

prohibits human trafficking, beggar and forced labour.

Prohibition of employment of children in factories, etc.: Article 24 prohibits employment of children below the age of fourteen years in factories, mining, and other hazardous employment.

Human Trafficking involves the following



Other Examples of Human Trafficking

- forced labour
- forced sex workers
- forced organ transplantation
- forced surrogacy
- forced to work in factories of hazardous activities
- forced into begging

(iv) Right to Freedom of Religion: Freedom of conscience and free profession, practice and propagation of religion: Under article 25, all persons have the right to freedom of conscience, and freedom to profess, practice and propagate religion as long as their acts do not threaten public order, morality and health. For example, on the issue concerning use of loudspeakers for religious purposes, Supreme Court has stated that: “no religion prescribed that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice-amplifiers or beating of drums. In the name of religion nobody can be permitted to add to noise pollution or violate noise pollution norms. Even if there be religious practice to use voice amplifiers, it should not adversely affect rights of others including that of being nor disturbed in their activities. Noise Pollution (Regulation and Control) Rules, 2000 should be followed.”

Also, State may regulate or restrict economic, financial, political or other secular activities that are associated with a religious practice. State can also

provide social welfare and reforms in Hindu, Sikh, Jain, or Buddhist religious institutions as well as the State can throw open their religious institutions like temple to all classes and sections of that religious society.

The wearing and carrying of kirpans is part of the profession of the Sikh religion and do not threaten public order, morality or health.

Freedom to manage religious affairs: Article 26 provides the right to every religious denomination, including their sub-sections or sects, to:

- establish and maintain institutions for religious and charitable purposes;
- manage their own matters of religious affairs;
- own and acquire movable (e.g., vehicles, furniture) and immovable (e.g., house, trees) property; and
- administer such property in accordance with law.

These rights are conditional; they should not endanger public order, morality and health.

Freedom as to payment of taxes for promotion of any particular religion: Article 27 prohibits forcing anyone to pay any taxes on revenues that are used in payment of expenses for the promotion or maintenance of any religion or section. For example, donations in temples that are used for the upkeep of the temple cannot be taxed.

Freedom as to attendance at religious instruction or religious worship in certain educational institutions: Article 28 prohibits religious instructions in educational institution that are wholly maintained out of State funds. For example, government run

schools like Sainik Schools and Kendriya Vidyalaya schools cannot impart religious instructions to students.

However, some educational institutions are exempted from this rule, those which are administered by State but are established by endowments or trusts that require religious instruction in such educational institutions.

Furthermore, State recognized or State aided educational institutions cannot force any student to take part in any religious instruction or to attend any religious worship conducted in such institutions. These provisions and others make India a secular state.

- (v) **Cultural and Educational Rights: Protection of interests of minorities:** Article 29 provides minority sections of citizens who have distinct language, script or culture the right to conserve the same. It also prohibits educational institutions, maintained by the State or receiving aid out of State funds, from denying admissions to any citizen on grounds of religion, race, caste, or language.

Right of minorities to establish and administer educational institutions: Article 30 provides all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. It also prohibits State from discriminating educational institutions, while granting them aid, on grounds of religion or language.

- (vi) **Right to Constitutional Remedies: Remedies for enforcement of fundamental rights:** Article 32 guarantees the aggrieved ones, whose fundamental rights have been violated or denied, to petition directly to Supreme Court for the enforcement of fundamental rights. Unlike cases of other matters where one has to exhaust remedies of lower courts, in matters of fundamental rights violation one can approach the Supreme Court directly. Similarly, Article 226 authorizes High Courts to take up matters of fundamental rights violations directly for their enforcement.

Public Interest Litigation: Also known as Social Action Litigation. Article 32 allows for the practice of Public Interest Litigation, which is a process by which letters written to Supreme Court or High Courts by public-spirited persons or organizations alleging fundamental rights violations are converted into petitions. The author of the letter alleges violations of fundamental rights of the weaker sections of Indian society who are unable to approach the court; they include people in custody, victims of police violence, forced bonded labourers, migrant and contracted labourers, child workers, rickshaw pullers, hawkers, pensioners, pavement dwellers, and slum dwellers. Courts can also act upon newspaper reports alleging fundamental rights violations of victims.

3. **Directive Principles:** Articles 36-51 in Part IV of the Constitution lay down the guiding principles of governance for the State are called the 'Directive Principles of State Policy'. Given below are few salient features of the directive principles.

- It is the duty of the State to apply these principles in making laws and policies on social and human development.
- These principles are largely of the nature of economic and social rights.
- The provisions of directive principles are not enforceable by any court of law, but they provide guidance in carrying out and drafting laws and policies regarding human and social development.
- Supreme Court has raised the status of many provisions of directive principles to that of fundamental right by suggesting they violate one's right to life (Art. 21).
- Directive principles aim at promoting the welfare of the people. They intend to secure and protect social, economic and political justice of its citizens.
- These principles endeavour to minimize income inequalities and to eliminate inequalities based on status, facilities, and opportunities amongst both individuals and groups of people.

Directive principles of policies guide State to achieve various goals as given in the table below.

'Directive Principles'
Right to adequate means of livelihood for both men and women.
Equal pay for equal work for both men and women.
Right to healthy working conditions for men, women and children.
Protection to children against exploitation and against moral and material abandonment.
Legal aid for securing justice - for those with economic or other disabilities.
Village panchayats vested with powers and functions as units of self-government.
Right to work, to education, and to public assistance in cases of unemployment, old age, sickness and disablement, etc.
Provision for just and humane conditions of work and for maternity relief.
Living wage and conditions of work to agricultural, industrial or other workers that ensures a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Promoting cottage industries on an individual or co-operative basis in rural areas.
Participation of workers in management of industries.
Uniform civil code for the citizens - one uniform law for family law matters.
Provision for early childhood care and education to children below age of six years.
Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections and protection from social injustice and all forms of exploitation.
Raising level of nutrition, standard of living and improving public health and prohibition of the consumption of intoxicating drinks and drugs injurious to health.
Organization of agriculture and animal husbandry in modern and scientific way and preserving and improving the breeds, prohibiting the slaughter of cows.
Protection and improvement of environment and safeguarding of forests and wild life.
Protection of monuments and places and objects of artistic or national importance.
Separation of judiciary from executive in the public services of the State. Promotion of international peace and security, maintaining just and honorable relations between nations, fostering respect for international law and treaty obligations, and encouraging settlement of international disputes by arbitration.

Supreme Court has raised the status of many provisions of directive principles to that of fundamental rights by suggesting they also violate one's right to life (Art. 21). Prior to 2002, elementary education for children between age six and fourteen was a policy goal provision in the Directive Principles of State Policy, which the Supreme Court raised to the status of fundamental right affirming that depriving one from education amounts to depriving one's right to life (Art. 21 Fundamental Right). Accordingly, right to education for ages six to fourteen is now part of the fundamental rights chapter, refer to the earlier discussion. Other prominent example is the right to livelihood, which is a directive principle often read with right to life as fundamental right. Supreme Court has often directed State to rehabilitate slum dwellers whenever they are evicted on grounds of encroachments. Eviction without rehabilitation closer

to their work place amounts to violation of their right to livelihood and in turn the right to life.

4. Fundamental Duties: Part IV(A): Article 51A of the Constitution prescribes fundamental duties of every citizen. In that, certain conduct and behaviour are expected of the citizens.

The salient features of fundamental duties are given below.

- The fundamental duties cannot be enforced in a court of law for violation of the duties, and no one can be punished for the violation.
- Fundamental duties contain standards to be followed by the citizens.
- They remind citizens not to behave irresponsibly but help building a free, democratic and strong society.

It may be possible that, just like some provisions of the directive principles, courts may raise the status of these duties in future.

Fundamental Duties
Respecting the Constitution and institutions, the National Flag and the National Anthem.
Cherishing and following the noble ideals of the national struggle for freedom.
Upholding and protecting the sovereignty, unity, and integrity of India.
Defending the country and rendering national service when called upon to do so.
Promoting harmony amongst religious, linguistic and regional diversities and renouncing practices derogatory to women's dignity.
Valuing and preserving the rich heritage and culture.
Protecting natural environment including forests, lakes, rivers and wild life.
Developing the scientific temper, humanism and the spirit of inquiry and reform.
Safeguarding public property and abjuring violence.
Striving for excellence and raising the nation to higher levels of endeavor and achievement.
Providing opportunities for education to children by their parents between the age of six and fourteen years.

COMPLAINT MECHANISMS OF QUASI-JUDICIAL BODIES

The quasi-judicial bodies typically are public administrative agencies under the realm of the executive branch and are largely bestowed with authority similar to courts. These bodies have the power to resolve disputes and also impose punishments. Examples of quasi-judicial institutions include,

national and state human rights commissions, central and state information commissions, consumer redressal forums and commissions, income tax tribunals, and so on. The most fundamental ones are the national human rights institutions that include, the National Human Rights Commission, National Commission for Minorities, National Commission for Women, National Commission for Scheduled Castes, and the National Commission for Scheduled Tribes. These commissions are independent or autonomous and transparent bodies that are created under specific legislations to promote and protect human rights; for example, the National and State Human Rights Commissions are governed by the Protection of Human Rights Act, 1993. National commissions have jurisdiction over the entire nation and the parallel state commissions take matters of human rights violations from the respective states.

National Human Rights Commission: The specific legislation called the Protection of Human Rights Act was enacted by the Parliament in 1993, which in turn established the National Human Rights Commission as an independent institution with powers and functions to promote and protect human rights. This act also provides for the constitution of State Human Rights Commissions at state levels for access to complaint mechanisms at the state level. The National Commission is headed by the Chairperson who is a former Chief Justice of the Supreme Court. The other members of Commission are: one member who is a former judge of the Supreme Court, another member who is present or former Chief Justice of a High Court, and two other members with knowledge or experience in matters relating to human rights. Besides, there is a Secretary-General who is the Chief Executive Officer of the Commission who largely discharges administrative duties of the Commission. The Chairperson and the members are appointed by the President of India on recommendation of a committee consisting of the Prime Minister, the Speaker of the House of the People (Lok Sabha), Minister of Home Affairs at the center, Leader of Opposition in the Lok Sabha, Leader of Opposition in the Council of States (Rajya Sabha), and Deputy Chairman of the Rajya Sabha. The committee is required to consult the Chief Justice of India whenever a sitting judge of the Supreme Court or sitting Chief Justice of a High Court is appointed to the Commission. The government also appoints police officers and investigative staff and other administrative, technical and scientific personnel for the efficient functioning of the Commission. The National Commission is based in New Delhi and the State Commissions also complement the working of the National Commission.

(a) Powers and Functions of the Commission: The Commission is vested with the functions as given below.

Inquiry and Investigation : One of the Commission's roles is to conduct inquiry and investigation into the alleged violation of human rights or abetment (aiding

or supporting) or negligence in the prevention of such violation by a public servant. The complaint can be filed by the victim or his or her representative, or the court may direct the Commission with a complaint, and at times the Commission may initiate inquiry and investigation on its own (sou motu). For example, the Commission may inquire sou motu based on some human rights violations news or report published through the media. Sou motu inquiry is especially useful when the victims belong to weaker section of the society and have limited access to justice delivery mechanisms.

The Commission has the powers of a civil court and in conducting an inquiry or investigation it can utilize various powers including the following:

- summon and enforce the attendance of witnesses and examine them on oath;
- ask for production of any document before itself;
- receive evidence on affidavits;
- request public record from any court or office; and
- examine witnesses or documents.

Once the inquiry is completed, the Commission can make recommendations to governmental authority in cases where any public servant is the perpetrator of human rights violation. The recommendation may include payment of compensation to the victims or suggest initiation of proceedings for prosecution of the public servant. The Commission can also approach the Supreme Court or the High Court for directions and orders. The Commission may also ask the State authority to provide immediate interim relief to the victim.

Intervening in court proceedings: The Commission may with the permission of the court intervene in court proceedings concerning human rights violations. For example, the Commission can request the Supreme Court to transfer pending riot cases out of a state in which the riots had happened to ensure the witnesses are not threatened in any manner and that evidences are not damaged.

Inspection of jails, etc.: The Commission may also visit any jail or other governmental institutions, where prisoners are lodged or detained, to study the living conditions of the inmates and make recommendations to the government.

Awareness and Sensitization: The Commission can review various human rights laws either in the Constitution or other statutes and recommend measures to the government for their effective implementation. The Commission can also evaluate various factors, including acts of terrorism, which prevent the enjoyment of human rights and recommend appropriate remedial measures to the

government. The Commission's role includes studying various international human rights laws and make recommendations for their effective implementation at the domestic level (within the State). Furthermore, the Commission can undertake and promote research in the field of human rights as well as spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars, and other available means. Lastly, the Commission can encourage and support the efforts of non-governmental organizations and institutions involved with human rights work.

- (b) Complaint Mechanism:** The complaint mechanism procedure with the National Human Rights Commission is easy and straight forward. Any one aggrieved of human rights violation or their representatives can lodge a complaint with the Commission in any language. The complaint can be filed online at www.nhrc.nic.in or by paper petition using the complaint format provided on the website. The complaint can be sent either by Post or Fax or through E-mail. There is no fee for filing a complaint. The complaint must be filed within a year of the occurrence of the human rights violation. Once the complaint is pending before the commission, one can check the status of the complaint online.

TRANSGENDER RIGHTS

The Indian Supreme Court's declaration that transgender individuals are a Third Gender under the constitution and recent legislation has significantly furthered recognition and rights for transgender individuals.

The golden thread that runs through the equality scheme of the Indian constitution (Articles 14, 15, 16, 19 and 21) is 'enjoyment of life by all citizens and an equal opportunity to grow as human beings irrespective of their race, caste, religion, community, social status and gender.'

One of the basic tenets of the equality scheme lies in the recognition and acknowledgement of the 'right of choice and self-determination'. Determination of the gender to which a person belongs and relates is intrinsic to their right of self-determination and their dignity.

Acknowledging that Indian laws are substantially binary in nature, recognising only male and female genders, the Honorable Supreme Court of India in its order in the case of National Legal Services Authority vs. Union of India (dated 15 April 2014, AIR2014SC1863, the 'Nalsa Judgement'), declared transgender individuals distinct from binary genders, as the 'Third Gender' under the Indian constitution and for the purposes of laws enacted by the parliament and state legislatures.

Non-recognition of the Third Gender in the Indian legal framework has resulted in systematic denial of equal protection

of law and widespread socio-economic discrimination in society at large as well as in Indian workplaces. In the wake of the Nalsa Judgment, the Indian parliament recently enacted the Transgender Persons (Protection of Rights) Act, 2019 (the 'Act').

'Transgender' as defined in the Act, refers to and includes all individuals whose gender does not conform or match with the gender assigned to them at birth and includes trans-man and trans-woman (whether or not they have undergone sex reassignment surgery ('SRS') and individuals with socio-cultural identities such as 'kinner', 'hijra', 'aravani' and 'jogta'.

Drawing a distinction between actions that require immediate implementation such as introducing social welfare schemes and actions that require a long-term approach, such as changing the negative attitude of the general public, the legislature has placed positive obligations on all concerned Stakeholders. 'Stakeholders' include the central government, state governments and establishments (as defined under the Companies Act, 2013).

These obligations take the form of guarantees (from Chapter II to Chapter VIII). They include the following.

- 1. Prohibition of discrimination against Transgender individuals:** Discrimination includes denial or discontinuation of access to or enjoyment of, or unfair treatment in:
 - educational establishments;
 - employment;
 - healthcare services;
 - any goods, accommodation, service, facility meant for public use;
 - right of movement;
 - right to purchase reside, purchase, rent or otherwise occupy property;
 - opportunity to stand for or hold public office; and
 - government or private establishment in whose care or custody a transgender person is.
- 2. Recognition of identity:** Recognition of transgender individuals' identity and conferring the right and entitlement to obtain a certificate of identity as proof of recognition from the relevant state authorities.
- 3. Welfare measures:** Formulation and enactment of welfare measures, schemes, programmes for education, social security, healthcare, effective participation in the society and facilitating access to these schemes and welfare measures by appropriate state governments.
- 4. Rehabilitation and right of residence:** Rescue and rehabilitation measures, including right of residence conferred by the relevant state governments.
- 5. Obligations on Establishments:** 'Establishment' means any body or corporate authority established

by or under a central or state act or any body owned, controlled or aided by the government or any company or body corporate or association or body of individuals, firm, cooperative, other society, trust, agency or institution.

Chapter V requires Establishments to ensure compliance with the Act and provide facilities as may be prescribed by the Act from time to time. In matters relating to employment including but not limited to recruitment, promotion and other related issues, Establishment must not discriminate against transgender individuals and must provide for an adequate grievance redressal mechanism to deal with complaints relating to violations of the Act and in the workplace.

6. National Council for Transgender Persons: The constitution and establishment of the National Council for Transgender Persons. The National Council will perform the functions assigned to it under the Act, including but not limited to advising concerned Stakeholders on formulation of policies, programmes, legislations and welfare measures, monitoring and evaluating the impact of policies and programmes designed for ensuring participation of Transgenders and ensuring redressal of grievances of Transgender Persons among others.

7. Offences and penalties: The Act introduces penalties for offences against transgender individuals.

Anyone who:

- compels or entices a transgender individual into forced or bonded labour (excluding compulsory government service for public purposes);
- denies a transgender person the right of public passage or use of public places;
- forcefully removes a transgender person from a household, village or other place of residence;
- commits an acts or intends to do an act causing physical, sexual, verbal, emotional or economic

harm and/or abuse against a transgender person; shall be punished with imprisonment which may vary between six months to two years, with a fine.

The Act is not an all-encompassing piece of legislation and is only a preliminary step on the part of the legislature, affording legal recognition to the Third Gender under our legal framework. The extent to which the Stakeholders concerned will take positive steps to facilitate inclusion and attempts to make Transgenders productive members of the society, will be a slow and challenging process. The Act does not lay down consequences of the newly acquired gender status on their rights and entitlements in various spheres and aspects of life and is largely silent on the consequences of non-compliance and accountability for Stakeholders.

Inclusivity in the workplace: comments and key recommendations: Preparing the Indian workspace for an inclusive approach towards transgender individuals is going to be an uphill task, as accommodating societal change of this magnitude has always been a slow process in India.

Improving the status of the transgender community has to be a collective effort and empowering this community in the workplace would go a long way in reducing social stigmas and also improving their economic position. Although the Act only puts an onus and does not place legal requirements on the Stakeholders concerned, in view of the changing dynamic, some of the steps that Establishments and organisations can undertake to create a more equitable and inclusive environment are set out below.

Sensitisation and education: Prior to introducing any change in the system, it will be imperative for organisations to educate workforces around gender inclusivity, assimilation in workplace and greater acceptance for the innate character and personality of transgender individuals in the corporate environment.

MULTIPLE CHOICE QUESTIONS

1. How many articles are in the Protection of Human Rights Act?
A. 50 B. 40
C. 28 D. 31
2. What is the retirement age of the chairman of the NHRC?
A. 55 B. 60
C. 70 D. 65
3. Who appoint the chairman of the NHRC?
A. Prime Minister
B. Supreme Court Chief Justice

- C. President of India
D. None of These
4. Who is the chairman of the committee which recommend the chairman and members of NHRC to the President?
A. President B. Finance Minister
C. Prime Minister D. Home Minister
5. Who should be the chairman of the NHRC?
A. Supreme Court Judge
B. Retired Supreme Court Chief Justice
C. High Court Chief Justice
D. High Court Judge

6. How many members are in the NHRC including the Chairman?
A. Five B. Four
C. Seven D. Two
 7. NHRC is a body.
A. Quasi-judicial B. Judicial
C. Executive D. Legislative
 8. Which Article of the Protection of Human Rights Act prescribes for Human Rights courts?
A. Article 12 B. Article 16
C. Article 31 D. Article 13
 9. Where is the headquarters of UNICEF?
A. Paris B. New York
C. Geneva D. Rome
 10. Where was the first Conference on Women held?
A. Nairobi B. Mexico city
C. Copenhagen D. Beijing
 11. The Universal Declaration of Human Rights, a landmark document was adopted by:
A. UNO
B. UNICEF
C. UNESCO
D. International Court of Justice
 12. The Universal Declaration of Human Rights was adopted by United Nations on:
A. 10 December, 1947
B. 10 December, 1948
C. 1 August, 1950
D. 15 September, 1945
 13. Where was the Universal Declaration adopted:
A. London B. New York City
C. Paris D. Zurich
 14. Which of the following were known as the key contributors to the drafting of the Universal Declaration of Human Rights?
(i) Eleanor Roosevelt (United States of America),
(ii) René Cassin (France)
(iii) Charles Malik (Lebanon)
(iv) Hernan Santa Cruz (Chile)
(v) Alexei Pavlov (Soviet Union)
Codes:
A. (i), (ii), (iii), (iv) B. (i), (ii), (iv), (v)
C. (i), (ii), (iii), (v) D. All the above
 15. How many articles does the Universal Declaration of Human Rights contain?
A. 30 B. 20
C. 15 D. 35
 16. Human Rights Day is observed on:
A. 10th October B. 10th December
C. 1st December D. 15th November
 17. The Universal Declaration of Human Rights is applicable to:
A. Every citizens of third world countries
B. Citizens of UN member countries
C. Each individual, regardless of gender, race, religion or cultural background
D. None of the above
 18. What are the rights championed by the Universal Declaration of Human Rights?
(i) Right to life, liberty and security of person
(ii) Right to education, freedom of thought, conscience and religion
(iii) Freedom of opinion and expression, work
(iv) Seek and obtain asylum from persecution in other countries
Codes:
A. (i), (ii), (iii), B. (i), (ii), (iv),
C. (i), (iii), (iv), D. All the above
 19. The slogan “All Human Rights for All” was adopted for the Anniversary of the Universal Declaration of Human Rights
A. 50th B. 25th
C. 15th D. 30th
 20. When was the International Year for Human Rights?
A. 1988 B. 1968
C. 1962 D. 2008
- Directions: (Qs. No. 21-30):** Contains two statements—one labelled as Assertion (A) and the other as Reason (R). Examine whether the statements are correct and related to each other with the help of the codes given below:
21. **Assertion (A):** One of the fundamental principles of the Indian Constitution is the Rule of Law.
Reason (R): The Constitution of India has guaranteed to every citizen the equality before law and has recognized the judiciary as the unfailing guardian of the rights of people.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).
B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
 22. **Assertion (A):** Women in India today legally enjoy equal opportunities with men in all the fields.
Reason (R): The Constitution of India prohibits any kind of discrimination against women.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).

- B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
- 23. Assertion (A):** Bonded Labour is illegal in India.
Reason (R): Constitution of India prohibits bonded labour.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).
B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
- 24. Assertion (A):** Fundamental Rights and Directive Principles constitute a body of rights/privileges guaranteed by the Indian Constitution to the people.
Reason (R): Fundamental Rights are justiciable whereas Directive principles are not.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).
B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
- 25. Assertion (A):** Fundamental Duties are not enforceable before a Court of Law.
Reason (R): Fundamental Duties can be enforced only through Constitutional means.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).
B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
- 26. Assertion (A):** Power of the President to grant pardon and to suspend, remit or commute sentences under Article 72 of the Constitution is politically much abused from the Human Rights point of view.
Reason (R): The advice given by the Council of Ministers to the President under Article 74 of the Constitution is binding on the President.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).
B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
- 27. Assertion (A):** Right to life and personal liberty under Article 21 cannot be abridged even during emergency.
Reason (R): There is no need of emergency provisions in a democratic country.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).
B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
- 28. Assertion (A):** Capital punishment (Death Sentence) is impermissible Under the Universal Declaration of Human Rights (UDHR).
Reason (R): According to Article 5 of Universal Declaration of Human Rights (UDHR), no one shall be subjected to Torture or to cruel, inhuman or degrading treatment or punishment.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).
B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
- 29. Assertion (A):** Directive Principles of State policy are not justiciable in a Court of Law.
Reason (R): The Directive Principles are Fundamental in the governance of the country.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).
B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
- 30. Assertion (A):** Marx was against the Religion.
Reason (R): Religion is opium of the masses.
Codes:
A. Both (A) and (R) are correct and (R) is the correct explanation of (A).
B. Both (A) and (R) are correct and (R) is not the correct explanation of (A).
C. (A) is correct, but (R) is incorrect.
D. (A) is incorrect, but (R) is correct.
- 31. Arrange the following laws in chronological order in which they addressed Human Rights problems relating to practice of untouchability.**
(i) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.
(ii) The Protection of Civil Rights Act.
(iii) The Untouchability Offences Act.

- (iv) The Bihar Harijan (Removal of Civil Disabilities) Act
- Codes:**
- A. (iv), (iii), (ii), (i) B. (iii), (ii), (iv), (i)
C. (ii), (i), (iv), (iii) D. (i), (ii), (iii), (iv)
32. Arrange the following events in chronologically
- (i) Nehru Report
(ii) Objective Resolution
(iii) Sapru Report
(iv) Morley Minto Reforms
- Codes:**
- A. (iv), (i), (iii), (ii) B. (i), (ii), (iii), (iv)
C. (ii), (iii), (iv), (i) D. (iv), (ii), (iii), (i)
33. Arrange the following in order of the year of their establishment:
- (i) Sachar Committee
(ii) Rangnath Mishra Commission
(iii) Gopal Singh Committee
(iv) Nanavati Commission on Godhra
- Codes:**
- A. (iii), (iv), (ii), (i) B. (i), (ii), (iii), (iv)
C. (iv), (iii), (ii), (i) D. (ii), (iii), (iv), (i)
34. Arrange the following Fundamental Rights enshrined in the Constitution of India in order of sequence:
- (i) Right to form Association
(ii) Right to Education
(iii) Prohibition of Traffic in human beings and forced labour
(iv) Right to Constitutional Remedies
- Codes:**
- A. (iii), (ii), (i), (iv) B. (ii), (iii), (iv), (i)
C. (iv), (iii), (ii), (i) D. (i), (ii), (iii), (iv)
35. Arrange the following Human Rights Conventions in the chronological order of their adoption:
- (i) Convention on the elimination of all forms of discrimination against women.
(ii) Convention on the prevention and punishment of the crime of genocide.
(iii) Convention on the protection of the Rights of Migrant workers.
(iv) Convention against Torture.
- Codes:**
- A. (i), (ii), (iii), (iv) B. (ii), (i), (iv), (iii)
C. (iii), (ii), (i), (iv) D. (iv), (iii), (ii), (i)
36. Arrange the following events in the order in which they happened using the codes given below:
- (i) Swadeshi Movement
(ii) Motilal Nehru Committee
(iii) Quit India Movement
(iv) Jalianwala Bagh
- Codes:**
- A. (i), (ii), (iv), (iii) B. (i), (iv), (ii), (iii)
C. (iii), (ii), (i), (iv) D. (iv), (ii), (iii), (i)
37. Who among the following launched educational reform movements among Muslims in India?
- (i) Sir Syed Ahmed Khan
(ii) Sir W.W. Hunters
(iii) Shah Waliullah
(iv) Zakir Hussain
- Codes:**
- A. (i) and (iv) B. (i) and (iii)
C. (ii), (iii) and (iv) D. (iii) and (iv)
38. Arrange sequence of following concepts as they appear in the Universal Declaration of Human Rights, 1948, using codes given below:
- (i) Marriage
(ii) Right to Education
(iii) Arbitrary arrest
(iv) Equality
- Codes:**
- A. (iii), (ii), (i), (iv) B. (iv), (ii), (i), (iii)
C. (iv), (iii), (ii), (i) D. (iv), (iii), (i), (ii)
39. Arrange sequence of following concepts as appearing in International Covenant on Civil and Political Rights, 1966:
- (i) Liberty of movement
(ii) Torture, in human treatment and punishment
(iii) Slavery
(iv) Family
- Codes:**
- A. (iii), (ii), (i), (iv) B. (ii), (iii), (i), (iv)
C. (ii) (iii) (iv) (i) D. (iv), (i), (iii), (ii)
40. Arrange the following regional human rights instruments in the order of their adoption:
- (i) African Charter on Human and People's Rights
(ii) American Convention on Human Rights
(iii) European Convention on Human Rights
(iv) Arab Charter on Human Rights
- Codes:**
- A. (i), (ii), (iii), (iv) B. (iii), (ii), (i), (iv)
C. (iii), (ii), (iv), (i) D. (iv), (ii), (iii), (i)
- Directions: (Qs. No. 41-45): Match List-I with List-II and select the correct answer with the help of codes given below:**
41. Match List-I with List-II:
- | List-I | List-II |
|---|--------------------|
| (a) Free Legal Aid | (i) Article – 51 |
| (b) Uniform Civil Code | (ii) Article – 48A |
| (c) Promotion of International Peace and Security | (iii) Article – 44 |
| (d) Safeguarding forests and wild life | (iv) Article – 39A |
- Codes:**
- | | | | |
|----------|-------|------|-------|
| (a) | (b) | (c) | (d) |
| A. (i) | (iv) | (ii) | (iii) |
| B. (iii) | (ii) | (i) | (iv) |
| C. (iv) | (iii) | (i) | (ii) |
| D. (ii) | (iii) | (iv) | (i) |

42. Match List-I with List-II:

List-I

- (a) Indigenous and Tribal People's Convention –1989
(b) Convention Against Discrimination in Education–1960
(c) Geneva Convention-1949
(d) The Framework Convention for the protection of National Minorities–1994

List-II

- (i) UNESCO
(ii) Council of Europe
(iii) ILO
(iv) ICRC

Codes:

- (a) (b) (c) (d)
A. (i) (ii) (iii) (iv)
B. (iv) (iii) (ii) (i)
C. (iii) (ii) (i) (iv)
D. (iii) (i) (iv) (ii)

43. Match List-I with List-II:

List-I

(Authors)

- (a) Amartya Sen
(b) John Rawls
(c) Ronald Dworkin
(d) J.S. Mill

List-II

(Books)

- (i) Theory of Justice
(ii) Development as Freedom
(iii) On Liberty
(iv) Taking Rights seriously

Codes:

- (a) (b) (c) (d)
A. (ii) (i) (iv) (iii)
B. (i) (ii) (iii) (iv)

C. (iii) (ii) (iv) (i)

D. (i) (iii) (ii) (iv)

44. Match List-I with List-II:

List-I

- (a) Justice
(b) Third generation of Human Rights
(c) Globalization
(d) Growth approach

List-II

- (i) Dehumanisation
(ii) Model of development
(iii) Collective Rights or Solidarity Rights
(iv) Basic concept

Codes:

- (a) (b) (c) (d)
A. (iii) (iv) (i) (ii)
B. (iv) (iii) (i) (ii)
C. (iv) (iii) (ii) (i)
D. (ii) (i) (iv) (iii)

45. Match List-I with List-II:

List-I

(Organizations)

- (a) ICRC
(b) PUCL
(c) IUCN
(d) CES

List-II

(Areas of Work)

- (i) Environment & Science
(ii) Conservation of Nature
(iii) Humanitarian Law
(iv) Civil Rights

Codes:

- (a) (b) (c) (d)
A. (i) (ii) (iii) (iv)
B. (iii) (iv) (ii) (i)
C. (iv) (ii) (iii) (i)
D. (i) (iv) (iii) (ii)

ANSWERS

1	2	3	4	5	6	7	8	9	10
D	C	C	C	B	A	A	C	B	B
11	12	13	14	15	16	17	18	19	20
A	B	C	D	A	B	C	D	A	B
21	22	23	24	25	26	27	28	29	30
B	A	A	D	A	B	B	A	B	A
31	32	33	34	35	36	37	38	39	40
A	A	A	D	B	B	A	D	B	B
41	42	43	44	45					
C	D	A	B	B					

LEGAL PROFESSION IN INDIA

The modern legal profession in India has colonial roots, emerging with the advent of Mayor's Courts in Madras and Calcutta in 1726. However, it was not until 1846, through the Legal Practitioner's Act, that the doors of profession were thrown open to all those duly qualified, certified and of good character, irrespective of nationality or religion. Women were still excluded from the profession at this stage, to be thereafter admitted through the Legal Practitioner's (Women) Act, XXIII of 1923.

The legal profession in India, which includes both the practice of law as well as professional legal education, is regulated by the Advocates Act, 1961. The Bar Council of India (BCI) is envisaged under the Advocates Act as a body for regulating the minimum standards to be maintained by institutions imparting legal education in India. The reformation of legal education in India undertaken since the late 1980s at the initiative of the BCI, the University Grants Commission (UGC), the Law Commission of India and various state governments has led to the establishment of various national law schools in India in the last two decades. This movement which was pioneered by Professor N.R. Madhava Menon (who was instrumental in the setting up of the first National Law School in Bangalore) and other leading academicians in India has resulted in the establishment of around 17 national law schools and a few other new generation law schools in the public as well as the private sector.

India has the second largest population of lawyers in the world, second only to the United States.

HISTORY OF THE LEGAL PROFESSION IN INDIA

The timeline given below provides an overview of the history of the legal profession in India leading upto the enactment of the Advocates Act in 1961:

- **1726 and later, 1753:** Mayor's Courts - There was no established legal profession until the establishment of the Mayor's Court. Those who practised law were devoid of legal training and some of the functionaries under the Mayor's courts were dismissed servants of the British East India Company.

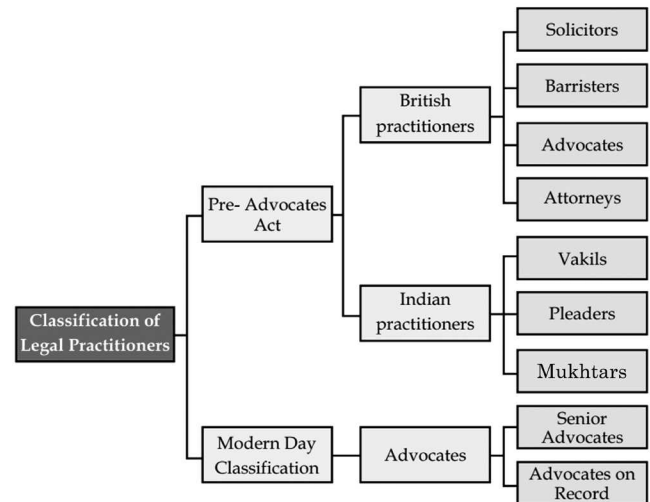
- **1774:** Supreme Court of Judicature established by a Royal Charter at Calcutta—Similar courts were established in Madras (1801) and Bombay (1823). The Regulating Act of 1773 empowered the Supreme Court to “approve, admit and enrol” Advocates and Attorneys-at-Law. “Attorneys of Record” were authorized to “appear, plead and act for the suitors”. Attorneys were not admitted without a recommendation from high officials in England or a Judge in India. The term “Advocate” at that time was extended only to the English and Irish Barristers and members of the Faculty of Advocates in Scotland. “Attorneys” similarly referred to British attorneys and solicitors only. The Calcutta Supreme Court therefore appeared to be the exclusive bastion of British Barristers, Advocates and Attorneys. The Charter introduced in India the British system of legal practice and profession. Indians had no right to appear before the Supreme Courts (this trend continued in Bombay and Madras as well although both these courts were established much later).
- **1793:** The Bengal Regulation VII of 1793 created for the first time, a regular legal profession in the Company's Courts. The Regulation was one “for the appointment of vakils or native pleaders in the Courts of Civil Judicature (Sadar Diwani Adalat) in Bengal, Bihar and Orissa. Only Muslims and Hindus could be enrolled as pleaders. The Regulation also provided for a Vakalatnama (a party would execute a Vakalatnama in favour of a pleader, authorizing him to represent the party, and act on his behalf in a matter). This was the genesis of the “Vakalatnama” as we know today. The Bengal Regulation XXVII of 1814 consolidated the law on the subject. The pleaders were empowered to act as arbitrators and to give legal opinions on payment of fees. Thereafter, in 1833, The Bengal Regulation XII modified the provisions of earlier regulations regarding selection, appointment and remuneration of these pleaders. It permitted any qualified persons of any nationality and religion to be enrolled as a pleader in the Sadar Diwani Adalat.

- **1846:** The Legal Practitioners Act of 1846, was the first pan-India law concerning the regulation of the Indian legal profession. A religious test for enrolment as a pleader was abolished, and persons of any nationality and religion could be enrolled as a pleader. Every Barrister enrolled in any of Her Majesty's Courts in India became eligible to plead in the Sadar Adalats subject to the rules of those Courts applicable to pleaders as regards language or any other matter. The Legal Practitioners Act also permitted Vakils to enter into agreements with their clients for their fees for professional services.
- **1879:** The Legal Practitioners Act of 1879 repealed the Pleaders, Mukhtars and Revenue Agents Act, 1865. During this time in British India, there were six grades of practitioners - Advocates, Solicitors (Attorneys) and Vakils of the High Court and Pleaders, Mukhtars and Revenue agents in the lower courts. Vakils became a distinct grade above the Pleader. The Act brought all six grades of legal practitioners into one system.
- **1923:** Barristers of England had come to occupy a predominant position in the legal profession. The Government of India in 1923 appointed the Indian Bar Committee, popularly known as the Chamier Committee to address the existing disparities in the Legal profession. It was chaired by Sir Edward Chamier, a retired Chief Justice of the Patna High Court. The Committee in its report stated that it was not practical at that time to organize the Bar on an all India basis. However, the Committee suggested the establishment of Bar Council for each of the High Courts. The Committee suggested that a Bar Council should have power to make rules in matters such as qualifications and admission of persons to be Advocates of the concerned High Court, legal education, discipline and professional conduct of Advocates, terms on which Advocates of another High Court could appear occasionally in the concerned High Court or any other matter prescribed by the High Court.
- **1926:** Giving effect to the Chamier Committee recommendations, the Central Legislature enacted the Indian Bar Councils Act, 1926. The Act was to provide for the constitution and incorporation of Bar Councils, to confer powers and impose duties on the Bar Councils and to consolidate the regulations pertaining to the legal profession. The Bar Councils could, with the consent of the High Court, make rules for: (a) the rights and duties of Advocates of High Court and professional conduct; and (b) legal education and examinations. The Act eliminated the two grades of practitioners, the Vakils and the Pleaders by merging them in the class of Advocates who were "entitled as of right to practice" in the High Court in which they were enrolled and in any other Court in British India, subject to certain exceptions. The

High Courts occupied considerable influence in these matters and the Legal Practitioners Act, 1879 remained intact. Pleaders, Mukhtars etc. who were practicing in mofussil courts remained out of the scope of the Act.

CLASSIFICATION OF LAWYERS: ROLES AND FUNCTIONS

Legal practitioners in India were segregated into different categories under the British India. The following chart illustrates the different classes:



- **Attorneys:** Attorneys previously only referred to British attorneys or solicitors but now this definition is sometimes used to refer to advocates.
- **Solicitors:** Prior to the enactment of the Advocates Act, solicitors referred to British solicitors who were permitted to practise in the High Courts in pre-Independence India. Today, in the Bombay and Calcutta High Courts there is a separate class of legal practitioners, known as solicitors, who prepare the case, but do not argue in court.
- **Barristers:** Barristers of England had come to occupy a predominant position in the legal profession in the British India. On the Original Side of the Calcutta High Court, only Barristers could practice even though the distinction between Barristers and Vakils had been removed by other High Courts.
- **Pleaders:** Law graduates who did not possess the additional qualification for enrolment as vakil of the High Court and non-law graduates who could pass the pleadership examination held by the High Court were given certificates enabling them to act and plead as pleaders in the district and subordinate Courts. The pleaders had entry into the High Court only after gaining an experience of a certain number of years as pleaders. There were different grades of pleaders as well. This class of practitioners also does not exist today in Indian courts.

- **Vakil:** Vakils were native practitioners who were qualified to appear and practise in the High Courts of pre- Independence India. The Legal Practitioners Act had laid down additional requirements for a law graduate to be eligible to qualify as a vakil. This class of practitioners does not exist now.
- **Mukhtars:** Mukhtars were another class of practitioners in the subordinate courts. They were persons who had after passing the Entrance Examination corresponding to the Matriculation Examination of the later times passed the Mukhtarship Examination held by the High Court. Although their sanads or licences permitted them to practice in all subordinate courts, they were by reason of the High Court Rules and Orders, mainly confined to acting and pleading in the criminal courts in the mofussil. These mukhtars were not permitted to plead in any subordinate civil court.
- **Revenue Agents:** Revenue Agents were certificated and enrolled under rules made by the Chief Controlling Revenue Authority under section 17 of the Legal Practitioners Act, 1879. Their practise was confined to revenue offices mentioned in their certificates and other offices subordinate to them.
- **Advocates:** Prior to the enactment of the Advocates Act, the term “advocates” referred only to English and Irish barristers and members of the Faculty of Advocates in Scotland. This class was permitted to practise in the Supreme Court of Judicature in Bengal, to the exclusion of native practitioners. However, today this term is used to refer to lawyers qualified to practise in the Courts of India. An advocate is a person authorized to appear in a legal matter on behalf of a party. An advocate possesses a law degree and is enrolled with a Bar Council, as prescribed by the Advocates Act, 1961. Advocates are the only class of persons legally entitled to practice law or to provide legal advice. After being authorized to appear in a case by a client who has signed a vakalat, advocates prepare cases and argue them in Court. When appearing in a courtroom, an advocate usually dresses in black and white, and wears a band and gown.

Advocates will have to enrol with a state Bar Council. In addition to advocates, lawyers with special knowledge or ability are designated as Senior Advocates. A Senior Advocate, is an advocate who has been officially designated as such by either the Supreme Court or the High Court. A Senior Advocate cannot file a vakalatnama, appear in the court without another advocate or advocate-on-record, cannot directly accept an engagement to appear in a case or draft pleadings. A Senior Advocate argues cases in court upon instructions from another advocate. Senior Advocates wear gowns that have flaps on the shoulders. An Advocate on Record (AOR) is an advocate who has passed a qualifying examination conducted by the Supreme Court. The

examination is taken by an advocate who has been enrolled with a Bar Council for at least five years and has completed one year training with an AOR of not less than five years standing. Only an AOR can file a vakalat, a petition, an affidavit or any other application on behalf of a party in the Supreme Court. All the procedural aspects of a case are dealt with by the AOR, with the assistance of a registered clerk. It is the AOR’s name that appears on the cause list. The AOR is held accountable, by the Supreme Court, for the conduct of the case. Any notice and correspondence from the Supreme Court are sent to the AOR, and not to the party. AORs can argue matters, but frequently they serve in a solicitor like role.

Legal officers who act as advisors to the Central Government include the Attorney General of India, the Solicitor General of India and the Additional Solicitor General of India. The state government similarly has Advocate Generals. The office of the Attorney General for the Union of India and the Advocate General for the concerned States are Constitutional offices. The Constitution of India has also laid down the qualifications necessary for being considered for the position of the Attorney General and the Advocate General.

THE ADVOCATES ACT, 1961

After the enactment of the Advocates Act, 1961 all the old categories of practitioners (vakils, barristers, pleaders of several grades, and mukhtars) were abolished and consolidated into a single category called “advocates” who enjoy the right to practice in courts throughout India. The Advocates Act also established an All India Bar Council for the first time, with the Attorney-General and Solicitor General of India as ex-officio members of the Bar Council. The All India Bar Council has one member elected to it by each State Bar Council and it elects its own Chairman and Vice Chairman. The Act has created a State Bar Council in each State with the Advocate General of the State as an ex-officio member, and 15-25 Advocates elected for a period of five years. The State Council’s main functions include: admitting law graduates on its Roll, determining cases of misconduct against Advocates on the Roll and organizing legal aid, among other functions. Application for enrolment is therefore made to the State Bar Council. The Bar Council of India regulates the content, syllabus, duration of the law degree, subject to which every University can lay down its own provisions. The Council has a Legal Education Committee for this purpose. State Council rules need to be approved by the Bar Council, however the Central Government has overriding power to make rules.

In order to be eligible for enrolment, an Advocate must be: a citizen of India, at least 21 years of age and must have an LL.B degree from an Indian University. A foreign national may be enrolled on a reciprocal basis with the country of his citizenship, and his foreign degree may be

recognized by the Council for the purpose. In the absence of such reciprocity, foreign nationals cannot practice law in India. The Council has released a list of foreign degrees that it recognizes. There is an additional requirement of an All India Bar Examination since 2010, which Advocates must clear in order to be able to start practice.

The Act recognizes only one class of practitioners, that is, Advocates. An Advocate on the State Rolls is entitled to practice as of right before any tribunal, or authority of India, or any court including the Supreme Court. Advocates have been classified as Senior Advocates and other Advocates. The designation of an Advocate as a Senior Advocate is the responsibility of the Supreme Court or High Court based on the ability, experience and standing in the Bar of the Advocate in question. In 1977, the provisions relating to dual system (Advocates and Attorneys) in the Bombay and Calcutta High Courts were deleted. Any advocate enrolled in the State Rolls is entitled to practice in the Supreme Court. The Advocate-on-Record (AOR) is another category of Advocate in the Supreme Court.

THE BAR COUNCIL OF INDIA

The Bar Council of India was established by Parliament under the Advocates Act, 1961. It performs the regulatory function by prescribing standards of professional conduct and etiquette and by exercising disciplinary jurisdiction over the bar. It also sets standards for legal education and grants recognition to universities whose degree in law will serve as qualification for enrolment as an advocate.

In addition, it performs certain representative functions by protecting the rights, privileges and interests of advocates and through the creation of funds for providing financial assistance to organise welfare. The regulatory and representative mandate of the Bar Council for the legal profession and legal education in India is reflected by its statutory functions which are as follows:

- To lay down standards of professional conduct and etiquette for advocates.
- To lay down procedure to be followed by its disciplinary committee and the disciplinary committees of each State Bar Council.
- To safeguard the rights, privileges and interests of advocates.
- To promote and support law reform.
- To deal with and dispose of any matter which may be referred to it by a State Bar Council.
- To promote legal education and to lay down standards of legal education. This is done in consultation with the universities in India imparting legal education and the State Bar Councils.
- To recognise universities whose degree in law shall be a qualification for enrolment as an advocate. The

Bar Council of India visits and inspects universities, or directs the State Bar Councils to visit and inspect universities for this purpose.

- To conduct seminars and talks on legal topics by eminent jurists and publish journals and papers of legal interest.
- To organise legal aid to the poor.
- To recognise on a reciprocal basis, the foreign qualifications in law obtained outside India for the purpose of admission as an advocate in India.
- To manage and invest the funds of the Bar Council.
- To provide for the election of its members who shall run the Bar Council.

LAWYERS AND PROFESSIONAL ETHICS

The Bar Council of India Rules encompass professional standards for lawyers, as laid down by the Bar Council. The key duties and responsibilities of an Advocate can be summarised as follows:

Professional Duties of an Advocate

An Advocate has a duty to act in a dignified manner, to respect the court, not to communicate with a judge in private and impair impartiality, not to act in an illegal manner towards the opposition, to refuse to represent clients who insist on adopting unfair means. In addition, being an officer of the court, an advocate is expected to uphold and maintain the values of the profession.

Furthermore, an advocate's duty towards the client include being bound to accept briefs, not to withdraw from service, not to appear in matters where he/she is a witness, not to suppress material or evidence. An advocate also had to maintain client confidentiality and not to instigate litigation or to charge contingency fee (fee depending on success or favourable result of matters). There is a general duty to ensure that his/her duties do not conflict with the client's interests. An Advocate is also expected not to negotiate directly with the opposing party (only through the opposing advocate) and to carry out legitimate promises made. Breach of these rules and standards of conduct lead to disciplinary action against advocates which may result in suspension or debarment.

ADVERTISING BY LAWYERS

The right of advocates to advertise their services or solicit clients has been a controversial issue in the field of legal ethics and professionalism. In India advertising by lawyers has been strictly restricted by the Bar Council of India. An advocate is prohibited from promoting himself through circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has

been engaged or concerned. An amendment to this rule allows advocates to furnish certain information on their websites after intimating and taking approval from the Bar Council of India. However, only 5 pieces of information can be put up on the internet, *i.e.*, (i) the name of the advocate or the firm, (ii) the contact details, (iii) details of enrolment with the Bar, (iv) his professional and academic qualification and (v) the areas of practice. However, different countries across the world allow advertising by lawyers to varying degrees. The position in the USA is different from that in India, where lawyers have a right to advertise but subject to reasonable restrictions. There are different rules of professional ethics for different states and there is also the Model Rules of Professional Conduct which serves as an indicative reference point. Rule 7.1 of the Model Rules prohibits false and misleading communication about services, rule 7.2 addresses advertising and referrals, rule 7.3 articulates no-solicitation periods (*e.g.*, families and victims of mass disasters are off limits for 30-45 days). Lawyers in the US can provide information about class actions, can approach clients by handing out business cards and can advertise on internet forums. For class actions, solicitation through referrals is permissible, newspaper and magazine ads and even mass emails are permitted as long as they are not misleading, and no financial incentive is promised. Personal injury ads are commonplace in the USA. Often known as ‘ambulance chasers’, these personal injury lawyers are robust in their advertising — on billboards, newspapers, flyers, and even distasteful ads on the television. However, ambulance chasing is not representative of professional practice in India since these class of lawyers are the sort who solicit business by lurking around hospitals or by ads in newspapers and in Yellow Pages with toll free numbers and “free” consultations. However, it is a matter of debate whether the Victorian tradition (UK has itself done away with the prohibition) should be retained within which law was considered to be a noble profession and hence advertising was prohibited so as to not tarnish the image of lawyers. The issue of allowing advertising and solicitation by lawyers requires balancing the interest of the public which includes getting information on legal rights and services through advertisements and enhancement of access to justice and the legal profession on one hand and the possible misuse of advertising techniques by lawyers which may lead to a loss of credibility of the profession as a whole. Countries like USA, UK and France are more flexible with granting permission for legal ads whereas Hong Kong, Singapore and Malaysia are moving towards progressive relaxation. In Malaysia, *for example*, the Legal Profession (Publicity Rules), 2001, is a simple, comprehensive code that regulates ads in legal and non-legal directories, controls publication of journals, magazines, brochures and newsletters and interviews in the media, bars publicity through clients and even regulates greeting cards. In Hong Kong, lawyers are forbidden to advertise on television, radio and in the cinemas but are permitted to advertise in print media.

OPPORTUNITIES FOR LAW GRADUATES

Law is an exciting and challenging profession. Law graduates in India have various options and opportunities open to them after their graduation. A law degree, in addition to being a professional degree, is now considered to be training in a discipline which trains the mind to think analytically and communicate systematically. Following are some of the opportunities available (and opted for by law graduates) to graduates after they obtain their degrees in law.

LEGAL EDUCATION IN INDIA

Legal education in India is regulated by the Bar Council of India. There are two ways to obtain a degree to practice law and enrol with the Bar Council: (1) a 3-year LL.B. program which requires a prior undergraduate degree and (2) a 5-year integrated B.A., LL.B./BBA., LL.B./B.Sc., LL.B program which commences immediately after secondary school. Some universities offer both the five-year and the three-year degree programs. In 1987, the first National Law School — National Law School of India University (NLSIU) was set up in Bangalore. Its establishment marked the beginning of the reform of legal education in India. There are now 23 National Law Schools in India, with more being planned. 22 of these now have a common entrance test — CLAT (Common Law Admission Test) which tests logical reasoning, legal reasoning, English and comprehension, legal knowledge and general knowledge. Preparatory institutes for law entrances have also been set up such as the Law School Tutorials (LST). National Law School University, Delhi conducts a separate entrance test called the AILET — All India Law Entrance Test, while a number of others law schools in India have adopted the Law School Admission Test (LSAT) conducted by the Law School Admission Council (LSAC), USA. Some other institutions conduct their own separate entrance tests.

- **Litigation:** Graduates may practice as an advocate in a court of law. This can be achieved by working under experienced advocates or being attached to litigation departments of law firms or companies in order to practice in the Courts of India.
- **Law Firm Practice:** Law firms vary in size and practice areas. Law firms may range from boutique law firms specializing in specific areas of law (such as Intellectual Property Rights and Tax law), to mid-sized law firms as well as large law firms which are full service law firms with different practice groups such as general corporate, mergers and acquisitions, employment law, taxation, international trade, insurance, intellectual property, and project finance and infrastructure. Transactional law at law firms typically involves practicing in commercial and economic laws and advising on issues pertaining to a commercial transaction between two or parties. This would usually include advising on the laws applicable to the transaction, drafting contracts and other documents

and helping clients with the commercial negotiations and the management and execution (*i.e.*, successful completion) of the transaction. Corporate lawyers would also advise on regulatory issues and legal compliance. Centres for Legal Process Outsourcing (LPOs) also have a lot of transnational transactional work.

- **Corporate Sector:** Large corporations often have an in-house legal practice. An in-house counsel will give legal advice to the company, have expertise in the business of the company and be responsible for ensuring that the business of the company is being run in compliance with applicable laws and when required will bring in external lawyers. Several organisations such as commercial banks, multinational companies, investment firms, insurance companies, e-commerce ventures, media houses are hiring law graduates for managing their legal departments.
- **Public Policy:** Lawyers have an important role in formulating and advising on public policy. Several organizations employ law graduates for policy making and have institutionalized fellowships where law graduates can be Research Assistants. *For example*, a law graduate interested in public policy can apply to serve as a Legislative Assistant under the Legislative Assistants to Members of Parliament (LAMP) Fellowship programme run by PRS Legislative Research. Institutions such as Competition Commission of India and Securities Exchange Board of India also employ law graduates for policy making in the respective fields. Law firms have established Government Policy Departments where they employ law graduates for policy research.
- **Legal Research and Academia:** Graduates may attach themselves with Research Centres and think tanks. Law graduates may take up teaching and research as a profession. At least a post graduate degree in Law or related disciplines is expected to build a career in academics. Universities employ postgraduates in law as Lecturers/Assistant Professors at the beginning of their careers. Short term positions and opportunities as Visiting Professors/Adjunct Professors are also available in academia.
- **Non-governmental Organizations:** Not-for-profit organizations, especially organizations with a social justice orientation have positions for law graduates. These range from small grassroot level organizations to large well-funded organizations. They may be general in nature providing free legal aid, legal education and legal awareness to more specialist organizations involved in areas such as women and child right, environmental law, employment laws, consumer rights and public health.

- **Government Institutions:** Government departments, statutory authorities, public sector undertaking and regulatory bodies also provide interesting opportunities to lawyers. Graduates may opt for jobs in the government sector in institutions such as National Human Rights Commission, Law Commission of India, and National Commission for Women etc.
- **Further study:** Law is an interdisciplinary subject and graduates may opt for further studies in related disciplines such as Business, Economics, Anthropology and Sociology. Traditionally, law graduates pursue Master of Laws (LL.M) degree followed by research degrees such as M.Phil or Ph.D. A variety of opportunities are available in India and abroad for advanced studies in law.
- **Judicial Services/Clerkships:** The court system provides several avenues to law graduates. The higher judiciary, that is judges of the High Courts and Supreme Courts have law clerks cum research assistants who assists a judge in researching for cases, maintaining paperwork etc. Judicial clerks often sit in court hearings with the judges. Graduates may write the All India Judicial Services Examination to avail of positions in the Indian Judiciary. Qualifying candidates start in subordinate courts and may then progress to hold offices in the High Courts and even the Supreme Court of India.
- **Other avenues:** Law graduates may opt for different career paths such as politics, journalism (legal journalism at places such as Bar and Bench and Legally India as well as in media houses), Legal publishing, Fellowships (such as the Teach for India Fellowship), civil services etc.

LIBERALIZATION OF THE LEGAL PROFESSION

There is an ongoing debate about the issue of liberalization of legal service sector in a growing economy. Given that India had signed the WTO Treaty in the 1990s leading to economic liberalization, it is also expected to liberalize the legal services sector under the GATS (General Agreement on Trade and Services) and services negotiations under various free trade agreements/economic partnership agreements. The Bar Council of India has consistently passed several resolutions between 2002 and 2007 opposing the opening up of the Indian legal profession to foreign lawyers or foreign law firms. In 2011, in a judgment delivered by the Bombay High Court on a public interest litigation (PIL) was filed by Lawyer's Collective, a non-profit organization, the High Court held that foreign law firms could not be permitted to set up liaison offices in India. Contrary to this position, the Madras High Court, in response to a PIL filed by A.K. Balaji, permitted foreign lawyers to practice in India on a "fly in and fly out" basis. The Law Commission of India, in a working paper in 1999, raised pertinent issues and concerns

while recommending amendments to the Advocates Act to prepare a level-playing field for Indian lawyers. There is no resolution in sight regarding this issue.

GLOBALIZATION OF LEGAL PROFESSION

As globalization increases the flow of people and information across borders, there are increasing opportunities for trained lawyers. Typically, the opportunities are available in Common Law based jurisdictions such as the United States and the United Kingdom and to an extent Australia and Canada. However, unlike many other professions, lawyers trained and licensed in one jurisdiction may not be licensed to practice in other jurisdictions. Lawyers trained in other jurisdictions will have to requalify in order to practice in the foreign jurisdictions. Given the globalisation of legal profession, a number of lawyers have dual qualifications.

WOMEN AND THE LEGAL PROFESSION IN INDIA

Legal practice in India, as in most other countries, is a male dominated profession. In 1916, the Calcutta High Court, and in 1922, the Patna High Court had held that women otherwise qualified were not entitled to be enrolled as Vakil or Pleader. In the Patna High Court case, Ms. Hazra, the petitioner, secured a B.L. degree from Calcutta University. She was refused enrolment as a Pleader. She challenged this in the

High Court of Patna. The Court rules that the sections of the Legal Practitioner's Act referred to males and not females. Since 1793, no woman had ever been admitted to the roll of pleaders. To remove doubts about the eligibility of women to be enrolled and to practise as legal practitioners, the Legal Practitioners (Women) Act, XXIII of 1923, was enacted to expressly provide that no woman would by reason only of her sex be disqualified from being admitted or enrolled as a legal practitioner or from practising as such.

The Allahabad High Court took the lead by enrolling Ms. Cornelia Sorabji as the first Indian lady Vakil of Allahabad High Court on 24 August, 1921 by a decision of the English Committee of the Court (as the Administrative Committee was then called), consisting of Chief Justice Sir Grim Wood Meers. Since then, although the number of women entering into the profession has increased gender bias still pervades the profession. A recent survey found that the percentage of successful women candidates for the Common Law Admission Test was 47%, however 36% of women lawyer in another survey stated that they had faced some sort of gender bias at work. There have been only 5 women Senior Advocates since 1962 of the 397 designated Senior Advocates. However, recent studies have indicated that genderbased disadvantages are gradually being eliminated, especially in the corporate law sector.

MULTIPLE CHOICE QUESTIONS

- When was the Mayor's Court in Madras, Bombay and Calcutta was established by the East India Company?
 - 1726 AD
 - 1678 AD
 - 1710 AD
 - 1789 AD
- Which of the following court in India established under the regulating act of 1773 AD?
 - Supreme Court of India
 - Supreme Court of Fort William
 - Civil disputes for District Diwani Adalat and criminal disputes for District Fauzdari Adalats
 - None of the above
- Consider the following statement(s) is/are related to the reforms under Warren Hastings
 - He established two courts for resolving disputes – civil disputes for District Diwani Adalat and criminal disputes for District Fauzdari Adalats.
 - He shifted Sadar Nizamat Adalat to Calcutta and put it under the supervision of Governor-General and the members of Supreme Council who were assisted by Chief Qazi and Chief Mufti.

Code:

 - Only I
 - Only II
 - Both I and II
 - Neither I nor II
- Who among the following abolished the District Fauzadari Court and set up Circuit Court at Calcutta?
 - Lord Dalhousie
 - Warren Hastings
 - Lord William Bentinck
 - Lord Cornwallis
- Consider the following
 - It provided for the establishment of a Federal Court, which was set up in 1937 with appellate and advisory jurisdiction.
 - According to this act, the four Circuit Courts were abolished and transferred the functions of the abolished court to the collectors under the supervision of the commissioner of revenue and circuit.

Which of the above statement (s) is/are correct about the Government of India Act, 1935?

 - Only I
 - Only II
 - Both I and II
 - Neither I nor II
- Who among the following made English language as official language for Supreme Court proceeding?
 - Lord Dalhousie
 - Warren Hastings
 - Lord William Bentinck
 - Lord Cornwallis

7. Which of the following committee/commission is related to the law commission during British India?
 - A. Sargent Plan
 - B. MacDonnell Commission
 - C. Fraser Commission
 - D. Macaulay Commission
8. Who among the following known for the establishment of sovereignty of law in India?
 - A. Lord Dalhousie
 - B. Warren Hastings
 - C. Lord William Bentinck
 - D. Lord Cornwallis
9. Who among the following was the first Chief Justice of Supreme Court during British India?
 - A. Sir Elijah Impey
 - B. Sir Robert Chambers
 - C. Sir John Anstruther
 - D. Sir Henry Russell
10. **Assertion (A):** The beginning of Indian codified common law is traced back to 1726 when a Mayor's Court in Madras, Bombay and Calcutta was established by the East India Company.
Reason (R): This was the first sign of Company's transformation from a trading company to a ruling power with the added flavour of new elements of the Judiciary.
Codes:
 - A. Both (A) and (R) are true and (R) is the correct explanation of (A)
 - B. Both (A) and (R) are true, but (R) is not a correct explanation of (A)
 - C. (A) is true, but (R) is false
 - D. Both (A) & (R) are not true
11. Consider the following statements.
 1. The Bar Council of India is a statutory body under the Advocates Act, 1961.
 2. As per the Advocates Act, the Bar Council of India consists of members elected from each state Bar Council.
 3. The Attorney General of India and the Solicitor General of India who are *ex officio* members.
 Which of the above statements is/are correct?
 - A. 1 and 2 only
 - B. 2 and 3 only
 - C. 1 and 3 only
 - D. 1, 2 and 3
12. What kind of "system" does England and Wales operate under?
 - A. A civil law system
 - B. A common law system
 - C. An equitable system
 - D. None of the options given are correct
13. Which of the following statements best describes the function of a legal system?
 - A. Protection of individual rights and liberties
 - B. Maintenance of public order
 - C. Conferral of obligations
 - D. All of the options given are correct
14. Which of the following statements best describes a "legal personality"?
 - A. Natural persons only
 - B. Artificial persons only
 - C. Both natural and artificial persons
 - D. None of the options given are correct
15. What is the difference between private law and public law?
 - A. Private law refers to the relationship between individual citizens. Public law refers to the relationship between individual citizens and the state.
 - B. Public law refers to the relationship between individual citizens. Private law refers to the relationship between individual citizens and the state.
 - C. Private law relates to crimes committed inside the home. Public law relates to crimes committed in public places.
 - D. Private law relates to court hearings conducted in private. Public law relates to court hearings conducted in public.
16. What is the difference between an adversarial and inquisitorial approach to the legal system?
 - A. An adversarial system is based on a contest between the parties with the judge regulating the conduct of the parties. An inquisitorial approach concerns an investigation undertaken by the court with the parties ensuring the correct procedure is followed.
 - B. An inquisitorial system is based on a contest between the parties with the judge regulating the conduct of the parties. An adversarial approach concerns an investigation undertaken by the court with the parties ensuring the correct procedure is followed.
 - C. An adversarial approach is used in criminal cases whereas an inquisitorial approach is used in civil cases.
 - D. An inquisitorial approach is used in criminal cases whereas an adversarial approach is used in civil cases.
17. Which of the following is the correct statement of law?
 - A. The law of the United Kingdom
 - B. The law of England and Wales
 - C. The law of England, Wales and Northern Ireland
 - D. The law of England and Scotland
18. What was the effect of the Scotland Act, 1998?
 - A. It legally renamed the Scottish Executive to the Scottish Government
 - B. Allowed Scotland to set their own income tax rates

- C. Established the Scottish Parliament
D. None of the options given are correct
19. Which of the following is the most accurate description for the Rule of Law?
- A. An idealistic concept of how the legal system should function to further civilized society
B. The law must be made up of strict rules with punishment for breach of those rules
C. A rule made by Parliament
D. Guidance on how rules should be applied

20. Which of the following accurately reflects the distinction between substantive and procedural law?
- A. Substantive law reflects the rules on procedure and evidence. Procedural law reflects the elements or conditions for the law to apply
B. Procedural law reflects the rules on procedure and evidence. Substantive law reflects the elements or conditions for the law to apply
C. Substantive law and procedural law are synonymous
D. None of the options given are correct

ANSWERS

1	2	3	4	5	6	7	8	9	10
A	B	A	D	A	C	D	D	A	A
11	12	13	14	15	16	17	18	19	20
D	B	D	C	A	B	B	C	A	B

LEGAL SERVICES

According to the Encyclopedia Britannica, ‘legal aid’ is giving to persons of limited means, grants or for nominal fees, advice or counsel to represent them in court for civil and criminal matters. It aims to create a bridge between the poor and rich in the society in order to provide equality to seek justice in the court of law.

Rawls first principle of justice is that each person should have an equal right to the system of equal basic liberties. Legal Aid is to ensure that no one is debarred from legal advice and help because of lack of funds. Thus, the provision of legal aid to the poor is based on humanitarian consideration and the main aim of these provisions is to help those who are socially and economically backward.

Reinald Heber Smith in his 1919 book, *Justice and the Poor*; promoted for the first time, the concept of free legal assistance for the poor. Smith challenged the legal profession to consider it an obligation to make sure that justice was accessible to all, without regard to the ability to pay. “Without equal access to the law”, he wrote, “the system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon even invented”.

BRIEF HISTORY OF LEGAL SERVICES

The growth of legal aid movement is seen as one of the late conscious attempts in social adjustment that followed the slow and often unconscious process of social engineering. The real problem of social engineering was stated clearly when *Hammurabi*, the King of Babylon, announced his purpose in promulgating the code which he set up in the early years of the 20th century B.C. That purpose was “to establish justice in the earth to hold back the strong from oppressing the weak”.

Such social adjustment is also referred to as social engineering. Social engineering may be defined as the science and art of making appropriate adjustments to human relationships as well as to promote the welfare of the community as a whole. In the savage struggle for existence, it is natural for the strong to take advantage of their strength. Of these adjustments, the most necessary as

well as the most difficult is clearly indicated by the words of the wise autocrat of Babylonia: “It is to prevent the strong from oppressing and exploiting the weak”. The Code of Hammurabi, written nearly 4000 years ago, had progressive laws such as minimum wage, the right to be born a free man, the need to work off your debt, and no incest. This was written 2000 years before the Bible.

There were three processes whereby the developing civilization progressively moved towards social engineering through free legal aid. The first was to grant aid to vulnerable communities; the second was to put restrictions upon the exercise of privileges accorded by law to those well-off; and the third was to strip those fortunate of their privileges and place the strong and weak on an equal footing before the law. But these three steps did not ultimately bring the society towards realizing its goal. There is one kind of weakness that is not adequately protected by restraints or by taking away the privileges from the fortunate. As law is not self-executing, the power of the society which gives sanction to law must be brought to bear upon the law-breaker before a wrong done is made right.

The process of setting the machinery of the law in motion involves effort as well as expense. Those economically weak cannot bear this expense and hence we are to ask ourselves: what does it profit a poor and ignorant man that he is equal to his strong antagonist before the law? Or are the courts open to him on the same terms as to all other persons when he has not the wherewithal to pay the fee?

From the earliest times, there is evidence that law-makers had sensed the disability of the poor. They had addressed that the disability must be taken into account in any sound scheme of social engineering. Thus the *Code of Hammurabi* attempts to limit the charges made for the services to poor men providing an instance wherein a surgeon can exact subjectively from the poor and the rich.

Mosaic law (Law of Moses) gave to the poor man many privileges intending to aid him to escape from the bonds of debt and servitude. If the creditor took his poor debtor’s cloak in pledge, he must return it by nightfall, for instance otherwise he would have no covering for the night. So prompt

payment of wages to the poor was enjoined for he was poor.

According to *Herodotus*, justice in Egypt was administered without cost in order to give the greatest relief possible to those who were wronged. It is evident that court costs constitute the most obvious obstacle to the poor man seeking justice. Despite *Herodotus*' statement with respect to Egypt, it is probable that costs in some form have always been required of litigants. It may be that in early times when the *Hebrew* courts sat by the city gate, there was free and easy access to all suitors, but the fierce charges of the sale of justice made by the prophets suggests the toll of heavy costs.

Under the peculiar procedure before the praetor at Rome, costs took the form of *vodimonium*, security for appearance by the defendant, and the *sacramentum* which was in the form of a wager laid by each party, but in substance security to abide by the judgment of the court. No evidence is found of any special procedure by which a person too poor to bear these charges could secure the adjudication of his claims.

In the early years from 1876-1965, Civil legal assistance for poor people in the United States began in New York City in 1876 with the founding of the Legal Aid Society of New York. The legal aid movement caught on in urban areas. By 1965 virtually every major city had some kind of programme.

Since 1952, the Government of India also started addressing the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Government for legal aid schemes. In different states, legal aid schemes were regulated through Legal Aid Boards, Societies and Law Departments. Although all are equal before the law, in practice some seem to be more equal than others, and this resulted in the denial of easily available opportunities to access justice.

Article 39A of the Constitution inserted by the 42nd Amendment Act in 1976 offered a remedy to this problem by directing the state to provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities to secure justice are not denied to any citizen by reason of economic or other disabilities. Legal aid schemes were floated across states through legal aid boards, societies and law departments thereafter.

LEGAL BACKGROUND

In a participatory democracy, it is essential that citizens have faith in their institution. A judiciary that is as fair and independent is an important component in sustaining their trust and confidence. An impartial independent judiciary is the guardian of the individual rights in a democratic society. In order for citizens to have faith in their court system, all people must have access to the courts when necessary.

Citizens agree to a limitation on their freedom in exchange for peaceful coexistence, and they expect that when conflicts between citizens or between the state and citizens arise, there is a place that is independent from undue influence, that is trustworthy, and that has an authority over all the parties to solve the disputes peacefully. It is also the responsibility of the state to ensure that fair and impartial justice is made available at the door steps of the poor and economically weaker sections irrespective of their caste, creed, religion, geographical position at free of cost.

The fundamental value of Indian system of justice is that the stability of our society depends upon the ability of the people to readily obtain access to courts, because the court system is the mechanism recognized and accepted by all to peacefully resolve disputes. Denying access to the courts forces dispute resolution into other arenas and results in vigilantism and violence. As envisaged under **Article 15 of the Constitution of India**, the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Based on this cardinal principle, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability. **Article 14 of the Constitution of India** provides that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Human rights and human dignity form the premises for socio-legal foundations of free legal aid. As part of the human rights, it is necessary to recognize the principle of equality and ensure access to justice. These foundations reflect the incorporation of legal obligation in the international treaties, regional treaties, the working of monitoring bodies under these treaties or in the national legal systems.

FREE LEGAL AID UNDER INTERNATIONAL LAW

International law addresses the provision for free legal service from the perspective of human rights. An explicit provision for legal services is incorporated in the International Covenant on Civil and Political Rights (ICCPR).

Article 14(3) (d) of the International Covenant on Civil and Political Rights outlines the requirement for free legal assistance as follows: *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*

To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing to be informed if he does not have legal assistance, of this right and to have legal assistance assigned to him, in any case where the interests of justice require, and without payment by him in any such case if he does not have sufficient means to pay for it.

India has ratified the International Covenant on Civil and Political Rights which came into force in 1976 and is bound by the International obligation to provide free legal assistance as per the requirements of the Covenant. The Supreme Court of India has adopted the method of giving effect to international legal obligations when these obligations exist in the Indian legal system expressly. The Court also recognized international legal obligations as part of the law of the land when Indian law can be harmoniously interpreted as in conformity with international law.

A number of international treaties like International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on Elimination of Discrimination Against Women (CEDAW) and International Convention on Elimination of All Forms of Racial Discrimination may be interpreted as implicitly referring to the need for free legal services while aiming at effective legal remedy and access to justice.

There are a number of declarations and principles adopted by the UN which refer to effective legal remedy, of which free legal services (in genuine cases) form an essential component. For instance, Article 8 of the Universal Declaration on Human Rights (UDHR) provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by the law. Being a General Assembly resolution, some international law scholars describe UDHR as a soft law in terms of declaration, encapsulating lofty idealistic notions about human rights. Still, it creates right centric obligations of norm creating character for the members of the international community.

THE INDIAN LEGAL SYSTEM

The adversarial system that the colonial era brought in, made access to justice difficult because it ended the era of informal dispute settlement prevalent in the Indian society leaving aside the quality of justice dispensation in the indigenous mode. The pre-British system was accessible as it was not technical or formal and was conducted in a language known to parties. The Supreme Court in the *M.H. Hoskot vs State of Maharashtra* ([1978]3 SCC 544) observed: *Our judicature moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power or steering the wheels of equal justice under the law.*

The adversarial system is characterized by the technical nature of law, and been called as formal because it requires pleadings and court fees. Added complexities like bribery and poverty among the Indian masses makes access to justice highly problematic. In the words of B Sivaramaya, the observation of Anatole France that the majesty of law treats a millionaire and a pauper sleeping under the bridge alike held good in the case of dispensation of justice by the courts modeled on adversary system.

FREE LEGAL AID UNDER CRIMINAL LAW

Section 340(1) of the Code of Criminal Procedure, 1898, provided that if a man was charged with an offence punishable with death, the court could provide him with a counsel upon his request. This was subjected to a twisted interpretation by the Supreme Court by classifying it as a privilege rather than the duty of the magistrate in *Tara Singh vs State* (1951 AIR 441). However, India in the Code of Criminal Procedure, 1973, facilitated statutory implementation of free legal aid subsequently. Section 304(1) provides that: In a trial before the sessions judge, if the accused has not sufficient means to engage a pleader, the court should assign a pleader for his defense at the expense of the State.

LEGAL AID BY THE STATE

The 14th Report of the Law Commission of India mooted the idea of providing free legal aid to the poor by the state. The Report highlighted the responsibility of the legal community to administer legal aid scheme and the state to fund legal representation to the accused in criminal proceedings, appeals and jails. In 1960, the Union Government initiated the national legal aid scheme which faced financial shortages and died a natural death. In 1973, in the second phase, the Union Government constituted a committee under the chairmanship of Justice Krishna Iyer to develop a legal aid scheme for states. The Committee devised a strategy in a decentralized mode with legal aid committees in every district, state and the centre. A committee on judicature was set up under the chairmanship of Justice P.N. Bhagwati to implement the legal aid scheme. This Committee suggested legal aid camps and nyayalayas in rural areas and recommended the inclusion of free legal aid provision in the Constitution. In 1980, the Committee on National Implementation of Legal Aid was constituted with Justice Bhagwati was its head. Subsequently, the Parliament enacted the Legal Services Authorities Act, 1987.

LEGAL AID UNDER THE INDIAN CONSTITUTION

The 1976 amendment of the Constitution inserted Article 39-A in the Constitution which is as follows: *Equal Justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.*

As pointed out by *Granville Austin*, the portions of the Constitution dealing the fundamental and directive principles of state policy are meant for social revolution. The revolution intends to bring about social justice based on equality. The wording of Article 39-A reiterates that kind of an equality which shall promote access to justice for all by creating

equal opportunity. That this constitutional guarantee that was often violated than observed is visible in many of the cases brought before the courts including the apex court. Among many crucial reasons for this, it is evident that a technical application of statutory law or constitutional obligation is inadequate. Only a fair procedure can ensure the concept of equality and access to justice.

Maneka Gandhi vs Union of India (AIR 1978 SC 597) provided clarity on what procedure means under Article 21. The right to life or liberty could be violated only by a fair, just and reasonable procedure. In the adversarial system, the fairness requires legal representation. Creation of equal opportunity for accessing the courts is a dimension of the equality clause in Article 14. Denial of opportunities in public employment or education to different classes is not the only occasion when considerations about retaining equality go missing; the inadequacy of the legal system to provide an effective forum to the indigent in another. In the *MH Hoskot* case, the court observed: Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; a failure of equal justice under the law is on the cards where such supportive skills is absent for one side.

NALSA REGULATIONS, 2010

In 2010, the National Legal Services Authority (NALSA) of India adopted the National Legal Services Authority (Free and Competent Legal Services) Regulations in exercise of its power under Section 29 of the Legal Services Authorities Act, 1987. The Regulations are applicable to the Legal Service Committees of the Supreme Court, High Courts, the States, districts and taluks.

CRITERIA FOR GIVING FREE LEGAL SERVICES

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:

- A member of a Scheduled Caste or Scheduled Tribe;
- A victim of trafficking in human beings or beggar as referred in article 23 of the Constitution;
- A woman or a child;
- A person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);
- A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood drought, earthquake or industrial disaster; or
- An industrial workman; or
- In custody, including in a protective home within the meaning of clause (g) of section 2 of the Immoral

Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987.

The Act renders a helping hand to all those categories of citizens mentioned in the above. Now the larger question arises whether an economically sound person who falls into these categories should he/she be allowed to seek free legal aid. If they are allowed to seek free legal assistance then such an approach and its ramifications on the system should be carefully analyzed. Thus, the million question arises whether the wealthy and affluent in the society needs to be provided legal aid? The economically sound who falls into these categories, whose income runs into crores of rupees make use of the free legal aid. Thus, in a way they are hijacking the real sufferers for whom this enactment was made.

Those who have the financial means, who can afford to have a lawyer, should desist from taking the help of legal aid institutions. As far as the above scenario is concerned, the achievement of one is always at the expense of the other. Why the public treasury is being exhausted for providing legal assistance to a cross section which goes against the basic spirit of the said statute. Flaws in the system can only be identified when the system turns fully functional; once such flaws are identified there should not be any delay in plugging the same.

Legal Services

Legal services are of two types:

- Pre-litigation legal services, and
- Post-litigation legal services

It is rightly said that prevention is better than cure. In these days, the number of litigations is increasing day by day which is against smooth administration of justice. So far emphasis was given only on post-litigation assistance or help but now it is being realized that pre-litigation legal services are more useful than post-litigation legal services.

The pre-litigation legal services include:

- Legal education
- Legal advice
- Legal awareness
- Pre-litigation settlement etc.

Litigation is not a luxury but it should be used as a last resort. In criminal cases, prosecution is initiated by the state and when legal aid is provided to the accused, the expenditure of both the parties is managed by the state. Sometimes, it is criticized that legal aid in criminal cases is encouraging litigation.

HIERARCHY OF LEGAL AID SERVICE AUTHORITIES

I. The Central Authority

The Central Government constitutes the National Legal Services Authority (NALSA) and the Supreme Court Legal Services Committee (SCLSC) for exercising powers and functions as determined by the Central Authority. The NALSA consists of - the Chief Justice of India (CJI) as the Patron-in-Chief, a Judge of the Supreme Court nominated by the President as Executive Chairman, and other members nominated by the Government in consultation with the CJI. The SCLSC consists of - Judge of the Supreme Court as the Chairman, and other members prescribed by the Government and nominated by the CJI.

II. Functions of the Central Authority

The Central Authority shall perform all or any of the following functions, namely:

- (a) Lay down policies and principals for making legal services available under the provisions of this Act.
- (b) Frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act.
- (c) Utilize the funds at its disposal and make appropriate allocation of funds to the State Authorities and District Authorities.
- (d) Take necessary steps by way of social justice litigation with regard to consumer protection, environment protection or any other matter of special concern to the weaker sections of the society.
- (e) Organize legal aid camps, especially in rural areas, slums or labour colonies.
- (f) Encourage the settlement of disputes by way of negotiations arbitration and conciliation.
- (g) Undertake and promote research in the field of legal services with special reference to the need for such services among the poor.
- (h) To do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IV A of the Constitution.
- (i) Monitor and evaluate implementation of the legal aid programmes at periodic intervals.
- (j) Provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities.
- (k) Develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance.
- (l) Take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of society.

- (m) Make special efforts to enlist the support of voluntary social welfare institutions working at the grassroots level.
- (n) Coordinate and monitor the functions of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluka Legal Services Committees and voluntary social service institutions and other legal services organizations and give general directions for the proper implementations of the legal service programmes.

III. The High Court Legal Services Committee

Section 8A of the Legal Services Authorities Act provides details of the High Court Legal Services Committee. The State Authority shall constitute a High Court Legal Services Committee for every High Court for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the State Authority. The Committee shall consist of a sitting judge of the High Court as a Chairman; and such number of other members as may be determined by regulations made by State Authority to be nominated by Chief Justice of the High Court. The Chief Justice of the High Court shall appoint a secretary to the committee possessing such experience and qualifications as may be prescribed by the State Government. The terms of office and other conditions relating thereto, of the members and secretary of the committee shall be such as may be determined by regulations, made by the State Authority.

The committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions. The officers and other employees of the committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

IV. The State Authority

Every State Government constitutes the State Legal Services Authority (SLSA) and the High Court Legal Services Committee (HCLSC) for exercising powers and functions as determined by the State Authority. The SLSA consists of - the Chief Justice of High Court as the Patron-in-Chief, a Judge of the High Court nominated by the Governor as Executive Chairman, and other members nominated by the State Government in consultation with the Chief Justice of High Court. The HCLSC consists of - Judge of the High Court as the Chairman, and other members prescribed by the State Authority and nominated by the Chief Justice of High Court.

V. Functions of the State Authority

The State Authority is responsible for giving effect to the policy and directions of the Central Authority. It provides legal services like the Central Authority and conducts Lok Adalats. While undertaking legal aid programmes, it also performs other functions of the State Authority fixed by way of regulations.

It shall be the duty of the State Authority to give effect of the policy and directions of the Central Authority. Without prejudice to the generality of the functions referred to in sub-section (1), the State Authority shall perform all or any of the following functions, namely:

- (a) Give legal service to persons who satisfy the criteria laid down under this Act.
- (b) Conduct Lok Adalats, including Lok Adalats for High Court cases,
- (c) Undertake preventive and strategic legal aid programmes; and
- (d) Perform such other functions as the State Authority may in consultation with the Central Authority, fix by regulations.

VI. The District Authority

The State Government constitutes the District Legal Services Authority (DLSA) for every district for exercising powers and functions as determined by the District Authority. The DLSA consists of - the District Judge as Chairman, and other members nominated by the State Government in consultation with the Chief Justice of High Court. The District Authority is responsible for performing functions of the State Authority in the District as delegated by the State Authority. It coordinates the activities of the Taluk Legal Services Committee and other legal services in the District. It organizes Lok Adalats within the District. The District Authority also performs other functions fixed by way of regulations by the State Authority.

The State Authority constitutes the Taluk Legal Services Committee (TLSC) for every taluk or mandal. The TLSC consists of - senior most Judicial Officer as the ex-officio Chairman, and other members prescribed by the State Government in consultation with the Chief Justice of High Court. The TLSC is responsible for organizing Lok Adalats within the taluk. It coordinates the activities of legal services in the taluk. It performs other functions as assigned by District Authority.

Section 9-11 of the Legal Services Authorities Act deal with the District Legal Services Authority. The State Government shall, in consultation with the Chief Justice of the High Court, constitute a District Authority for every district in the State to exercise the powers and perform the functions conferred on, or assigned to the District Authority under the Act.

VII. Functions of the District Authority

It shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority. Without prejudice to the generality of the functions referred to in sub-section (1) the District Authority may perform all or any of the following functions, namely:

- (a) Co-ordinate the activities of the Taluk Legal Services Committee and other legal services in the District,
- (b) Organized Lok Adalats within the District, and
- (c) Perform such other functions as the State Authority may fix by regulations.

VIII. Taluk Legal Services Committee

Section 11A and 11B of the Legal Services Authorities Act deal with Taluk Legal Services Committee. The State Authority may constitute a Committee, to be called the Taluk Legal Services Committee, for each Taluk or Mandal or for a group of Taluk or Mandals. The Committee shall consist of the senior Civil Judge operating within the jurisdiction of the Committee as an ex-officio chairman and such number of other members as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court. The Taluk Legal Services Committee may perform all or any of the following functions, namely:

- (a) Co-ordinate the activities of legal services in the Taluk;
- (b) Organize Lok Adalats within the Taluk; and
- (c) Perform such other functions as the District Authority may assign to it.

Entitlement to Legal Services

Section 12 and 13 of the Legal Services Authorities Act, deal with the criteria of eligibility to the legal services and its procedure. Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:

- (a) A member of a Scheduled Caste or Scheduled Tribe;
- (b) A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) A women or a child;
- (d) A mentally ill or otherwise disabled person;
- (e) A person under circumstances of underserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) An industrial workman; or
- (g) In custody, including custody in protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (prevention) Act, 1956 (104 of 1956); or in a Juvenile Justice Act, 1986 (53 of 1986); or

in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of Mental Health Act, 1987 (14 of 1987); or

- (h) In receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

IX. Lok Adalats

Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committees or, as the case may be, Taluk Legal Services Committees may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit. A case may be referred to Lok Adalat when the parties thereof agree or one of the parties thereof makes an application to the court for referring the case to the Lok Adalat for settlement.

1. Powers of Lok Adalats

The Lok Adalat shall for the purpose of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

- (a) The summoning and enforcing the attendance of any witness and examining him on oath,
- (b) The discovery and production of any document,
- (c) The reception of evidence on affidavits,
- (d) The requisitioning of any public record or document or copy of such record or document from any court or office; and
- (e) Such other matters as may be prescribed.

2. The Legal Services Authorities (Amendment) Act, 2002

The Parliament of India realized that litigation oriented legal services cannot bring out desired result, therefore, for encouraging pre-litigation legal services specially in public utility service, the Parliament has made certain amendments in Legal Services Authorities Act by passing an Act known as the Legal Services Authorities (Amendments) Act, 2002. The purpose of this amendment is to bring out certain changes in the Legal Services Act, 1987 (hereinafter referred to as the principal Act) especially for the establishment of permanent Lok Adalats to settle disputes concerning public utility services at pre-litigation state.

Chapter VIA provides certain provisions dealing with pre-litigation conciliation and settlement pertaining to public

utility services. Section 22A provides that in this Chapter and two the purpose of section 22 and 23 unless the context otherwise requires: “permanent Lok Adalant” means a permanent Lok Adalat established under sub-section (1) of Section 22 B. “Public utility service” means any:

1. Transport service for the carriage of passengers of goods by air, road or water; or
2. Postal, telegraph or telephone service; or
3. Supply of power, light or water to the public by any establishment; or
4. System of public conservancy or sanitations; or
5. Service in hospital or dispensary; or
6. Insurance service.

It also includes any service which the Central Government or the State Government, as the case may be, may in the public interest, by notifications, declare to be a public utility service.

LEGAL AID IN CONTEXT OF SOCIAL JUSTICE AND HUMAN RIGHTS

There are millions of people who are denied human rights only because, they cannot afford the cost required for the enforcement of their rights. Merely to talk about human rights from an elitist platform is not sufficient. In order to do social justice to them and to make human rights meaningful, legal aid becomes essential. The Human Rights which cannot be enforced due to poverty are meaningless and worthless. A right to access to justice is sine qua non for social justice. The access to justice itself is one of the most basic human rights, and without it, the realization of many other human rights may become difficult. Indeed, the right to assess to justice or Legal Aid is evolved by judicial creativity for the benevolence of poor persons. Now, neither is it possible nor is it proper to isolate the right to legal aid from range of human right.

The reason is obvious, mere declaration and passing of resolutions about human rights are not enough, the guarantee for the enforcement of these rights is equally essential. Hence, it will not be incorrect to say that right to legal aid stands first in the specie of human rights. Human rights are only mere pious declaration without legal aid. They become lucrative only when they are enforced. The right to legal aid enables accomplishment of these human rights and makes them worthwhile for the poor masses in the world.

In the present legal system of most of the countries, justice is not given but sold. The consumers of justice have to pay the counsel for representing them, bear expenditure for court fees and also other contingent charges. Indeed, the poverty is an obstacle in the way of getting justice and due to this reason the poor becomes the sufferer of social injustice. Legal aid is only a way for providing social justice to all. Legal aid indeed, is an integral part of human rights

and it requires urgent considerations, otherwise there is an apprehension that someday the patience of the poor may be exhausted and that will endanger the world peace.

FUNDING

The Central Government by way of grants provides funding to the Central Authority for providing legal services. Similarly, the State Government by way of grants provides funding to the State Authority and the District Authority for providing legal services.

I. The National Legal Aid Fund

The National Legal Aid Fund established by the Central Authority includes sums of money given as grants by the Central Government, any grant or donation made to the Central Authority by any other person for the purpose of legal services, and amounts received by the Central Authority under the orders of any court.

The National Legal Aid Fund shall be utilized towards the cost of legal services provided by the SCLSC, grants made to the State Authorities, other expenses of the Central Authority.

II. The State Legal Aid Fund

The State Legal Aid Fund established by the State Authority includes sums of money given as grants by the Central Authority, any grant or donation made to the State Authority by any other person for the purpose of legal services, and amounts received by the State Authority under the orders of any court.

The State Legal Aid Fund shall be utilized towards the cost of functions of State Authorities, cost of legal services provided by the HCLSC, other expenses of the State Authority.

III. The District Legal Aid Fund

The District Legal Aid Fund established by the District Authority includes sums of money given as grants by the State Authority, any grant or donation made to the District Authority by any other person for the purpose of legal services, and amounts received by the District Authority under the orders of any court.

The District Legal Aid Fund shall be utilized towards the cost of functions of District Authorities and Taluk Legal Services Committee, and other expenses of the District Authority.

MULTIPLE CHOICE QUESTIONS

- What is the Legal Aid Agency?
 - The body which runs the courts and tribunals
 - The body which regulates the legal advice centres
 - The body responsible for the provision of civil and criminal legal aid
 - The body which allocate lawyers to defend those accused of criminal acts
- Which of these tests must an applicant pass in order to qualify for criminal legal aid?
 - Interests of justice test
 - A means test
 - Interests of justice and a means test
 - A merits test
- What does a 'conditional fee arrangement' mean?
 - A litigant's solicitor will be paid whether or not the claim is successful
 - A litigant's solicitor will not be paid if the claim is successful
 - A litigant's solicitor will only be paid if the claim is unsuccessful
 - A litigant's solicitor will only be paid if the claim is successful
- What does 'pro bono' legal work mean?
 - Legal work done for free, or at a reduced cost, for litigants of limited means
 - Legal work done at a set hourly fee
 - Legal work done on the basis of 'no win, no fee' for litigants of limited means
 - Legal work done at substantial cost for litigants of substantial means
- Which of the following is excluded from the provision of legal aid as a result of the Legal Aid, Sentencing and Punishment of Offenders Act, 2012?
 - Human rights cases
 - Employment cases
 - Habeas corpus* cases
 - Protection from harassment cases
- Which of the following accurately describes the position of legal aid in relation to the right to a fair trial?
 - A defendant has a qualified right to legal aid where there is a lack of means to pay for services and such aid is necessary in the interests of justice
 - A defendant has an absolute right to legal aid
 - A defendant has a qualified right to legal aid where there is a lack of means to pay for services
 - A defendant had no right to legal aid
- What work is undertaken by Citizen Advice?
 - Provide free information and advice on non-legal matters
 - Provide legal advice, for which it
 - Provide free representation in court
 - Provide free information and advice, on both legal and non-legal matters

8. What are damages based agreements (DBAs)?
 - A. Lawyers receive their fees by taking a percentage out of the damages recovered by their own clients
 - B. A lawyer's fees are only paid if a judge decides what the fees should be
 - C. A lawyer's fees are fixed
 - D. Agreements to pay referral fees to a lawyer
9. Who is responsible for determining the policy of the Legal Aid Agency?
 - A. Attorney General
 - B. Solicitor General
 - C. Lord Chancellor
 - D. Permanent Secretary
10. Which of the following is not a "strategic objective" of the Legal Aid Agency?
 - A. Build and maintain strong partnerships to secure quality provision and contribute fully to wider justice and government aims
 - B. Improve organizational capacity to meet the challenges ahead, including developing and engaging our people
 - C. Improve casework to reduce cost, enhance control, and give better customer service
 - D. Strike a fair balance between the rights of individuals to receive legal advice and representation whilst also ensuring a tight constrain is kept on the budget
11. When was the Legal Services Authority Act passed?
 - A. 1985
 - B. 1987
 - C. 1986
 - D. 1988
12. Which of the following statements is/are correct regarding Lok Adalat in India?
 1. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.
 2. If the parties are not satisfied with the award of the Lok Adalat, there is a provision for an appeal against such an award.
 3. Mobile Lok Adalats are also organized in various parts of the country which travel from one location to another to resolve disputes in order to facilitate the resolution of disputes through this mechanism.

Select the correct answer using the code given below.

 - A. 1 only
 - B. 2 and 3 only
 - C. 1 and 3 only
 - D. 1, 2 and 3
13. Which among the following is not correct in connection with the institution of Lok Adalat?
 - A. Its awards are deemed to be decrees of the civil courts
 - B. Its awards are final and binding on all the parties
 - C. Appeal can be made against the awards by deposit of 75% of the amount of award
 - D. Normal Lok Adalats can entertain cases involving a sum up to ₹ 20 lakh
14. Which of the following loan accounts can be referred to Lok Adalat?
 - A. All NPA accounts
 - B. Both suit filed and non-suit filed accounts
 - C. Where liability does not exceed ₹ 20 lacs
 - D. All of the above
15. The upper limit of referring cases to Lok Adalat is _____.
 - A. ₹ 20,00,000
 - B. ₹ 10,00,000
 - C. ₹ 15,00,000
 - D. ₹ 5,00,000
16. With which of the following the Lok Adalat deals?
 1. The parties should agree to refer the disputes.
 2. If one party applies to court to refer the case to Lok Adalat.
 3. The dispute which courts feels appropriate.
 - A. All are true
 - B. 1 and 3
 - C. 1 and 2
 - D. 2 and 3
17. Which of the following describes the fundamental principles of human rights?
 - A. Universal and inalienable
 - B. Guaranteed and inalienable
 - C. Universal and alienable
 - D. Guaranteed and alienable
18. Which of these features does the adversarial system involve?
 - A. Judges collecting evidence
 - B. Each side presenting its case and testing the oppositions evidence
 - C. The use of a jury in all court cases
 - D. The payment of damages to the victim of a crime
19. What is the main purpose of equity?
 - A. To achieve justice
 - B. To achieve fairness
 - C. To achieve equality
 - D. To achieve damages
20. Which Article of the Constitution of India contains various provisions for settlement of disputes through Lok Adalat?
 - A. Article 14
 - B. Article 19
 - C. Article 39A
 - D. Article 21

ANSWERS

1	2	3	4	5	6	7	8	9	10
C	C	D	A	B	A	D	A	C	D
11	12	13	14	15	16	17	18	19	20
B	C	C	D	A	A	A	B	B	C

INTERNATIONAL CONTEXT

INTRODUCTION TO INTERNATIONAL LAW

Every state has their own respective laws (domestic laws) which regulate the conduct of its citizens. These laws regulate the private, social, commercial and other activities of the individuals. These internal laws also help in regulating the conduct and affairs of the state machinery. But, what happens when there is a dispute between two or more state parties? Which body of law governs their conduct? Which jurisdiction is to be applied in case of disputes related to private parties across different jurisdictions? The answer to these situations lies in International Law.

History and Meaning

Many scholars have traced the history of international law back to concepts or systems prevalent in different periods in history such as the European Renaissance, or in different civilizations such as the Roman Empire or the ancient Middle East. International law, as we know it today, took its form in the mid-19th century during the expansionist and industrial eras, when concepts such as state sovereignty gained increasing prominence, alongside ideas such as exclusive domestic jurisdiction and non-intervention in affairs of other states. These ideas were then spread throughout the globe by the imperial European powers through colonization. Subsequently, international law ended up becoming truly 'international' in the initial decades after World War II, owing to the rapid decolonization that took place then, leading to the formation of numerous independent states which infused the European dominated ideas and practices of international law with their own diverse cultures and influences. At the same time, international organizations such as the League of Nations and the United Nations came into existence in the aftermath of World War I and World War II respectively, thus marking an era of a new form of international law in which organizations such as UN along with its organs would have a significant role.

International law hence came to be a framework of rules and principles binding the relations between states and governing their conduct amongst themselves. It is a form of law which relies on consent-based governance to

a great extent, as states are not ordinarily obliged to abide by it, unless they expressly consent to a particular course of conduct, though certain aspects are exceptions to the consent requirement, such as principles of customary international law and peremptory norms or jus cogens.

International Law can be further categorized into:

- Public International Law and
- Private International Law

Public International Law

Public International Law is the law that regulates relations between states. Public International law is different from other types of laws because it is concerned with interstate regulation, *i.e.*, it deals in regulating the conduct of one state with another and is not concerned with the relations between private entities (legal and natural persons) and even the domestic laws of any country.

The primary objective of Public International law is to provide for a framework of rules and regulations which help in fostering stable and organized international relations.

Some key areas where public international law is applicable			
Peace and security	Human rights	Finance	Airspace
Trade	Intellectual Property	Development	Sea
Weapons	Bio-diversity	Science and security	Fisheries
International Crimes	Climate change	Extradition	Natural resources

Public International Law is further classified into fields such as law of the seas, international humanitarian law, the law of treaties, and so on.

Private International Law

Private International Law, often referred to as "Conflict of Laws", is a set of rules and principles that govern interstate interactions and transactions of private parties. It is a body constituted of conventions, model laws, domestic laws of

states and secondary legal sources. It commonly involves issues like which

- Jurisdiction should be permitted to hear the case, and
- Jurisdiction's law should be applied.

It is different from Public International Law, as the latter is a set of rules which governs the intercourse between nations through determining the rights and obligations of the governments of the nations, while the former comprises of certain rules and regulations which are established or agreed upon by private citizens from different nations who enter into transactions and that would govern them if a dispute were to arise.

There are certain international bodies which have been working towards harmonizing private laws of different countries and bringing uniformity in their application. The bodies include organizations such as the Hague Conference on Private International Law, the International Centre on the Settlement of Investment Disputes (ICSID), the International Institute for Unification of Private Law (UNIDROIT), the United Nations Commission for International Trade Law (UNCITRAL), and so on. The Hague Conference, convened by the government of Netherlands, originates back in 1893, and focuses on developing conventions on a wide array of aspects of private law. The UNCITRAL works towards developing model laws and guides, related to international trade and commercial laws, including the UNCITRAL Arbitration Rules.

Some of the international conventions/model laws in the sphere of private international law which have gained more traction in recent times are, the United Nations Convention on Contracts for the Sale of International Goods (CISG), the UNCITRAL Model Law on International Commercial Arbitration, the Geneva Convention on the execution of foreign arbitral awards, and so on.

The CISG, also referred to as the Vienna Convention on sale of goods, is a multilateral treaty which provides options for avoiding choice of law issues by providing a framework of accepted substantive rules with respect to contract disputes. It is considered one of the most influential documents in private international law, and nowadays is deemed to be incorporated into any otherwise applicable domestic laws, unless expressly excluded.

The UNCITRAL Model Law has provided a framework for domestic laws on international arbitration and is being adopted by an increasing number of countries, with India joining the list in 1996.

SOURCES OF INTERNATIONAL LAW

A source of law within a domestic legal system is easier to determine. Within the domestic system it is considered as something which is not too difficult a process, where one may look at the various legislations or statutes provided for

by the legislature and if there is a lacunae in the statute then decisions of the domestic courts.

But, it is not so easy to pinpoint the sources of International law. Yet, the most authoritative source of international law is Article 38(1) of the Statute of the International Court of Justice, which provides that when a court which deals with disputes relating to international law, it shall apply:

“International conventions, whether general or particular, establishing rules expressly recognized by the contesting states,

- (a) International custom, as evidence of general practice accepted by law*
- (b) The general principles of law recognized by civilized nations*
- (c) Subject to provisions of Article 59, judicial decisions and teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of international law.”*

Though Article 38(1) is technically limited in application to the International Court of Justice (“ICJ”), since the function of the court is to decide disputes submitted to it in accordance with international law and all members of the United Nations are ipso facto members, it is widely accepted that this is considered as enumerating the general norm on sources of international law. Although the provisions of the Statute of the ICJ do not suggest any hierarchy, they are generally applied in the following order in case of disputes.

Treaties

A Treaty/International Convention/Charters refers to legally binding, written, agreements in which states agree to act in a particular manner as specified in the agreement. Treaties are often complex documents, particularly with regards to those involving more than two parties as they are binding upon them and are to be entered into in good faith. Agreements which are between different nations but without the intention of creating binding obligations are not considered treaties, however they may have political effects. A treaty need not be one consolidated document but may consist of more than one related documents.

Treaties may be drafted between states by their leaders or government departments depending on the circumstances. However there are a number of stages that are involved in order to convert a final draft into a binding treaty. The final text has to be ‘adopted’ in an international conference by way of two-thirds majority. A state may express its consent to be bound by a particular treaty in certain cases, the most common of which are:

Consent by signature

In certain cases, treaties may be given force by way of signatures of representatives who have been given the full powers, i.e., authorization in writing from their state to be able to take decisions on its behalf.

Consent by exchange of Instruments

In some scenarios, consent may be recorded by way of exchanging certain instruments, *i.e.*, documents which contain the terms agreed to by both sides, when these instruments provide that on such exchange they will be in effect.

Consent by Ratification

Ratification is simply understood to be the act by which a State establishes its consent to be bound by a treaty on the international plane. This was initiated as a measure to ensure that the representative who signed a treaty had due authority, by seeing whether the state agrees to 'ratify' the same. Ratification differs from country to country but usually requires a sign that the state consents to follow the provisions of the treaty *i.e.*, could be assent by the President of the State or require a vote of a majority in the legislature. In multilateral treaties, involving a number of countries, ratification is usually the most preferred method of expressing assent where one party collects the ratification of the others.

They are generally considered to be the most accepted as they are in a written form and have been explicitly assented to by the states party to the dispute.

Customs

An observed custom could be derived from the law of nature or mutual consent and is extremely fluid. Custom is usually derived by sifting through many layers and evidences of state practice and opinion juris. Many other sources such as unsigned treaties and United Nations declarations have been included to identify and cover more and more customs and practices in the international domain.

International Court of Justice (ICJ) decisions

Article 59 of the Statute of the ICJ states that decisions of the ICJ have no binding force except on the parties to the dispute, however the ICJ tends to examine its previous decisions, determine which cases should not be applied and rarely departs from the relevant case law.

There are many who feel a departure from the current system is necessary as these are outdated. However, and for the time being, these are the prevalent sources for the purpose of international law.

INTERNATIONAL INSTITUTIONS

The growth in the number of sovereign nations and increasing international relations gave rise to notions of international co-operation. The 19th Century saw the commencement of international non-governmental associations such as the International Law Association, in 1873, and the International Committee of the Red Cross, in 1863. These institutions paved the way for the formation of the League of Nations in 1920 which was the predecessor to the United Nations in 1945.

Today, there are numerous organizations established by inter-governmental agreement and having a large number of social, economic and cultural influences which have been facilitated by the United Nations. Some of the key organizations that have been set up with the aid of the League of Nations and the United Nations are mentioned below.

International Labour Organization (ILO)

It was set up post the First World War as a part of the Treaty of Versailles, in 1919 to achieve social justice. It was aimed at improving the conditions of labour in various countries in the world to help achieve humane conditions for such labourers by providing for various regulations and agreements on the conditions of labourers.

United Nations Educational, Scientific and Cultural Organization (UNESCO)

Formed in 1945, UNESCO was set up to promote coordination between members keeping in mind the fact mere economic and political arrangements are not enough to ensure growth and stability in member states. By promoting culture, preserving the heritage, sharing knowledge and understanding that are beneficial for the whole of mankind, UNESCO aims to aid sustainable development and foster greater cooperation between nations.

World Bank and the International Monetary Fund (IMF)

The World Bank was instituted as the International Bank for Reconstruction and Development (IBRD-the World Bank) and along with the IMF were dubbed the Bretton Woods Twins in 1944. These two sister institutions were started in order to aid the economies of various nations which had suffered immense losses subsequent to the Second World War. The World Bank aids member states by providing loans to member states for the purpose development and raises its funds by way of the world's financial markets.

World Health Organization (WHO)

The WHO was formulated in 1948 to set up an agency that would move towards aiding member states with regards to health concerns. WHO has been a core agency for setting up of norms and standards to be followed with regards to human health and research regarding the containment of diseases as well assessing worldwide health trends. It coordinates with various agencies in different countries to facilitate greater knowledge and awareness of health issues in various countries.

These organizations, and their counterparts, are aimed to promote international cooperation between member states on a large number of issues from rights of labourers, redevelopment of countries and economies as well as monitoring health trends

across the world. After the end of the Second World War, these institutions have flourished and provided exceptional coordination among various departments of governmental and non-governmental organizations to fulfill their goals.

INTERNATIONAL HUMAN RIGHTS

International Human Rights pose a variety of question under the framework of international law. There are various problems related to enforcement and sanctions with regards to human rights. The Second World War had a profound impact on the development of human rights law as there was a need for a system to give rise to protection of human rights. This led to a wide spurt of activism and literature on the same. We will quickly look into some of the key conventions and treaties promoting and protecting Human Rights in the international sphere.

Article 4 of the International Covenant on Civil and Political Rights (**ICCPR**) states that there are certain rights such as the right to life, freedom of thought, prohibition of slavery, etc. that are said to be non-derogable and constitute a special place in the hierarchy of rights. Also, there are certain rights that have also entered the framework of customary international law like the prohibition of torture, genocide and slavery and the principles of non-discrimination. These have become certain inalienable rights that do not require any specific treaty to be given effect to.

One of the most influential documents in this regard is the **Universal Declaration of Human Rights** which deals with various provisions, a few of them being:

- liberty of a person (Article 3)
- equality before law (Article 7)
- prohibitions on torture (Article 5)
- socio-economic rights such as right to work and equal pay (Article 23)
- right to social security (Article 25)

While it is not a binding document, per se, there have been many instances where it has been referred to by cases of the International Court of Justice and is an extremely important document for the purpose of international human rights.

Another such arrangement was **The Vienna Declaration and Programme of Action** (1993). It emphasized that all human rights were universal, indivisible, inter-dependent and interrelated. This led to the creation of the post of the UN High Commissioner for human rights who would principally be responsible for UN human rights activities. The High Commissioner can make recommendations to other UN bodies and can also coordinate between them.

There are several other key legislations and arrangements such as the **Convention on the Prevention and Punishment of the Crime of Genocide**, **The International Convention on the Elimination of All Forms of Racial Discrimination**

which read with provisions of the Universal Declaration of Human Rights give rise to a host of enforceable rights in both treaty and customary international law.

There are various bodies such as the **Commission on Human Rights**, which is known as the **Human Rights Council** since 2006. It looks into matters of human rights issues. However, it has faced criticisms on its political selectivity and failure to objectively review the issues in certain countries. The Human Rights Council is continuing the work of the previously set up Commission by broadening its framework by spreading its area over a wider framework.

Generally human rights violations are dealt with by the state in which they occur. However, there are certain human rights, established under treaty that may constitute *erga omnes* (towards all) obligations for the state parties. This means that there are some violations that are so grave, that any state may take action against such crimes, regardless of whether they occurred in their jurisdiction or not. All states have a shared interest in elimination of such grave violations. This is one of the most empowering features of international human rights law where it does away with the borders and limitations of a domestic body and allows the international community to also seek an active role to protect the rights of citizens of other countries.

Given the primacy of human rights even in domestic legislatures all over the world, it is almost no surprise that international human rights law is possibly given such a high degree of importance in the world of international law.

CUSTOMARY INTERNATIONAL LAW

According to Article 38 of its Statute, the International Court of Justice 'whose function is to decide in accordance with international law such disputes as are submitted to it,' has to apply, *inter alia*, 'international custom.' This source of public international law is described, in the same Article, as 'evidence of a general practice accepted as law.'

This description of international custom, even though it has been criticized for its exact formulation, at least makes clear that international custom generally refers to a description state practice, but only such practice as is accepted by the states themselves as legally required. Once a certain practice is understood to be customary law, states are obliged to act as the rule of customary international law prescribes.

International customary law is probably the most disputed and discussed source of international law. *For example*, it is not clear when a particular state practice becomes a *legally binding* state practice. It is also unclear how one can identify a rule of international custom, or how one can prove its existence.

INTERNATIONAL LAW & MUNICIPAL LAW

The interplay between municipal and international law is complex. Some authors believe that international law and

the law of the domestic jurisdiction, also referred to as the municipal law of the country, do not intersect and are completely different entities which cannot affect or overrule each other. However in practice it seems that this does not hold true. There are some principles that are clear as this conflict between international law and domestic law is concerned.

Municipal law cannot serve as a defense to a breach of international law, *i.e.*, you cannot use a domestic law to justify the breach of an international one. Neither can one say that their consent to a treaty has been invalidated by way of a change of its municipal law. Similarly, the International Court of Justice has also stated that the lack of domestic legislation cannot be brought up as a defense if there is an international obligation on the state not to do a certain act. There have been various cases on points that state that international law is prevalent over the domestic law however that does not mean that domestic legislations carry no force.

Some international treaties require that countries adopt domestic legislation in line with the international obligations it has already agreed to. Owing to such requirements there is a blurring of the distinction between international and municipal law and domestic courts have also started analyzing international obligations of states in domestic disputes. In countries such as the United Kingdom, there is a doctrine of transformation that states that before any international agreement can be considered applicable domestically it must be transformed into municipal law. This means that the provisions of the treaty need to be transformed into local law, passing a domestic legislation with concurrent provisions as the international obligations.

Similarly in the United States of America, the position is that customary international law is federal law and if the federal courts in the US determine it to be binding then it's binding on the state courts as well. However, no act of legislature may be invalidated merely on the basis of a violation of customary international law. The US Supreme court believes that there should be respectful consideration to be given to the interpretation of international treaties however a domestic rule to the contrary would be given supremacy over those provisions.

Thus, it is to be understood that each country has their own method of dealing with the application of international law to its jurisdiction. The provisions of international law are often used to supplement various propositions of the domestic law when they are both concurrent with each other. However, whenever there is a dispute between international and domestic law, supremacy of either depends mainly on the forum, *i.e.*, where the case is being contested. International forums generally give preference to treaty law and other international sources whereas domestic forums give preference to statutes of the jurisdiction.

INTERNATIONAL LAW & INDIA

Article 51 of the Indian Constitution specifically states that the State shall endeavour to '*foster respect for international law and treaty obligations in the dealings of organized peoples with one another*'. Under Article 253 of the Constitution of India, the Parliament and the Union of India have the power to implement treaties and can even interfere in the powers of the state government in order to give power to provisions of an international treaty.

India generally follows that merely affirming a treaty by way of ratifying it by the assent of the executive unless the treaty requires ratification by way of an act of the legislature. In the landmark case of *Kesavananda Bharti vs State of Kerala*, it was observed that the court must interpret the provisions of the constitution in light of Charter of the United Nations.

There has been an evolution of the philosophy of the role of international treaties to which India is party to with relation to the Indian Constitution. In the case of *Magan Bhai Patel vs Union of India*, the court held that if a treaty or international agreement restricts the rights of the citizens or modifies the laws of the state would require to have a legislative measure, *e.g.* if India is a party to an international agreement to stop the killing of a species of turtle, it restricts the right to trade of certain fishermen by prohibiting killing of the turtle. If this treaty is to be enforced in India, the Indian Parliament needs to pass a domestic legislation regarding prohibition of the killing of such turtle species.

If no such right is restricted then it does not need to have a legislative measure to enact it or give rise to some weight in domestic law in the treaty. It is also a very clear of Indian law that international treaties cannot on their own override domestic law. Hence, these treaties which are not enabled by the legislature will not have the same force in law if there is a contradictory law provided for. However, in the case of *Sheela Barse vs Secretary Children's Aid Society*, the Supreme Court held that India had ratified conventions regarding the protection of children and this placed an obligation on the State Government to implement these principles. This was a case in which there were no contradictory laws and as they were supplementing the law already in force the court held that the treaty could be applied directly to Indian law.

The most revolutionary of these cases was the case of *Vishaka vs State of Rajasthan*, in which the Indian courts used the provisions of the Convention on Elimination of all forms of Discrimination against Women, (CEDAW), to create legally binding obligations regarding sexual harassment.

India has dealt with the interplay of international law as fits the need of the day. While any restriction of rights requires the need for an amendment by legislature, enhancing or broadening the scope of such rights is allowed as long as there is nothing to the contrary or similar in domestic law.

DISPUTE RESOLUTION

In the domestic scenario disputes may be resolved by way of various methods by way of application to court, mediation, conciliation or even arbitration. In international law there may be disputes regarding a large number of issues relating to treaties or some basic covenants of international law. In the event such disputes arise between states or even between individuals and the state, there are certain institutions and mechanisms in place to resolve such disputes.

International Court of Justice

The International Court of Justice ('ICJ') is termed as the main judicial branch of the United Nations. In 1946, the General Assembly of the United Nations, enacted the Statute of the ICJ which gave rise to the institution of the International Court of Justice at The Hague, Netherlands. All members of the UN are party to this statute, by default owing to Article 93 of the United Nations Charter, and non-members may also become parties under this Article.

The court may have jurisdiction to decide cases in which the parties agree to appear before the court, on their own behest, and agree to be bound by the decision of the ICJ. The court may also be a forum if provided for in a treaty between parties and in certain cases it is compulsory to refer to the court with regards to certain disputes.



The court may also give advisory opinions under Articles 65-68 of the Statute of the ICJ to countries. These are not binding but are merely referrals to the ICJ to understand the point of law on the matter. The ICJ is thus, one of the primary sources of dispute resolution available with regards to international disputes when parties are agreeable to settle them on their own accord.

International Criminal Court

The International Criminal Court (ICC) is a tribunal set up through the Rome Statute in 2002 with the purpose of prosecuting criminals for 4 major crimes:

- Crimes against Humanity
- Genocide
- War Crimes
- Crime of Aggression

The ICC may prosecute criminals for crimes committed in a country which accepts the jurisdiction of the court. Thus, only if countries agree to submit to the jurisdiction can the ICC take up certain cases in which the person who has committed the crime is a national of the country or if it was committed in the territory of that country. The cases may be referred by the country directly to the ICC or through the Prosecutor of the ICC, who is the person appointed to try cases on behalf of the ICC.

The ICC has limited jurisdiction over the ICJ with regards to certain issues pertaining to criminal matters listed under the Rome Statute. The divide is similar to the divide of civil and criminal courts in the domestic context however, the jurisdiction of the ICC is more restricted than that of ordinary criminal courts.

Other Dispute Resolution Mechanism

Often the treaties entered into by the states themselves lay down the procedure to be followed in case of a dispute. For instance, the General Agreement on Trade and Tariffs (GATT) provides for a dispute resolution panel within its own provisions. Treaties often employ mediation, arbitration and other such dispute resolution mechanisms to arrive at an agreeable decision. The United Nations has even created its own forum to deal with issues related to investment disputes in association with the World Bank.

These are some of the dispute resolution mechanisms available with regards to international disputes available to resolve disputes in international law. There are numerous other forums that can be created which are all dependent on agreements between parties and the provisions of the treaties. The ICJ's enabling provisions are also wide enough to deal with most disputes that may arise between member states.

MULTIPLE CHOICE QUESTIONS

1. The term of judges of International Court of Justice is:

A. Three years
B. Five years

C. Six years
D. Nine years
2. When was the Charter of Human Rights adopted?

A. 1945
B. 1948

C. 1951
D. None of these

3. Who is called 'the father of International Law'?

A. Hugo Grotius
B. Oppenheim

C. Suarez
D. None of these
4. The Alabama Claims Arbitration case was decided in:

A. 1872
B. 1854

C. 1890
D. None of these

5. Vienna Conference of 1961 is related to:
 - A. Diplomatic intercourse and immunities
 - B. Prisoners-of-war
 - C. Recognition of states
 - D. None of these
6. Diplomatic relations are established by:
 - A. Mutual consent
 - B. A unilateral decision
 - C. A decision of a regional organization
 - D. None of these
7. Non-permanent members of the Security Council are elected for a period of:
 - A. 7 years
 - B. 3 years
 - C. 2 years
 - D. None of these
8. Diplomatic staff enjoys complete immunity from:
 - A. Civil Jurisdiction
 - B. Criminal Jurisdiction
 - C. Both (A) and (B)
 - D. None of these
9. Number of Judges of International Court of Justice is:
 - A. Nine
 - B. Twelve
 - C. Fifteen
 - D. None of these
10. Permanent Court of International Justice was established under:
 - A. League of Nations
 - B. UNO
 - C. European Union
 - D. None of these
11. Pacta Sunt Servanda means:
 - A. Treaties between states are to be respected
 - B. An unwanted person
 - C. International Law must be honoured
 - D. None of these
12. Headquarters of International Court of Justice is in:
 - A. Hague
 - B. Geneva
 - C. New York
 - D. None of these
13. Persona Non Grata means:
 - A. Impracticable article of international law
 - B. A fugitive criminal
 - C. A person refused for asylum
 - D. None of these
14. Principles Jus Soli means:
 - A. Grant of nationality on the basis of place birth
 - B. Grant of nationality on the basis of blood relationship
 - C. Grant of nationality through naturalization
 - D. None of these
15. Much of international law is derived through analogy from:
 - A. Islamic Law
 - B. Christian Law
 - C. Roman Law
 - D. None of these
16. Genocide Convention was adopted by the UN General Assembly in:
 - A. 1945
 - B. 1950
 - C. 1960
 - D. None of these
17. GATT is a multilateral treaty that:
 - A. restricts trade among non-member countries
 - B. imposes multiple trade barriers among its member nations
 - C. establishes trade agreements and limited tariffs and trade restrictions
 - D. None of these
18. The oldest principle of international law is the doctrine of:
 - A. pacta sunt servanda
 - B. foreign dignitaries
 - C. religious freedom
 - D. None of these
19. Universal declaration of human rights was passed in:
 - A. Chicago
 - B. London
 - C. Berlin
 - D. Paris
20. The jurisdiction of the international court of justice:
 - A. is binding on all the members of the UNO
 - B. is not binding on all the members of the UNO
 - C. is binding only upon the members of the SECURITY COUNCIL
 - D. None of these
21. "Economic and Social Council":
 - A. was an organ of the League of Nations
 - B. is an organ of the WTO
 - C. is an organ of UNO
 - D. None of these
22. Hague convention of 1970 dealt in properly with the crimes relating to:
 - A. refugees
 - B. prisoners of war
 - C. hijacking
 - D. None of these
23. The Universal Declaration of Human Rights was adopted in:
 - A. 1920
 - B. 1945
 - C. 1948
 - D. None of these
24. De facto recognition is:
 - A. legal recognition
 - B. recognition in principle
 - C. temporary and conditional recognition
 - D. None of these
25. Statutes of International Courts of Justice were drawn up by:
 - A. London Declaration in 1941
 - B. Moscow and Tehran Conference in 1943
 - C. San Francisco Conference in 1945
 - D. None of these
26. The Security Council is:
 - A. Specialized agency of the U.N.
 - B. Principle organ of the U.N.
 - C. N.G.O. for settling disputes between various states
 - D. None of these
27. In procedural matters, the decisions of the Security Council are made by the affirmative votes of any:

- A. 5 members B. 9 members
C. 15 members D. None of these
28. Extradition is normally granted:
A. in all cases
B. in criminal cases only
C. in civil cases only
D. None of these
29. "International law is not true law but a Positive International Morality", said:
A. John Austin B. Oppenheim
C. Hagel D. None of these
30. The term International Law was first coined by:
A. Hugo Grotius B. Jeremy Bentham
C. Hagel D. None of these
31. Extradition means:
A. Handing over a diplomat to other state
B. Handing over a spy to other state
C. Handing over a criminal to other state
D. None of these
32. Persona non grata means:
A. Ungrateful Diplomat
B. Inefficient Diplomat
C. Unacceptable or unwelcome Diplomat
D. None of these
33. The General Assembly is:
A. The Principle Organ of UNO
B. An ordinary Organ of UNO
C. A check on the Security Council
D. None of these
34. Judges of the ICJ are:
A. Elected by the Security Council
B. Elected by the General Assembly and the Security Council
C. Appointed by the Secretary General in consultation with the five permanent members of the Security Council
D. None of these
35. Which one of the following scholars consider International Law as the true law?
A. Grotious B. Hobbes
C. Holland D. Austin
36. The book "Jure Belli ac paceis" written by:
A. John Austin B. Jeremy Bentham
C. Hugo Grotious D. Belli
37. How many sources of International Law have been listed in Article 38(1) of the Statute of International Court of Justice:
A. Four B. Five
C. Six D. Three
38. Which one of the following is relatively the most important source of International Law?
A. Treaties
B. Judicial Decisions
C. Custom
D. The General Principles of Law
39. Which one of the following is not a source of International Law?
A. Constitution of Sovereign States
B. Treaties
C. International Conventions
D. International Customs and Practices
40. Calvo clause and Drago doctrine are the result of:
A. The Decisions of ICJ
B. Writings of Jurists
C. State Judicial Decisions
D. None of the above

ANSWERS

1	2	3	4	5	6	7	8	9	10
D	B	A	A	A	A	C	C	C	A
11	12	13	14	15	16	17	18	19	20
A	A	D	A	C	D	C	A	D	B
21	22	23	24	25	26	27	28	29	30
C	C	C	C	C	B	B	B	A	B
31	32	33	34	35	36	37	38	39	40
C	C	A	A	A	C	A	A	A	B

LEGAL MAXIMS

A

A Fortiori : With strong reason
A Priori : From the cause to the effect
Ab Antiquo : From ancient times
Ab Initio : From the very beginning
Abiure : To renounce on oath or affirmation
Acta Extiora Indicant Interiora Secreta : Acts indicate the intention
Actus Legis Nemini Facit Injuriam : Law holds no man responsible for the act of god
Actus Non Facit Reum Nisi Mens Sit Rea : A guilty mind is necessary to constitute a crime
Actus Reus : Wrongful act, the physical act of involving in the crime
Ad Hoc : For a particular purpose
Ad Idem : Of the same mind
Ad Referendum : For further consideration
Ad Rem : To the point
Ad Valorem : According to the value
Addenda : List of additions
Alias : Otherwise called
Alibi : Elsewhere
Alimony : Maintenance given by a husband to his divorced wife
Amicus Curiae : A friend of court, the name is given to lawyer appointed by a court to represent a poor litigant
Animus Attestandi : The intention of attesting
Animus Deserendi : The intention of deserting
Antenuptial : Before marriage
Assumpsit : He promised or undertook
Au Fait : Conversant with
Audi Alteram Partem : Hear the other side
Auterefois : A person cannot be tried for the same offence twice

Auterefois Acquit : Formerly acquitted
Auterefois Convict : Formerly convicted

B

Bailiff : A subordinate officer of the court who executes writs and other court orders
Bona Fide : In good faith, honestly
Bona Vacantia : Goods that do not have an owner. Generally they go to the finder
Boni Judici Est Ansliare Jurisdictioness : It is the part of a good judge to enlarge his jurisdiction.

C

Causa Celebre : A celebrated case
Causa Causans : The immediate cause
Carte Fide : In good faith, honesty
Causa Sine Qua Non : Factor essential to the occurring of event
Caveat : An order given to officers may "let him beware"
Caveat Emptor : Let the buyer beware
Caveat Venditor : Let the seller beware
Canveat Viator : Let the traveller beware
Certiorari : An order of a higher court which quashes the decision of lower court
Compos Mentis : Of sound mind
Consensus, Non Concubitus, Facit Matrimonium : It is the consent of the parties, not their cohabitation which constitutes a valid marriage
Consensus Ad Idem : Agreement as to the same thing
Corpus Delicti : The substance of the crime
Coup D'etat : Violent or illegal change
Coup D'grace : Finishing stroke
Culpa : Wrongful default

D

Damnum Sine Injuria : Damage without legal injury
De Die In Diem : From day to day
De Facto : In fact
De Jure : In law
De Novo : New
Decree : Order of court pronounced after hearing the case
Decree Nisi : A conditional decree
Defeasible Right : Right which can be defeated
Doli Capax : Capable of crime
Doli Incapex : Incapable of crime
Double Jeopardy : A second prosecution for the same offence
Durante Absentia : During absence
Durante Vita : During life

E

Ejusdem Generis : Of the same kind, the rule that where particular words are followed by general words.
Emeritus : Retired after long service
En Bloc : All at the same time
En Masse : In a body
Ex Aequo Et Bono : In justice and good faith
Ex Contractu : Arising out of contract
Ex Curia : Out of court
Ex Delicto : Arising out of wrong
Ex Gratia : As a favour
Ex Nudo Pacto – Non Oitur Actio : An action does not arise from a bare promise
Ex Officio : By virtue of office
Ex Parte : In the absence of one party
Ex Post Facto : Acting retrospectively
Expressio Unius Est Exclusio Alterius : Express mention of one thing implies the exclusion of another
Extra Vires : Beyond powers

F

Factum : An act or deed
Factum Probantia : Facts which are given in evidence to prove other facts in crime
Faux Pas : Tactless mistake
Flagrante Delicto : In the commission of the offence
Force Majeure : Beyond one's control

H

Habeas Corpus : A court order which directed the person to produce before a court who illegally detained beyond twenty four hours before
Honoris Causa : As mark of esteem

I

Ibid : In the same place
Ignorantia Facti Excusat—
Ignorantia Juris Non Excusat : Ignorance of the fact is an excuse but ignorance of the law does not excuse
Ignorantia Juris Non Excusat : Ignorance of law has no excuse
Impasse : An insoluble difficulty
In Curia : In open court
In Loco Parentis : In the place of a parent
In Memoriam : In memory of
In Pari Delicto : Where both parties are equally in fault
In Pari Materia : Where two enactments have a common purpose in an analogous case
In Personam : Proceeding or directed against or reference to a specific person
In Re : In the matter of
In Rem : Right available against the world at large
It Situ : In its original situation
In Toto : Wholly
Infra : Below
Injuria Sine Damunum : Legal injury without actual damage
Innuendo : An innocent statement which a hidden defamatory meaning
Inter Alia : Among other things
Inter Vivos : Made between people who are alive
Intestate : Dying without leaving will
Intra Vires : Within power
Ipsa Facto : By reason of that fact

J

Jus : Right
Jus Naturale : Law of nature, natural justice

L

Laissez Faire : Doctrine of non-interference by state in economy
Lex : Statute

Lex Fori : The law of the court in which the case is tried

Lex Loci : The law of a place

Lex Non Cogit Ad Impossibilia : Law cannot compel a person who is not possible to perform

Lis Pendens : A pending suit

Locus Standi : Right to be heard in court



Mala Fide : With bad faith

Mandamus : We command

Manifesta Probatione Non Indiget : Things manifest do not require proof.

Mens Rea : Guilty mind

Mesne : Intermediate

Mesne Profits : Damage payable by trespassers who have stayed in possession after their right to occupy land has ended

Modus Operandi : Mode of operating

Mutatis Mutandis : With necessary changes being made



Nemo Debet Esse Judex In Propria Sua Causa : No man can be judge in his own cause

Nemo Tenetur Seipsum Accusare : No man can be compelled to incriminate himself

Nisi : Ineffective unless person affected fails to show cause

Non Assumpsit : He did not promise

Non Compos Mentis : Not of sound mind

Non Obstante : Notwithstanding

Noscitur A Sociis : Meaning of word can be gathered from context

Noscitur A Socvis : Meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it

Nota Bene (Nb) : Take notice

Nudum Pactum : An enforceable contract

Nullus Commodum Capere Potest, De Injuria Sua Propria : No man can take advantage of his own wrong



Obiter Dicta : Remark of a judge

Obiter Dictum : Judge's opinion



Par Excellence : Eminently

Pendente Lite : Pending litigation

Per : As stated by

Per Annum : By the year

Per Capita : Individually

Per Curiam : By the court

Per Incuriam : Wrong decision by court, by oversight

Per Se : By itself

Prima Facie : On the first sight

Pro Bono Publico : For the good of the public

Pro Rata : In proportion



Quantum Merit : As a person earned

Quash : Making null or invalid or making end to a legal proceeding

Quasi Contract : A contract between a party comes

Quasi Judicial : Sharing of qualities of and approximating to what is judicial

Qui Facit Per Alium Facit Per Se : He who acts through another is deemed to act in person

Qui Per Alium Facit Per Seipsum—

Facere Videtur : He who does an act through another is deemed in law to do it himself

Quid Pro Quo : Something for something

Quo Warranto : Order of a court in the form of writ directed the person in authority to show by what right he claim it

Quorum : Minimum number of persons necessary for conduct of proceeding of parliament

Quo Jure : By what right



Raison D'être : Reason for the existence of a thing

Rapprochement : Restoration of harmonious relations

Ratio Decidendi : Principle laid down by the court in deciding a case

Rebus Sic Stantibus : Binding bill circumstances remain the same

Res Gestae : The facts so connected with a fact in issue so as to explain its nature

Res Judicata : A case already decided

Res Nullis : A things which has no owner

Respondent Superior : Let the principle be held responsible

Responsa Prudentium : The answer of the learned in law. The opinions and decisions of learned lawyers

S

Salus Populi Est Suprema Lex : The welfare of the people is the paramount law

Sine Die : Indefinitely

Sine Qua Non : Indispensable condition.

Spes Successionis : Mere hope of succeeding to property

Stare Decisis : The principle that decision of courts in previous cases must be followed in subsequent cases of similar nature

Status Quo : To maintain the present state of affairs

Statute : An act of parliament

Sub Judice : Under judicial consideration or in course of trial

Subpoena : An order of a court to a person to appear and give evidence before it

Sui Generis : The only one of its kind

Suo Moto : On its own

Supra : Above

T

Tort : Civil wrong

Trespass : To pass beyond

Turpis Causa : A base on which no action can be founded, the maxim being *ex turpi causa non oritur actio*

U

Uberrimae Fide : Of the utmost good faith

Ubi Jus Remedium : Where there is a right there is a remedy

Ultra Vires : Beyond the power

V

Vide : Refer to

Vigilantibus, Non Dormientibus, Jura Subveniunt : The law assists those who are vigilant, not those who sleep over their rights

Vis Major : Irresistible force

Void : Have no legal effect

Void Ab Initio : Void from very beginning

Volenti Non-fit Injuria : Damage suffered by consent is not a cause of action

Voluntas In Delictis Non Exitus Spectatur : In crimes, the intention, and not the result, is looked into.

Miscellaneous Type MCQs

Directions (Qs. No. 1-5): Read the passage carefully and answer these questions.

Harm suffered voluntarily does not constitute a legal injury and is not actionable. This principle is embodied in the maxim *volenti non fit injuria*. A person cannot complain of harm to the chances of which he has exposed himself with his free consent and free will. The maxim *volenti non fit injuria* is founded on good sense and justice. A person who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong. The maxim presupposes a tortious act by the defendant. The maxim applies, in the first place, to intentional acts which would otherwise be tortious. There are certain limitations to the application of this maxim:

- (i) It is no answer to a claim made by a workman against his employer for injury caused through a breach by the employer of a duty imposed upon him by a statute. But where the negligence or breach of statutory duty is on the part of an employee of the plaintiff who knowingly accepts the risk flowing from such breach and the employer-defendant is not guilty of negligence or breach of statutory duty, the defence of *volenti non fit injuria* is available to the defendant.
- (ii) Under an exigency caused by the defendant's wrongful misconduct, consciously and deliberately faced a risk, even of death, whether the person endangered is one to whom he owes a duty of protection, as a member of his family, or is a mere stranger to whom he owes no such special duty. The rescuer will not be deprived of his remedy merely because the risk which he runs is not the same as that run by the person whom he rescues. But where there is no need to take any risk, the person suffering harm in doing so cannot recover.
- (iii) To cover a case of negligence the defence on the basis of the maxim must be based on implied agreement whether amounting to contract or not. The defence is available only when the plaintiff freely and voluntarily, with full knowledge of the nature and extent of the risk impliedly agreed to incur it and to waive any claim for injury. But when the plaintiff has no choice or when the notice is given at a stage when it is beyond the

ability of the plaintiff to make a choice there can be no implied agreement and the defence on the basis of the maxim must fail.

- (iv) The maxim will also not apply when the act relied upon is done because of the psychological condition which the defendant's breach of duty had induced.
1. Mr. A was the owner of a car and he had a driver- Mr. D. On January 19, 2021, Mr. A and Mr. D were travelling in their car wherein Mr. A got down at a restaurant and told Mr. D to take the car back to Mr. A's bungalow. Mr. D was filling the petrol tank of the car, and two strangers- Mr. B and Mr. C took a lift from Mr. D in his car. The car went ahead and the right-side front wheel of the car flew away, the car toppled and Mr. D and Mr. C were thrown out. Mr. C sustained severe injuries and ultimately died due to those injuries on January 20, 2021. Mr. B and legal representatives of Mr. C claimed compensation from Mr. A and Mr. D.
 - A. Mr. D will be liable to pay the compensation.
 - B. *Volenti non fit injuria* will be applicable and no compensation can be claimed.
 - C. *Volenti non fit injuria* will not be applicable and compensation can be claimed.
 - D. Mr. A and Mr. D both will be liable to pay the compensation.
 2. Rama was a spectator at a motor car race being held on a track owned by the defendant company. During the race, there was a collision between two cars, one of the cars was thrown among the spectators, thereby injuring Rama severely. Which of the following statements is correct?
 - A. Rama impliedly took the risk of such injury, the danger being inherent in the sport which any spectator could foresee, the defendant was not liable.
 - B. It was a negligence on the part of defendant and *volenti non fit injuria* will be applicable.
 - C. Rama did not take the risk of such injury, and she only consented to watching the race and hence the defendant was liable.

- D. Rama was negligent and hence she suffered injuries.
3. Which of the following is correct about consent in *volenti non fit injuria*?
- Knowledge of the risk does not always amount to consent.
 - Knowledge of a risk does not precede consent.
 - Knowledge of the risk always amounts to consent.
 - Mere perception of the existence of danger amounts to consent.
4. Lily had placed spring guns in a wood on her ground for the protection of the garden. Karan, with full knowledge that there were spring guns somewhere in the wood, trespassed on the land of Lily and was injured. Which of the following statements is correct?
- Lily will be liable to pay compensation to Karan.
 - Lily has not committed a tort against Karan by exceeding her right of private defence.
 - Karan's case does not fall within *volenti non fit injuria*.
 - Karan had knowledge of the spring guns and wilfully courted the danger himself.
5. Which of the following is not an element to claim the defence of *volenti non fit Injuria*?
- Prior knowledge of the plaintiff about the risk involved.
 - Free consent.
 - Plaintiff is compelled to agree to a risk by the defendant.
 - Voluntary acceptance of the risk by the plaintiff.

Directions (Qs. No. 6-10): Read the passage carefully and answer these questions.

It is essential to the creation of a contract that both parties should agree to the same thing in the same sense. Mutual consent, which should also be a free consent, is the *sine qua non* of a valid agreement and one of its essential elements is that a thing is understood in the same sense by a party as is understood by the other. Not only consent, but free consent is provided in Section 10 of the Indian Contract Act, 1872 to be necessary to the complete validity of a contract. Consent is free when it works without obstacles to impede its exercise. Where there is no consent or no real and certain object of consent, there can be no contract at all. Where there is consent, but not free consent, there is generally a contract voidable at the option of the party whose consent was not free. A general averment that consent was not freely obtained is not enough, and it is necessary to set up one of the vitiating elements such as fraud which includes, false assertion, active concealment, promise without intention of performing it, any other deceptive act, or any act declared as fraudulent. In order to constitute fraud, the act should have been done by the party to the contract, or by any other

person with his connivance, or by his agent and with intent to deceive the other party thereto or his agent, or to induce him to enter into the contract. There is no duty upon parties to speak about facts likely to affect the other party's consent to the contract and mere silence does not amount to fraud, unless the circumstances of the case show that there is duty to speak, or silence is, in itself equivalent to speech. On the other hand, misrepresentation falls into three categories: (i) a statement of fact, which if false, would be misrepresentation if the maker believes it to be true, but which is not justified by the information he possesses; (ii) any breach of duty which gains an advantage to the person committing it by misleading another to his prejudice, there being no intention to deceive; and (iii) causing a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement, even though done innocently.

6. Which of the following statements correctly depicts the essentials of misrepresentation?
- A misrepresentation is a positive statement of fact, which is made or adopted by a party to a contract and is untrue.
 - Misrepresentation and false representation do not mean the same.
 - If one party has induced the other to enter into a contract by misrepresenting, though innocently, any material fact especially within his own knowledge, the party misled cannot avoid the contract.
 - A misrepresentation is a negative statement of fact, which is made or adopted by a party to a contract and is true.
7. Consider the statements given below and answer which one correctly describes a fraudulent act.
- The expression fraud means an intention to deceive, whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial.
 - A fraud is an act of deliberate deception with the design of securing something by taking an unfair advantage of another. It is a deception to gain from another's loss.
 - Fraud arises out of deliberate active role of representator about a fact.
- (I), (II) are correct
 - (I) is correct
 - (I), (II), (III) are correct
 - (I) and (II) are correct, but (III) is incorrect
8. Which of the following statements is correct?
- Fraud is an innocent wrong whereas misrepresentation is an intentional wrong.

- B. The principal difference between fraud and misrepresentation is that in the former, the person making the suggestion does not believe it to be true and, in the latter, he believes it to be true.
- C. In fraud and misrepresentation both, it is not a misstatement of fact which misleads the promisee.
- D. Fraud and misrepresentation both are innocent wrongs.
9. Mr. A sells a car to Mr. Y, his childhood friend with a knowledge that the car is defective. Before buying the car, Mr. Y says to Mr. A, "If you do not deny it, I shall assume that the car is perfect". Mr. A says nothing. In light of the statement, decide the liability of Mr. A.
- A. A's silence is equivalent to speech and hence a misrepresentation.
- B. A is not liable for fraud, but liable for misrepresentation.
- C. A is liable for fraud and misrepresentation both.
- D. A's silence is equivalent to speech and hence a fraud.
10. In which of the following statements will a contract not be voidable at the option of a party?
- A. When a party takes consent by fraud.
- B. When a party takes consent by misrepresentation.
- C. A contract entered by fraud and misrepresentation is neither void nor voidable.
- D. When silence amounts to fraud, but the other party whose consent was taken had discovered the truth or had the means of discovering the truth with ordinary diligence.

Directions (Qs. No. 11-15): Read the passage carefully and answer these questions.

Section 4 of the Indian Contract Act, 1872 reads as follows:

Communication when complete — The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete, — as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.

Thus, the provision makes no difference in the position of the offeror. The offeror becomes bound when a properly addressed and adequately stamped letter of acceptance is posted. The acceptor does not become bound by merely posting his acceptance. He becomes bound only when his acceptance comes to the knowledge of the proposer. The contract is concluded at the place from where the proposal is accepted and communication of acceptance is dispatched, *i.e.*, the address at which the proposal was sent. The court

at that place would have jurisdiction to entertain a cause of action under the contract. This rule, that the communication of an acceptance is complete as against the proposer when the letter is posted, is probably intended to apply only when the parties are at a distance and they communicate by post. "Where, however, the parties are in each other's presence or, though separated in space", they are in direct communication, as, for example, by telephone, no contract will arise until the offeror receives the notification of acceptance.

11. 'S' wanted to purchase shares of a company and communicated his offer to buy shares on March 1, 2021. A letter of allotment of shares addressed to 'S', which is an acceptance of the offer to purchase shares, was posted by the company on March 10, 2021, but the letter never reached 'S' and was lost in transit. In the given situation, which of the following statements is true?
- A. Communication of acceptance is not complete as against 'S' and hence, there is no valid contract between 'S' and the company.
- B. Communication of acceptance is complete as against 'S' however not complete as against the company.
- C. Communication of acceptance is complete as against the company however not complete as against 'S'.
- D. Communication of acceptance is complete against both 'S' as well as the company.
12. 'A', who is in Mumbai, makes an offer for supply of goods to 'B', who is in Delhi, *via* a mobile phone call. During the same call, A's offer is absolutely and unconditionally accepted by 'B'. According to the terms agreed between 'A' and 'B', goods are to be supplied at Pune and payment is to be made electronically. In the given situation, where is the contract concluded?
- A. Neither Mumbai, Delhi nor Pune as it is a telephonic contract
- B. Pune
- C. Delhi
- D. Mumbai
13. 'X', who is in Gandhinagar, makes an offer for sale of second-hand luxury car to 'Y', who is in Jammu, *via* an e-mail sent on January 15, 2021 at 2:03 pm. X's offer is absolutely and unconditionally accepted by 'Y' *via* an e-mail sent on January 15, 2021 at 4:04 pm. The e-mail communicating acceptance is read by 'X' on January 15, 2021 at 7:05 pm. In the given situation, when is the contract concluded?
- A. As against 'X', on January 15, 2021 at 4:04 pm and as against 'Y', on January 15, 2021 at 7:05 p.m.
- B. As against 'Y', on January 15, 2021 at 4:04 pm and as against 'X', on January 15, 2021 at 7:05 p.m.

- C. January 15, 2021 at 4:04 p.m.
D. January 15, 2021 at 7:05 p.m.
14. 'X', who is in Agra, makes an offer for sale of second-hand luxury car to 'Y', who is in Jammu, via an e-mail sent on January 15, 2021 at 2:03 pm. However, the e-mail did not reach 'Y' due to some technical error at the server which is located in Delhi. Thereafter, 'X' makes a mobile phone call to 'Y' on January 15, 2021 at 4:04 pm and makes him the same offer as was made in the e-mail. In the same mobile phone call, the offer is absolutely and unconditionally accepted by 'Y' at 4:10 pm. In the given situation, where is the contract concluded?
- A. Delhi
B. Jammu
C. Agra
D. Neither Delhi, Jammu nor Agra as it is an electronic contract.
15. "When the words of acceptance are spoken into the telephone, they are put into the course of transmission to the offerer so as to be beyond the power of the acceptor. The acceptor cannot recall them." In light of the given proposition, which of the following statements is/are true?
- I. The communication being instantaneous, the contract immediately arises.
II. The communication being instantaneous, the communication of acceptance is immediately complete as against the proposer as well as the acceptor.
III. The communication being non-instantaneous, the communication of acceptance is complete as against the acceptor when the words of acceptance are spoken into the telephone.
IV. The communication being non-instantaneous, the communication of acceptance is complete as against the proposer when the words of acceptance are spoken into the telephone.
- A. Only I
B. I and II
C. III and IV
D. Only II

Directions (Qs. No. 16-20): Read the passage carefully and answer these questions.

It is a well settled principle of contract law that parties cannot by contract exclude the jurisdiction of all courts. Such a contract would constitute an agreement in restraint of legal proceedings and contravene Section 28 of the Indian Contract Act, 1872. However, where parties to a contract confer jurisdiction on one amongst multiple courts having proper jurisdiction, to the exclusion of all other courts, the

parties cannot be said to have ousted the jurisdiction of all courts. Such a contract is valid and will bind the parties to a civil action.

Section 28. Agreements in restraint of legal proceedings, void-Every agreement,

- (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.

Parties cannot by agreement confer jurisdiction on a court which lacks the jurisdiction to adjudicate. But where several courts would have jurisdiction to try the subject matter of the dispute, they can stipulate that a suit be brought exclusively before one of the several courts, to the exclusion of the others.

16. 'A', a resident of Mumbai, and 'B', a resident of Delhi, enter into an agreement for sale and supply of goods. The transaction takes place partly in Mumbai and partly in Delhi. There is a clause in the agreement which stipulates that in the event of a dispute between 'A' and 'B', the courts in Kolkata would have exclusive jurisdiction to decide the dispute. 'A' and 'B' agreed to the said clause in order to avoid dispute over choice between the two proper places of jurisdiction- Mumbai and Delhi. In the given situation, which of the following statements is true?
- A. The clause relating to jurisdiction is in restraint of legal proceedings.
B. The clause relating to jurisdiction is not in restraint of legal proceedings.
C. The clause relating to jurisdiction is valid as 'A' and 'B' have mutually agreed to the same.
D. The clause relating to jurisdiction is valid as its object is lawful.
17. 'A', a resident of Chennai, and 'B', a resident of Bengaluru, enter into an agreement for sale and supply of goods. The transaction takes place partly in Chennai and partly in Bengaluru. There is a clause in the agreement which stipulates that in the event of a dispute between 'A' and 'B', the courts in Chennai would have exclusive jurisdiction to decide the dispute. 'A' and 'B' agreed to the said clause in order to avoid dispute over choice between the two proper places of jurisdiction- Chennai and Bengaluru. In the given situation, which of the following statements is true?

- A. The clause relating to jurisdiction is in restraint of legal proceedings.
 B. The clause relating to jurisdiction is void.
 C. The clause relating to jurisdiction is valid as 'A' and 'B' have mutually agreed to the same.
 D. The clause relating to jurisdiction is valid as courts in Chennai have jurisdiction to decide the dispute.
- 18.** 'A', a resident of Agra, and 'B', a resident of Bhubaneswar, enter into an agreement for sale and supply of goods. The transaction takes place partly in Agra and partly in Bhubaneswar. There is a clause in the agreement which stipulates that in the event of a dispute between 'A' and 'B', neither of them can approach the court of law or take recourse to any alternative dispute resolution mechanism to settle the dispute. In the given situation, which of the following statements is true?
- A. The clause relating to jurisdiction is not valid as it is in restraint of legal proceedings.
 B. The clause relating to jurisdiction is not valid as the clause is vague and ambiguous.
 C. The clause relating to jurisdiction is valid as they have not restricted the choice of either party regarding choice of jurisdiction.
 D. The clause relating to jurisdiction is valid as no court's has been ousted by the clause.
- 19.** 'A', a resident of Ahmedabad, and 'B', a resident of Ranchi, enter into an agreement for sale and supply of goods. The transaction takes place partly in Ahmedabad and partly in Ranchi. Clause 6 of the agreement stipulates that in the event of a dispute arising between 'A' and 'B' within six months of the entering into contract, they can approach a court in either Ahmedabad or Ranchi (as both are proper places of jurisdiction), or take recourse to any alternative dispute resolution mechanism to settle the dispute. Clause 7 of the agreement stipulates that in the event of a dispute arising between 'A' and 'B' after the expiry of six months of entering into contract, the courts in Chennai would have exclusive jurisdiction to decide the dispute. In the given situation, which of the following statements is true?
- A. Clause 6 is void and Clause 7 is valid.
 B. Clause 6 is valid and Clause 7 is void.
 C. Both Clause 6 and Clause 7 are valid.
 D. Both Clause 6 and Clause 7 are void.
- 20.** According to the given passage, which of the following statements is true?
- A. Parties cannot by contract make a choice of jurisdiction.
 B. Parties cannot by contract exclude the jurisdiction of all courts.

- C. Parties can by contract confer jurisdiction on any court.
 D. Parties can by contract extinguish their rights under any contract.

Directions (Qs. No. 21-25): Read the passage carefully and answer these questions.

The doctrine of *res judicata* requires that a party should not be allowed to file same matter repeatedly against the other party either in the same court or in other competent court and that the decision given by one court should be accepted as final subject to any appeal, revision or review. The doctrine is founded on the principle that it is in the interest of the public at large that a finality should be attached to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. This apart, the object of the doctrine is to ensure that ultimately there should be an end to litigation. Doctrine of *res judicata* is embodied in Section 11 of the Code of Civil Procedure, 1908 which governs the procedure to be followed in civil matters. Section 11 is inapplicable to writ jurisdictions. The Supreme Court has observed that though the rule is technical in nature yet the general doctrine of *res judicata* is based on public policy and therefore, it cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32 of the Constitution of India. The court observed that if a writ petition filed by a party under Article 226 of the Constitution of India is considered on merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed in appeal or other appropriate proceedings permissible under the Constitution of India. It would not be open to a party to ignore the judgment of the High Court and move Supreme Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Article 226 is dismissed but not on the merits, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32, however if the petition is dismissed without passing a speaking order, then such dismissal cannot be treated as creating a bar of *res judicata*.

- 21.** Which of the following is *res judicata* applicable to?
- A. Civil suits
 B. Writ petitions
 C. None of the above
 D. Both (A) and (B)
- 22.** Doctrine of *res judicata* is applicable to writs if
- A. The decision is on merits
 B. Order is a speaking order
 C. Both (A) and (B)
 D. Neither (A) nor (B)

23. On which of the following is the doctrine of *res judicata* based?
- No one should be vexed twice for the same cause more than once.
 - It is in the interest of public that finality should be attached to the decisions of courts.
 - There should be an end to litigation.
 - All of these.
24. Which of the following is correct?
- If a writ petition is filed under Article 226 of the Constitution of India and the same is rejected on merits by a speaking order, another petition under Article 32 of the Constitution of India is not maintainable being barred by *res judicata*.
 - The doctrine of *res judicata* is founded on the principle that it is in the interest of the public at large that a finality should be attached to the binding decisions pronounced by courts of competent jurisdiction.
 - Technical rule of *res judicata* only prevents multiple filing of petitions under Article 226 of the Constitution of India between same parties over the same matter and is not applicable to petition under Article 32 of the Constitution of India.
 - Both (A) and (B)
25. Mr. X was dismissed from service by his employer after a proper enquiry. Mr. X challenged his dismissal in High Court by a petition under Article 226 of the Constitution of India. However, the High Court dismissed the petition citing that Mr. X has an alternative remedy available. Mr. X took recourse to the alternative remedy before the appropriate forum, but Mr. X's legal action is opposed by the employer on the basis of *res judicata*. Based on these facts, which of the following is the most appropriate?
- Res judicata* is applicable.
 - Res judicata* is not applicable.
 - Since the matter relates to livelihood and life of the person, technical rule of *res judicata* should not be applied.
 - Both (B) and (C)

Directions (Qs. No. 26-30): Read the passage carefully and answer these questions.

Compassionate appointment is an exception to the general rule of appointment which is a way of providing employment to the family of the deceased employee on compassionate grounds. The objective is only to provide solace and succour to the family in difficult times and, thus, its relevancy is at that stage of time when the employee passes away. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned

has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family. It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be exercised at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner. Thus, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.

26. Which of the following correctly states the intent behind the application of compassionate appointment?
- The norms, at the time of death of the government employee will be applicable and not the norms at the time of making an application.
 - A dependent of a government employee cannot demand consideration of his/her application.
 - The norms of the governmental or public authorities are not considered while applying for compassionate appointment.
 - The norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment.
27. Which of the following is not correct about the rule of compassionate appointment?
- Compassionate appointment is given to the family members of the deceased irrespective of their financial status.
 - It is to mitigate the hardship caused to the family members after the death of earning member of the family.
 - Compassionate appointment cannot be granted as a matter of vested right.
 - Compassionate appointment cannot be made in the absence of rules and regulations issued by the government or a public authority.
28. Mr. Y, son of Mr. X, made a representation before ABC government company on January 4, 2018 that he should be given appointment on compassionate grounds as his father died during his employment in the company in 2000. Consider the given facts and decide whether Mr. Y is entitled to get compassionate appointment.
- Mr. Y is entitled to get compassionate appointment.
 - Mr. Y is not entitled for compassionate appointment as a long period has elapsed since the death of his father.

- C. Mr. Y is entitled to get compassionate appointment depending on policy of the company in which his father was working.
- D. Mr. Y is not entitled to get compassionate appointment as it is the discretion of the company to refuse the said appointment.
29. The Government of 'N' formulated a scheme for providing compassionate appointment to the dependants of government servants who retired on medical invalidation. By a further notification, the benefit of the scheme was restricted to cases where the government servants retired on medical invalidation, at least five years before attaining the age of superannuation. Consider the given facts, and decide which of the following is correct in relation to the validity of this rule of compassionate appointment?
- A. The scheme is valid subject to the approval of the dependents.
- B. The scheme is not valid as the offer of compassionate appointment to the dependent of a government servant who is medically invalidated is not an exception to the general rule.
- C. The scheme is not valid as it is unconstitutional.
- D. The scheme is valid as it is not arbitrary and the government has the right to formulate such rules.
30. Which of the following is not correct regarding the nature of appointment on compassionate grounds?
- A. A request for compassionate appointment by the dependent relatives of the deceased must be preferred without any undue delay.
- B. The general rule of appointment may not be always applicable to compassionate appointments.
- C. The immediacy of the need is not the basis for the state to allow the benefit of compassionate appointment.
- D. It is a benefit given to the family members at the time of distress.

Directions (Qs. No. 31-35): Read the passage carefully and answer these questions.

Marriage is necessarily the basis of social organisation and the foundation of important legal rights and obligations. The importance and imperative character of the institution of marriage needs no comment. In Hindu law, marriage is treated as a *Samskara* or a sacrament. The Hindu Marriage Act, 1955 introduced monogamy as a law of marriage among Hindus by virtue of Section 5 clause (i) which is essentially the voluntary union for life of one man with one woman to the exclusion of all others. It enacts, "neither party must have a spouse living at the time of marriage". The expression 'spouse' here used, means a lawfully married husband or wife. Before a valid marriage can be solemnised, both parties to such marriage must be either single or divorced

or a widow or a widower and only then they are competent to enter into a valid marriage. If at the time of performance of the marriage rites and ceremonies, one or other of the parties had a spouse living and the earlier marriage had not already been set aside, the later marriage is no marriage at all. The Supreme Court in *Bhaurao Shankar Lokhande v. State of Maharashtra*, [AIR 1965 SC 1564] held, "*Prima facie*, the expression 'whoever marries' in Section 494 of the Indian Penal Code, 1860 (which defines the offence of bigamy) must mean 'whoever marries validly' or 'whoever marries and whose marriage is a valid one'. If marriage is not valid according to the law applicable to the parties, no question arises of its being void by reason of its taking place during the life of the husband or wife of the person marrying. One of the conditions of a valid marriage under the Hindu Marriage Act, 1955 is that it must be 'solemnised'. Further, Section 13 (2) of the Act provides for grounds of divorce to wife and states, "A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground that in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition".

31. Mr. A, a 40-year old male Hindu, was married to Ms. B, a 36-year old female Hindu. Mr. A fell in love with his colleague- Ms. C, a 22-year old female Christian. On April 8, 2020, Mr. A declared Ms. C as his wife in front of all his colleagues, family members and relatives. Based on the given facts, decide the liability of Mr. A as per Hindu law.
- A. Mr. A is not liable for the offence of bigamy as Ms. C is a Christian.
- B. Mr. A is liable for the offence of bigamy as mere declaration also amounts to solemnisation.
- C. Mr. A is not liable for the offence of bigamy as he has not solemnised his marriage with Ms. C.
- D. Mr. A is liable for the offence of bigamy as there was no intention to marry.
32. Which of the following statements correctly expresses the interpretation of the word 'solemnise' under Hindu law?
- A. Solemnisation means celebrating the marriage with proper customary rites and ceremonies of either party to a marriage.
- B. Solemnisation includes and means promising each other a lifetime of happiness.
- C. Solemnisation is not necessary in modern marriages when registration of marriage is complete.
- D. Solemnisation is a mere formal practice and not a mandate.

33. Which of the following is not correct regarding the law of monogamy among Hindus?
- Monogamy is a union of a man and woman which provides their relation a social and legal recognition.
 - Monogamy as a law was abolished after 1955.
 - The second marriage during the subsistence of a first valid marriage is void.
 - If a husband solemnises a second marriage during the subsistence of first marriage, it is not an offence, however, it is an offence if a wife commits the same act.
34. On the basis of Section 13 of the Hindu Marriage Act, 1955, which of the following statements does not relate to the remedy?
- The object of the Section was to provide an opportunity to the wife in the form of remedy of divorce.
 - The introduction of this ground of divorce is unnecessary as it disturbs the sanctity of marital institution.
 - A remedy is only available under this Section if the husband has the other wife living.
 - The living status of either spouse is immaterial to claim the remedy.
35. Mr. P, a 28-year old male Hindu was legally married to Ms. Q, a 26-year old female Hindu. Mr. P converts to Islam to marry Ms. N, a 30-year old Sunni female Muslim. Consider the statement and decide whether Ms. Q has the remedy to file a complaint for the offence of bigamy against Mr. P?
- Yes, Ms. Q can file a complaint subject to the approval by Ms. N.
 - No, Ms. Q cannot file a complaint as it defeats the very purpose of her marriage with Mr. P.
 - No, Ms. Q cannot file a complaint as Mr. P converted to another religion and the offence of bigamy will only be attracted when the parties are Hindus.
 - Yes, Ms. Q has the remedy of filing a complaint for the offence of bigamy.

Directions (Qs. No. 36-40): Read the passage carefully and answer these questions.

The Indian Penal Code, 1860 does not define 'consent' in positive terms, but what cannot be regarded as 'consent' under the Code is explained by Section 90. Section 90 reads as follows:

"90. *Consent known to be given under fear or misconception* - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of

such fear or misconception;..." Consent given firstly under fear of injury and secondly under a misconception of fact is not 'consent' at all. That is what is enjoined by the first part of Section 90. These two grounds specified in Section 90 are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country as well as other countries. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act *i.e.*, the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology. Section 90 cannot, however, be construed as an exhaustive definition of consent for the purposes of the Indian Penal Code, 1860. The normal connotation and concept of 'consent' is not intended to be excluded. Various decisions of the High Court and of Supreme Court have not merely gone by the language of Section 90, but travelled a wider field, guided by the etymology of the word 'consent'.

36. 'A', a man, promises 'B', a woman that he will marry her if she has sexual intercourse with him. 'B' agrees, but after having sexual intercourse, 'A' flees and never contacts 'B' again. In the given situation, which statement is true?
- Consent for sexual intercourse was given under misconception of fact.
 - Consent for sexual intercourse was given under fear of injury.
 - Consent for sexual intercourse was given under undue influence.
 - Consent for sexual intercourse was given without any misconception or fear of injury.
37. According to the given passage, a person is said to 'consent' to the doing of an act if
- A person agrees to do an act without misconception of fact or fear of injury.
 - The person to whom agreement is signified has no reason to believe that the agreement is being given under misconception of fact or fear of injury.

- C. A person agrees to do an act without misconception of fact or fear of injury and the person to whom agreement is signified has no reason to believe that the agreement is being given under misconception of fact or fear of injury.
- D. A person agrees to do an act without having regard to the consequences of fear of injury or misconception of fact.
38. According to your understanding of the given passage, why is negative terminology used to explain the meaning of consent under Section 90?
- A. To emphasise on the factors that vitiate consent.
- B. To emphasise on the point of view of victim or the person who gives consent.
- C. To emphasise on the point of view of the person who receives consent.
- D. To emphasise on the non-exhaustive scope of definition of consent.
39. 'X', a man, promises 'Y', a woman that he will marry her if she has sexual intercourse with him. 'Y' agrees and they have sexual intercourse. Thereafter, 'X' assures 'Y' that they will get married, but X's family is opposed to the marriage even after X's attempts to convince them. Therefore, 'X' refuses to marry 'Y'. In the given situation, which statement is true?
- A. Consent for sexual intercourse was received knowing that the consent is given under misconception of fact.
- B. Consent for sexual intercourse was given without any misconception of fact or fear of injury.
- C. Consent for sexual intercourse was received knowing that the consent is given under fear of injury.
- D. Consent for sexual intercourse was given under misconception of fact and received misconception of fact.
40. According to the given passage, which of the following statements is not true?
- A. Misconception of fact vitiates consent.
- B. Fear of injury vitiates consent.
- C. Misconception of fact obviates the necessity of consent.
- D. Fear of injury is analogous to coercion.

Directions (Qs. No. 41-44): Read the passage carefully and answer these questions:

The COVID-19 pandemic has taken the entire world hostage in less than four months, and the global economy has been hit the hardest with governments across the globe implementing stringent policies including lockdown to control the coronavirus outbreak. The pandemic today presents unprecedented challenges and impediments to businesses in conducting their normal operations. The lockdown across the world has caused delays in the performance of contracts

and transactions. Now, the question that arises is whether the current situation can enable parties to a contract to alter their obligations with non-compliance of terms neither being regarded as a "default committed by any party" nor a "breach of contract"? There are certain well-accepted practices for dealing with such extraordinary situations in commercial transactions by the inclusion of force majeure & material adverse effect (MAE) clauses. Determination of the types of circumstances so covered by the force majeure clause contained in a contract is essential. Provisions of force majeure often cover natural disasters like hurricanes, floods, and earthquakes as "acts of God." Other covered events may include war, terrorism, civil disorder, fire, disease medical epidemics or by reasons of applicable laws or regulations. Broadly, the Courts have interpreted the term "Force Majeure" as an event that can neither be anticipated nor controlled by either of the contracting parties. A force majeure clause applies in the context of ongoing contractual arrangements, whereas, an MAE or material adverse change (MAC) clause applies to the allocation of risk in transactions before their closure or completion. Pandemic and related consequences such as government action is a type of event covered by a force majeure clause, however, its impact on the affected party's ability to perform its contractual obligations may vary depending upon contractual terms. It is common for force majeure clauses to specify the impact that the event or circumstances in question must have, in order for the clause to be triggered. References may be made, for example, to the event or circumstances having "prevented", "hindered" or "delayed" performance. These terms require different levels of impact on performance before a party can claim recourse to these clauses. In other words, the force majeure and MAC clauses act as an exception to what would otherwise be treated as a breach of contract. Certain contracts may state that, if a force majeure clause is applied, the contract may automatically be terminated. On the other hand, some contracts may even state that the duty to fulfil the contractual obligation may be suspended for a certain period of time and if the force majeure event is not curbed or treated even after such time, then eventually the contract may be terminated. Though there cannot be a one-size-fits-all solution to this question, and it depends upon how the force majeure clause is worded in a specific contract; and in the absence of the same, applicable laws related to the same will be required to be taken into consideration.

*[Excerpt from Business Today,
by Ranjana Roy Gawai, April 17, 2020]*

41. Based on the Author's argument in passage above, which of the following is correct?
- A. Force Majeure Clauses, generally have a uniform impact on the performance of Contracts in all the cases.

- B. The Impact on the performance of Contracts by the usage of Force Majeure Clauses is dependent upon the way such clauses have been constructed in a particular Contract.
- C. Both Force Majeure and Material Adverse Change Clauses have similar impact on the performance of Contracts.
- D. All of the above.
42. Imagine, there is a domestic commercial Contract for supply of certain goods for certain price between A and B. However, in pursuance of the same, both A and B forget to negotiate and agree on the terms of a Force Majeure event and the Contractual document does not contain the Force Majeure clause. In such a situation, what would be the fate of the Contract in the event like that of COVID 19?
- A. As the parties did not negotiate on the Force Majeure Clause, either of them cannot take an exception to the Breach of Contract.
- B. The parties can invoke the Material Adverse Change Clause.
- C. In absence of such clauses in the Contract, the Courts may resort to the applicable law, i.e., the Indian Contract Act, 1872 to give relief to the parties.
- D. None of the above.
43. In the same fact situation as mentioned above with a modification that there is a Force Majeure Clause in the Contract between A and B, let us suppose, that B, who was to supply goods to A on certain date and time, faced issues in relation to procurement of goods due to mill strike and also because of rise in prices of goods. In this case, can B claim the suspension of performance of Contract on the basis of the Force Majeure Clause?
- A. Yes, B can, depending upon the way, the Force Majeure Clause is worded.
- B. Such situation cannot be covered under Force Majeure as it is just a case of disappointed expectations and hence B cannot invoke the clause. It is merely a case of commercial hardship.
- C. B can invoke the Force Majeure clause as the clause is too broad to cover such situations.
- D. None of the above.
44. Typically, the MAE (Material Adverse Change) provision in an agreement contemplates events which if they occur, or are likely occur, would have a materially adverse change or effect on the assets, business, property, liabilities, financial condition, results, operations of the target or that affects the ability of the transacting parties to consummate the

transaction or the validity or enforceability of the transacting parties to its rights and remedies under the transaction documents. Which of the following sample clauses in a contract resembles an MAE clause?

- A. "In the event either party is unable to perform its obligations under the terms of this agreement because of Act of God, strikes, equipment of transmission failure or damage reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform..."
- B. "Except with respect to payment obligations under this agreement, no party shall be liable for, nor such party shall be considered in breach of this agreement due to, any failure to perform its obligations under this agreement as a result of cause beyond its control, including any earthquake, labour problem, unavailability of supplies..."
- C. Both of the above.
- D. None of the above.

Directions (Qs. No. 45-49): Read the passage carefully and answer these questions:

The issue of Obscenity has vexed the Courts in India and abroad for a long time now. The intriguing question has always been the same, i.e., what should be the standards to qualify something as obscene in the eyes of law? In the United Kingdom, way back in 1868, the Court laid down the Hicklin test in *Regina v. Hicklin* (1868 L.R. 2 Q.B. 360), and held that: "*The test of Obscenity is whether the tendency of the matter charged as Obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.*" Hicklin test postulated that a publication has to be judged for obscenity based on isolated passages of a work considered out of context and judged by their apparent influence on most susceptible readers, such as children or weak-minded adults. However, this test was later rejected by most of the jurisdictions. There were many judgments where it was stipulated by the Indian Courts that, Obscenity has to be judged in the context of contemporary social mores, current socio-moral attitude of the community and the prevalent norms of acceptability/ susceptibility of the community, in relation to matters in issue. [For example, in *Ranjit D. Udeshi v. State of Maharashtra* AIR 1965 SC 881; *Chandrakant Kalyandas Kakodar v. State of Maharashtra* 1969 (2) SCC 687 etc.] These judgements indicated that the concept of Obscenity would change with the passage of time and what might have been "obscene" at one point of time would not be considered as obscene at a later period. This came to be known as "Community Standards Test". In *Bobby Art International & Ors. v. Om Pal Singh Hoon* (1996) 4

SCC 1, the Court, upholding the Community standards test held that, complete message and context of the objectionable scene/film/picture etc., needs to be examined in order to find out whether the alleged material is obscene or not.

45. A, daily local newspaper called 'Ramanand Bazar Patrika' having wide circulation in Anandnagar published, on 1st July, 2019, an article with a picture of Boris Becker, a world renowned Tennis player, posing nude with his dark-skinned fiancée by name Barbara Feltus, a film actress, which was photographed by none other than her father. The article states that, in an interview, both Boris Becker and Barbara Feltus spoke freely about their engagement, their lives and future plans and the message they wanted to convey to the people at large, for posing to such a photograph. Article pictures Boris Becker as a strident protester of the pernicious practice of "Apartheid". Further, it was stated that the purpose of the photograph was also to signify that love champions over hatred. Will the alleged picture classify as an Obscene Material in India?
- A. No, according to the Hicklin Test, it will not classify as Obscene.
- B. Yes, according to the Community Standards Test, the picture will classify as Obscene.
- C. No, according to the Community Standards Test, the picture will not classify as Obscene.
- D. Both (A) and (C).
46. The difference between Hicklin Test and Community Standards Test is:
- A. The former focuses on the susceptibility of the minds of individuals to get corrupted while the later hinges upon the context, intended meaning and contemporaneous socio-cultural environment of the society.
- B. As per Hicklin Test, a nude picture of a woman *per se* can be obscene while as per the later, the picture should be suggestive of deprave mind and designed to excite sexual passion in persons who are likely to see it.
- C. The former considers Obscenity as a changing concept with changing times while the later does not.
- D. All of the above.
47. The issue of 'Obscenity' is fundamentally related with which of the following?
- A. Freedom of Religion of an individual.
- B. Freedom of Speech and Expression of an individual.
- C. Right to Privacy of an individual.
- D. All of the above.
48. Consider the following situations. Choose the correct option as per the Hicklin's Test.

1. A Movie scene where there are rows of Jewish naked men and women, shown frontally, being led into the Gas Chambers of Nazi Concentration Camp. Not only they are about to die but they are stripped off their basic dignity in the last moments of their life.
2. The controversial movie scene of Phoolan Devi, the Bandit queen where she is paraded naked and made to draw water from the well within the circle of a hundred men.
- A. 1 is Obscene but 2 is not.
- B. 2 is Obscene but 1 is not.
- C. Both 1 and 2 are Obscene.
- D. Neither 1 and 2 are Obscene.
49. An activist, while being semi-nude, allowed her body to be used as a canvas to paint on by her two minor children who were properly clothed. She uploaded this video of hers on an online platform with a message that she intended to normalise the female form for her children and not allow distorted ideas about sexuality to pervade their mind. An advocate who sees the video, registers a case of Obscenity against her. Is it a case of Obscenity as per the Community Standards Test?
- A. This is a pure case of Obscenity and she is spreading it.
- B. This is a pure case of Obscenity as well as Child Pornography as her children were exposed to her nudity.
- C. This is not a case of Obscenity because as per the Community Standards Test the video must not be seen in isolation but in the contextual set up of the message that the activist has put on normalisation of a female's sexuality.
- D. This is a case of Obscenity as per the Community Standards Test as the video was blatantly obscene.

Directions (Qs. No. 50-54): Read the passage carefully and answer these questions:

On 7th May 2020, a major leakage of Styrene gas was reported from the plastics-manufacturing plant 'LG Polymers' located on the outskirts of the Visakhapatnam city. The accident took place when the cooling system of a polymers plant got clogged due to the mismanagement of factory workers and resulted in turning the city into a gas chamber. The gas which leaked was styrene gas, which is a 'hazardous chemical' under Rule 2(e) plus Entry 583 of Schedule I of the Manufacture, Storage and Import of Hazardous Chemical Rules 1989.

Principle 1: Polluter Pays Principle

The 'Doctrine of Polluter Pays' is a well-established principle of environmental law, which places an obligation of compensating the damage to the people who ought to

reimburse it and also have the capacity to disburse it. The principle explicitly affirms that the person who damages or destructs the environment has the absolute obligation to bear the cost of ameliorating the environment. In *Enviro Legal Action v. Union of India* case, the Apex Court of India held that the polluter is legally responsible to reimburse the individual sufferers as well as pay for the revitalization of the damaged environment.

Principle 2: Principle of Strict Liability

The principle of Strict Liability was established in the year 1868 in the case of *Rylands v. Fletcher*, where the Court held that any person who uses his/her land in an 'unnatural manner' and who keeps any 'hazardous substance' on such premises would be held liable under the principle of strict liability for any 'damage' occurred on the 'escape' of such perilous substance. However, the person is liable only when there is non-natural use of land; the principle also restricts liability when the escape is due to an act of strangers, Act of God, for example a natural calamity; due to the person injured or when it happens with the consent of the person injured or with statutory authority.

Principle 3: Principle of Absolute Liability

The absolute liability is a stringent form of Strict Liability as it is devoid of any exceptions that were mentioned under the earlier principle, for the first time in the case of *M.C. Mehta v. Union of India*. This principle implies that whenever an enterprise is engaged in any dangerous or hazardous activity that threatens the people working in the enterprise and those living nearby, it owes an absolute and non-delegable duty to the community that no harm will be caused. If harm is indeed caused, the enterprise will have to compensate for damages, and can't use exceptions provided in the case of strict liability. The enterprise can't claim that the harm has not been caused due to negligence (absence of due care) or that it had taken all reasonable precautions.

50. Under which of the following principles, will the company LG Polymers be liable?
- Polluter Pays Principle
 - Strict Liability
 - Absolute Liability
 - All of the above
51. As per the Polluter Pays Principle, LG Polymers will be liable to pay:
- Amount of Money for restoration of environment only.
 - Amount of Money for restoration of environment and compensation to Individuals who suffered the loss.
 - Compensation to the victims.
 - None of the above.

52. A company ABC limited operates an industrial chemical plant in the city of Azadnagar. Due to an earthquake on July 22, 2020, the valves of the reactors in the plant get damaged due to which the operators could not properly transport the hazardous gas for chemical vaporisation, resulting in the gas leakage. The gas leakage resulted in the death of 12 workers of the plant and also some people living nearby the Plant. In this situation, in order to decipher the liability of ABC Limited, choose the best option:
- ABC Limited can be held liable under the principles of Strict and Absolute Liability and Polluter pays principle as well.
 - ABC Limited can be held liable under the Polluter Pays Principle and the Principle of Absolute Liability, but can be exempted under the rule of Strict Liability.
 - ABC Limited will not be held liable under any of the Principles.
 - ABC Limited will be held liable under Strict and Absolute Liability principles but the Principle of Polluter Pays will not be applicable to this situation.
53. The argument of LG Polymers that, they did not know that the Styrene Gas could leak:
- is a strong argument and can reduce their liability under the Polluter Pays Principle.
 - is a strong argument and can reduce their liability under the Strict Liability Principle.
 - is a weak argument and will not help in reducing the liability of LG Polymers under any of the principles.
 - is a weak argument but may help in reducing their liability under the Strict Liability Principle.
54. XYZ is a company operating a Pesticide Factory in the city of Rampur. On one day, due to the negligence of Factory staff, there is a leakage of the Pesticide gas as a result of which, many pests and insects which feed on the plantation crops in the nearby farm are killed. There is no harm caused to the people living nearby or the workers of the Pesticide Factory. However, the leakage was so humungous that it reduced the quality of air in the city causing breathing problems for the people living around in the area. In this case,
- XYZ will be absolutely liable but not strictly liable.
 - XYZ will not be liable under the Strict and Absolute liability principles because the leakage only killed the pests and insects.
 - XYZ's liability under the Strict and Absolute liability principles will depend upon the inquiry as to whether the leaked pesticide gas was a hazardous substance/activity or chemical or not and; XYZ will be liable under the Polluter Pays Principle.

D. XYZ will not be liable under the Polluter Pays Principle.

Directions (Qs. No.55-59): Read the passage carefully and answer these questions:

Principle of Natural Justice is derived from the word ‘*Jus Natural*’ of the Roman law and it is closely related to Common law and moral principles but is not codified. It is a law of nature which is not derived from any statute or constitution. The principle of Natural Justice is adhered to by all the citizens of civilised State with Supreme importance. Natural justice simply means to make a sensible and reasonable decision making procedure on a particular issue. Sometimes, it doesn’t matter what is the reasonable decision but in the end, what matters is the procedure and who all are engaged in taking the reasonable decision. It is not restricted within the concept of ‘fairness’ it has different colours and shades which vary from the context. Basically, natural justice consists of 3 rules.

The first one is “*Hearing rule*” which states that the person or party who is affected by the decision made by the Panel of expert members should be given a fair opportunity to express his point of view to defend himself. Secondly, “*Bias rule*” generally expresses that Panel of expert should be free from bias while taking the decision. The decision should be given in a free and fair manner which can fulfil the rule of natural justice. And thirdly, “*Reasoned Decision*” which states that order, decision or judgement of the Court given by the Presiding authorities with a valid and reasonable ground. The principles of Natural Justice have been adopted and followed by the judiciary to protect public rights against the arbitrary decision by the administrative authority. One can easily see that the rule of natural justice include the concept of fairness: they stay alive and support to safeguard the fair dealing.

*Source: Excerpt taken from blog.ipleaders.in
(Dated - 12th June, 2019)*

55. “*Nemo Judex in causa sua*” or the principle that ‘*No one can be a judge in his own case*’, relates to which of the following rule of the Natural Justice?
- Bias rule
 - Reasoned decision rule
 - Hearing rule
 - All of the above.
56. Mr. X is a Public Servant, employed in a PSU and Mrs Y who is the wife of Mr. X is also an employee of the same PSU. Ms A files a complaint against Mr. X for sexual harassment at workplace before the ICC (Internal Complaints Committee), which is headed by Mrs Y. After completing her inquiry she held that Mr. X is guilty and recommended disciplinary

proceedings against him. Now, on what grounds Mr. X may challenge her findings?

- Mrs Y is an employee of the same institution and the inquiry should have been conducted by a person outside the institution.
 - The complaint was filed by a female employee, so the inquiry must have been conducted by a male employee.
 - Mrs Y is the wife of Mr. X and she holds a personal bias in the case, so the inquiry should not have been conducted by her.
 - Mr. X being the accused should have conducted the inquiry himself.
57. Mr. A is a judge and he is also the landlord of Mr. B, who resides in an apartment owned by Mr. A. Due to non-payment of rent for 3 consecutive months, Mr. A served an eviction notice to Mr. B. Now, choose the most appropriate option amongst the following.
- Being a judge himself, Mr. A cannot issue such notice of eviction.
 - Mr. A can issue such notice because it is his duty as a Judge, apart from being a landlord.
 - Such notice is illegal as Mr. B was not given an opportunity to present his case.
 - Mr. A issued such notice in his personal capacity as a landlord and not being a judge.
58. Which of the following is not in violation of the principles of Natural justice?
- Withholding of an increment of a public servant without giving him an opportunity to defend.
 - Non-renewal of a contract of employment of an employee after the period of contract is over.
 - Initiating a departmental inquiry against a public servant, without giving him an opportunity to submit representation during such inquiry.
 - All of the above.
59. On the basis of your understanding about Natural Justice in the passage above, state which of the following is true:
- Adherence to the reasoned decision rule is not required if other two rules are complied with.
 - Compliance of bias rule itself rejects the need of the hearing and the reasoned decision rule.
 - Principle of Natural Justice is incomplete without the compliance of any of its rules.
 - The Reasoned Decision rule is a substitute for the bias rule.

Directions (Qs. No. 60-64): Read the passage carefully and answer these questions:

Tension prevailed in the Jawahar area in Palghar district after three Mumbai residents, travelling in a Ford Ecosport to

Silvassa, were allegedly lynched late on Thursday night. The Kasa police said the incident occurred near Gadakhinchale village under their jurisdiction. "Information received by us indicates that the three occupants of the SUV hailed from Kandivali in Mumbai and were going to attend a funeral in Silvassa," Superintendent of Police Gaurav Singh, Palghar police said. A large mob of villagers surrounded the car within a matter of minutes and started attacking it with sticks, irons rods and their bare hands, leading to the death of all three occupants. "One of our patrolling vehicles later spotted the severely injured trio lying on the road and stopped to find out the matter. However, our team was also attacked by the mob and the vehicle pelted with stones. Our personnel had to flee and were unable to rescue the victims," an officer with the Kasa police said. A wireless alert was sent out later apprising all police stations and units of the incident following which reinforcements were sent to the village and a combing operation was undertaken. "Prima facie information indicates that the trio were mistaken for thieves and attacked. The villagers were on edge due to the ongoing lockdown and unavailability of essential supplies. For the past few days, several rumours have been doing the rounds on social media about thieves and dacoits targetting villages on the highway. As a result, villagers have been patrolling the highway and stopping late night travellers on suspicion," the officer said.

*Source: Excerpt from The Hindu,
written by Alok Deshpande (22/04/2020)*

60. Which of the following statements given below justifies criminalisation of Mob Lynching?
- In a democracy the actual power rests with the people and their actions cannot be penalised by the state.
 - There is no law in India which specifically prohibits mob lynching and therefore it is a justified act of the people.
 - It is impossible to punish the wrongdoer in case of Mob Lynching.
 - Violence cannot be a tool to implement the will of the majority and such actions are failure of the state.
61. Which of the following statement justifies the criminalisation of mob lynching as a distinct offence apart from 'Murder'?
- The offence of Murder is committed by a single individual or a group but mob lynching involves a large group of individuals.
 - When violence is committed by a mob it creates a situation of terror and anarchy having potential to disturb the public peace for a longer period.
 - Mob lynching is an offence which supports the idea of 'might is right', and cannot be accepted in a democratic society.
 - All of the above.

62. The above passage states about the existence of rumours in the area regarding the thieves and dacoits robbing the villagers or committing child lifting. In the light of this proposition which of the following statement is correct?
- The villagers should not be punished as there was a genuine mistake on their part.
 - The villagers should be punished as they do not have any right to punish any person unless he is an offender.
 - The villagers should be punished as no individual in the country is entitled to take law in his own hand and punish the wrongdoer.
 - The villagers should not be punished as they have the right of private defence against such incidents under which they can even kill a person.
63. In the light of the above passage which of the following incidents of mob violence would be justified?
- A group of people committing violence against people who are selling meat of an animal considered to be sacred under their religious beliefs.
 - The residents of a boy's hostel caught a drug paddler selling drugs in their hostel and killed him by beating.
 - The villagers injured a woman by pelting stone on her considering her to be witch.
 - None of the above.
64. **Assertion (A):** Mob Lynching can be justified only in circumstances where the religious sentiments or feelings of a large group of people is associated.
- Reason (R):** Religious sentiments and feelings are of paramount consideration for the state and should not be interfered with.
- Both (A) and (R) are correct
 - (A) is correct but (R) is incorrect
 - Both (A) and (R) are incorrect
 - (A) is incorrect but (R) is correct.

Directions (Qs. No. 65-69): Read the passage carefully and answer these questions:

The bench of Dr. DY Chandrachud and MR Shah, JJ has refused to transfer to CBI the criminal cases lodged against Republic TV Editor in-Chief Arnab Goswami for alleged defamatory news show telecast on April 21 in connection with the Palghar mob-lynching case. It also quashed all FIRs against Arnab Goswami except one which was filed in Nagpur and which has been transferred to Mumbai via order dated 24.04.2020.

[Excerpt from SCC Online Blog, May 19, 2020]

Delivering the verdict, Justice Chandrachud said, *Article 32 of the Constitution constitutes recognition of the constitutional duty entrusted to this Court to protect the*

fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). India's freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal...Free citizens cannot exist when the news media is chained to adhere to one position. Yuval Noah Harari has put it succinctly in his recent book titled "21 Lessons for the 21st Century": "Questions you cannot answer are usually far better for you than answers you cannot question."

[Excerpt from Arnab Ranjan Goswami vs Union Of India on 19 May, 2020]

65. The above passage mentions about the Journalist's request to transfer the case to the CBI (Central Bureau of Investigation) for investigation. What could be the appropriate reason for such request?
 - A. The CBI is a central investigating agency and conducts more scientific investigation.
 - B. Where State government is an interested party, the investigation conducted by the state police, may be biased.
 - C. The FIRs relate to an offence of defamation of the President of a national party, so the matter should be investigated by the CBI.
 - D. None of the above.
66. The above passage quotes the observation of the Court in relation to freedom of speech and expression as, "Questions you cannot answer are better than questions you cannot question." Now, based on such observation, chose the most appropriate option which describes the scope of such questions.
 - A. The term "questions" mentioned are not subject to limitations imposed upon the Freedom of Speech and Expression.
 - B. Those question are limited to the information warranted by the person.
 - C. The court is referring to the right to information through the above quote.
 - D. The questions are also subject to limitations imposed upon the Freedom of Speech and Expression.
67. It is an established principle of law that the offence of defamation (harming the reputation) has many exceptions and the imputation of truth is one of those, but the accused must prove that such imputation was true and also for the public good. In the light of this statement which of the following questions/statements are not defamatory?
 - A. An article published in a newspaper about the unaccounted property of a public servant in the form of a questionnaire.

- B. A question to a female actress about her sexual relationship with a married man.
- C. A question to a public servant about his extramarital relationship with a colleague.
- D. An Article published in a magazine stating a female politician as 'B grade' actress.

68. In the above passage, the Court ordered for the merging of different FIRs into one and the investigation to be conducted at Mumbai. What is the reason behind such order?
 - A. Multiple FIRs mean multiple investigations and the same might cause hardships to the accused.
 - B. The first FIR was registered at Mumbai and the investigation should be conducted at Mumbai.
 - C. The accused resides at Mumbai and the investigation should be conducted only at Mumbai.
 - D. Multiple FIRs are frivolous and there is only one cause of action.
69. Defamation is punishable:
 - A. Both as a Civil wrong as well as a Crime.
 - B. Only as a Civil wrong.
 - C. Only as a Criminal wrong.
 - D. None of the above.

Directions (Qs. No. 70-74): Read the passage carefully and answer these questions:

Common intention implies a pre-arranged plan and acting in concert pursuant to the plan. Common intention comes into being prior to the commission of the act, which need not be a long gap. To bring common intention into effect a pre-concert is not necessarily be proved, but it may well develop on the spot as between a number of persons and could be inferred from facts and circumstances of each case. For example A and B caught hold of C where only B stabbed C with a knife but A is also liable for murder as there was a pre-concerted action. In the case Pandurang v. State of Hyderabad, Supreme court emphasized on this point that prior concert need not be something always very much prior to the incident, but could well be something that may develop on the spot, on the spur of the moment.

Common Intention and Similar Intention

Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them. In the case of Dukhmochan Pandey v. State of Bihar, the Supreme Court, held that: "*Common intention which developed at the spur of the moment is different from the similar intention actuated a number of person at the same time....the distinction between a common intention and similar intention may be fine, but is nonetheless a real one and if overlooked, may lead to miscarriage of justice....*" The mere presence of accused together is not sufficient to hold that they shared the common

intention to commit the offence in question. It is necessary that the intention of each one of 'several persons' be known to each other for constituting common intention.

70. A gang of six members went to a bank, armed with weapons to commit a heist. While five of the gang members went inside the bank, Mr. A (the sixth member) waited outside the bank to alert them on any threat. During the heist one of the gang members fired a gun at the branch manager, as a result he died. All five escaped but Mr. A was caught and arrested. Now, choose the most appropriate option as per the principle stated in the above passage.
- Mr. A is not liable for murder as he was outside the bank and there was no common intention.
 - Mr. A along with all other members of the gang are liable for murder as there was common intention.
 - Only that person is liable for murder who actually fired the gun.
 - Mr. A is liable only for the heist and no other offence.
71. Raman and Raghav were riding on a motorcycle on a busy street, suddenly Aman (another biker) bumped into their bike. A heated argument started between the three of them. While Raghav started abusing Aman, Raman hit Aman with an iron rod lying on the road and as a consequence he died. Now, choose the correct option.
- Both Raman and Raghav are liable for murder as there was a common intention developed on the spot.
 - Raghav is not liable for murder as there was no common intention to kill Aman.
 - No one is liable as Aman was a wrongdoer himself and he started the fight.
 - Only Raghav is liable for murder as he started abusing Aman.
72. After reading the passage which of the following is not correct in relation to the difference between Common and Similar intention?
- Similar intention is developed prior to the commission of offence but the common intention is developed only at the time of commission of offence.
 - Under Common intention each of the offender is equally liable for the offence but under similar intention each of the offender is differently liable.
 - In order to determine the existence of Similar or Common intention, one must analyse the fact and circumstances of each case.
 - The boundary between Similar and Common intention is very fine and it may sometime overlap.

73. Mr. X and Mr. Y entered into a house at night to commit theft, while committing theft Mr. Y committed sexual assault on a minor girl of aged 11 years. Identify for which of the following offences Mr. X is liable for.
- Both Theft and Sexual Assault as there was a Common intention.
 - Only Theft as there was a Similar intention.
 - Only Theft as Mr. X had a different intention from Y.
 - He would not be liable for any offence.
74. Which of the following statements is correct in relation to the difference between common intention and similar intention?
- The intention of the accused and co-accused can be inferred from the facts and circumstances of each case.
 - Under common intention, it is considered that all the accused have jointly committed the offence themselves and are jointly liable.
 - Each accused is liable for the offence he has actually committed, if the common intention cannot be proved.
 - All of the above.

Directions (Qs. No. 75-79): Read the passage carefully and answer these questions:

Article 20(1) of the Indian Constitution prohibits Ex Post Facto laws. The expression Ex Post Facto Law means a law, which imposes penalties or convictions on the acts already done and increases the penalty for such acts. In other words, Ex Post Facto Law, imposes penalties retrospectively. For example, The Dowry Prohibition Act, 1961 came into force from 20.5.1961. A person guilty of accepting dowry is punishable under the Act after 20.5.1961 and not before 20.5.1961.

Ex post facto laws are of three kinds as follows: (a) A law which declared some act or omission as an offence for the first time after the completion of that act or omission. (b). A law which enhances the punishment or penalty for an offence subsequent to the commission of that offence. (c) A law which prescribes a new and different procedure for the prosecution of an offence subsequent to the commission of that offence.

Clause (1) of Art. 20 provides protection only in respect of the above first two categories of ex post facto laws i.e. laws which declare acts as offences subsequent to the commission to those acts and laws which enhance the penalty subsequently.

Article 20(1) provides: *No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the*

commission of the offence. The first part of clause (1) provides that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence. The second part of clause (1) protects a person from a penalty greater than that which he might have been subjected to at the time of the commission of the offence.

75. The Parliament of India legislated the Sexual Harassment at Workplace Act, in the year 2013 and simultaneously some new offences were also added to the Indian Penal Code, 1860. Mr. A is an employee of an institution, against whom departmental enquiry has been initiated for committing sexual harassment of a female colleague in the year 2012. Now, choose the correct option.

- A. Such inquiry is valid as per Article 20 (1) of the Constitution as the complaint was made after the act came into force.
- B. Article 20 (1) will not be applicable as the matter does not relate to an offence.
- C. As the Act was passed in the year 2013, any inquiry under such Act is invalid.
- D. Only inquiry may be conducted but no penal action can be taken against him after such inquiry.

76. Article 20 (1) would not affect which of the following acts of the legislature?

- A. Act of the legislature enhancing the term of imprisonment.
- B. Act of the legislature enhancing the amount of fine.
- C. Act of the legislature changing the punishment of death to life imprisonment.
- D. Act of legislature changing the nature of imprisonment from simple to rigorous.

77. Mr. A is a student of Law, aged 19 years. He is socially active and expresses his opinion on every social and political event of the nation through social media platforms. In one of his blog, he severely criticised the policy of a state government of changing names of cities and towns. He also stated that the government is biased towards a particular religion. The said blog was posted on 19th April, 2020 and subsequently, an amendment was made to Indian Penal Code whereby 'Hate Speech' was made a distinct offence and punishment was prescribed. An action was brought against him under the said provision for the blog. Now, choose the most appropriate option amongst the following.

- A. Mr. A may be liable for the offence of Hate speech as the blog was not removed even after the amendment.
- B. Mr. A may be liable for the offence of Hate speech as Article 20 (1) does not cover such areas.

- C. Mr. A may not be liable for the offence because the act was done before the amendment.
- D. Mr. A may not be liable for the offence as his blog was innocent and a fair criticism.

78. Considering the fact situations given in the above question, the Parliament passes a legislation in September 2020, whereby an amendment is made to the Juvenile Act and now a person below the age of 20 would be a Juvenile and special procedure would be followed for his trial. Choose the most appropriate option amongst the following.

- A. Mr. A would not be considered as juvenile as it is prohibited under the scheme of Article 20 (1).
- B. Mr. A would not be considered as juvenile because the amendment came after he committed the offence.
- C. Mr. A would be considered a Juvenile and tried under the new procedure.
- D. None of the above.

79. Considering the fact situation in the third question to this passage, the Parliament passes a legislation for the Probation of Offenders, under which any offender below the age of 21 will not serve the sentence of imprisonment in a prison, instead he will serve the sentence in a probation house. Now, choose the most appropriate option.

- A. Mr. A will get the benefit of Probation of Offenders Act.
- B. Mr. A will not get the benefit of Probation of Offenders act as it is prohibited by Article 20 (1) of the Constitution.
- C. It is discretion of Mr. A to decide whether he wants such benefit or not.
- D. None of the above.

80. **Principle:** Acceptance of proposal must be the exact mirror image of the proposal.

Facts: 'A' made a proposal to 'B' to sell a chair for ₹500. 'B' is desirous of buying the said chair for ₹400.

- A. B has accepted the proposal of A.
- B. B has not accepted the proposal of A.
- C. It is not clear if B has accepted the proposal of A.
- D. It is not clear whether A made a proposal to B.

81. **Principle:** An agreement with a boy below the age of eighteen years is not enforceable by law.

Facts: A man entered into an agreement with a girl of seventeen years of age.

- A. The agreement is enforceable by law
- B. The agreement is not enforceable by law
- C. The agreement is enforceable by the girl
- D. No inference can be drawn

82. Principle: Sale of liquor is illegal. All agreements relating to prohibited items do not exist in the eyes of law.

Facts: 'A' entered into an agreement with 'B' for the sale of liquor. 'A' failed to supply the agreed quantity of liquor to B.

- A. B can bring a legal action against A
- B. B cannot bring any legal action against A
- C. A can bring a legal action against B
- D. A and B can initiate appropriate legal proceeding against each other

83. Principle: The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Facts: 'A' sent a letter making a proposal to 'B' to purchase the house of B.

- A. The communication of proposal is complete when A sent the letter
- B. The communication of proposal is complete when B's wife received it
- C. The communication of proposal is complete when B's wife handed over the letter to B
- D. The communication of proposal is complete when B reads the letter

84. Principle: An agreement may be entered into orally, in writing, or by conduct.

Facts: 'A' went to the shop of 'B' and picked a tooth brush and gave a cheque of Rupees twenty to B and left the shop.

- A. A entered into an agreement with B.
- B. A did not enter into an agreement with B.
- C. Payment of tooth brush cannot be made through a cheque.
- D. A should have carried a currency note of Rupees twenty to make the payment.

85. Principle: Property consists of right to possess, right to use, right to alienate and right to exclude others. Sale is complete when property gets transferred from the seller to the buyer.

Facts: 'A' sold his car to 'B'. B requested A to keep the car in his care on behalf B for one month. A agreed.

- A. Sale of car is complete
- B. Sale of car is not complete
- C. Sale will be completed when B keeps the car in his own care
- D. Sale will be automatically completed after the expiry of one month

86. Principle: A person, who is usually mad, but occasionally not mad, may make a contract when he is not mad.

Facts: 'A' generally remains in the state of madness and rarely becomes capable of understanding anything.

- A. A can make a contract
- B. A can never make a contract
- C. A can make a contract at any time whenever he pleases
- D. A can make a contract only for his own benefit

87. Principle: An agreement without free consent can be enforced only at the option of the party whose consent was not free.

Facts: A obtains the consent of B to enter into an agreement by putting a gun on the head of B's girl friend.

- A. B can enforce the agreement
- B. B cannot enforce the agreement
- C. A can enforce the agreement
- D. Neither A nor B can enforce the agreement

88. Principle: Where one of the parties to a contract was in position to dominate the decision of the other party, the contract is enforceable only at the option of the party who was in a position to dominate decision of the other party.

Facts: A doctor asked his patient to make a payment of ₹10,00,000 (Ten Lac Only) for treatment of his fever. The patient paid an amount of ₹5,00,000 (Five Lac Only) and promised to pay the remaining amount after the treatment. After treatment the patient recovered from fever. The doctor demanded the remaining amount from the patient. The patient refused to pay.

- A. The contract is enforceable against the doctor
- B. The contract is enforceable against the patient
- C. The contract is not enforceable
- D. The contract is not enforceable against the patient

89. Principle: When, at the desire one person, any other person has done or abstained from doing something, such act or abstinence or promise is called a consideration for the promise.

Facts: X, the uncle of Y, made a promise to pay him an amount of ₹1,00,000 as reward if Y quits smoking and drinking within one year. Y quit smoking and drinking within six months.

- A. Consideration has moved from the side of X
- B. Consideration has moved from the side of Y
- C. No consideration has moved from the side of Y
- D. Quitting smoking and drinking cannot be a consideration

90. Principle: Law never enforces an impossible promise.

Facts: 'A' made a promise to 'B' to discover treasure by magic.

- A. Law will enforce the promise
- B. Law will not enforce the promise
- C. Law will enforce the promise only at the option of A
- D. Law will enforce the promise only at the option of B

91. Principle: When a person who has made a promise to another person to do something does not fulfill his promise, another person becomes entitled to receive, from the person who did not fulfill his promise, compensation in the form of money.

Facts: X made a promise to Y to repair his car engine. Y made the payment for repair. After the repair, Y went for a drive in the same car. While driving the car, Y met with an accident due to bursting of the tyre.

- A. X will be entitled to receive compensation from Y in the form of money
- B. Y will be entitled to receive compensation from X in the form of money
- C. X will not be entitled to receive compensation
- D. Y will not be entitled to receive compensation from X

92. Principle: Whoever takes away any movable thing from the land of any person without that person's consent is said to commit theft.

Facts: During his visit to the home of C, A asks B, the son of C, to accompany A to a forest. Neither A nor B inform C in this regard. B accompanies A to the forest.

- A. A has committed theft
- B. A has not committed theft
- C. A has committed theft as soon as he entered the home of C
- D. A has not committed theft till B did not accompany him

93. Principle: Nothing is an offence if it is done in good faith for the purpose of preventing or avoiding greater harm or damage to person or property.

Facts: A jumps into a swimming pool to save a boy from drowning. While pulling the boy from water A was hit by C. A left the boy in the water and attacked C. The boy died in the water.

- A. A has not committed the offence of killing the boy
- B. A has committed the offence of killing the boy
- C. The boy has committed the offence of suicide
- D. The boy has committed the offence of drowning

94. Principle: Causing of an effect partly by an act and partly by an omission is an offence.

Facts: A did not provide any food to his daughter D. He also confined D in a room. Consequently, D died.

- A. A committed the offence of not providing food to D
- B. A committed the offence of confining D
- C. A committed the offence of killing D
- D. A committed no offence

95. Principle: Nothing is an offence which is done in the exercise of the right of private defence. Nothing is an offence which is done in madness.

Facts: A, under the influence of madness, attempts to kill B. B to save his life kills A.

- A. A has committed the offence of attempt to murder
- B. A has committed an offence of being mad
- C. B has committed an offence
- D. B has not committed an offence

96. Principle: A man is guilty of not only for what he actually does but also for the consequences of his doing.

Facts: A wanted to kill the animal of B. He saw B standing with his animal and fired a gun shot at the animal. The gun shot killed B.

- A. A is guilty of killing B
- B. A is not guilty of killing B
- C. B is guilty of standing with the animal
- D. A did not know that the gun shot will kill B

97. Principle: Mere silence as to facts likely to affect the decision of a person to enter into a contract is not fraud.

Facts: A sells to B (A's daughter who is a minor) a horse which A knows to be unsound. A says nothing to B about the unsoundness of the horse.

- A. A has committed fraud
- B. A has committed no fraud
- C. There cannot be a contract between a father and daughter
- D. The daughter did not ask therefore the father did not tell, hence no fraud

98. Principle: Whoever attempts to commit the offence of cheating, commits an offence.

Facts: A with an intention to defraud B, obtains from him an amount of ₹500.

- A. A has committed no offence
- B. A has committed the offence of cheating
- C. A has attempted to commit the offence of cheating
- D. A has attempted to commit and has committed the offence of cheating

99. Principle: Whoever by words publishes any imputation concerning any person is said to defame that person.

Facts: During a marriage ceremony, A circulated a pamphlet saying sister of the bride 'S' is a thief, she has stolen the shoes of the bridegroom.

- A. A defamed S
- B. A did not defame S
- C. A defamed the bridegroom
- D. A defamed the bride

100. Principle: An employer is liable for an injury caused to an employee in the course of the employment.

Facts: 'A' and 'B' were working in a factory as unskilled labourers. A was carrying a basket of stones on his head. B was sitting on the ground. When A crossed B, all of a sudden a stone fell down from the basket and hit B on his head. B died instantaneously.

- A. The employer will be liable
- B. The employer will not be liable
- C. A will be liable
- D. Both employer and A will be liable

101. Principle: Damages the money recompense, as far as money can do, for the loss suffered by a person.

Facts: A, an Indian citizen, having a right to vote, was not allowed to cast his vote on the polling booth, by the returning officer. Name of A was mentioned in the voter's list. A has also reported at the polling booth in time. However, the candidate in whose favour A would have cast his vote won the election. A filed a suit claiming damages.

- A. A will be entitled to damages
- B. A will not be entitled to damages
- C. A will be entitled to only nominal damages
- D. A will be entitled to exemplary damages

102. Principle: When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety,

the other party shall not put an end to the contract.

Facts: A engaged B on April 12 to enter his service on June 1, but on May 11, A wrote to B that his services would not be needed. On May 22, B joined C for employment.

- A. B cannot put the contract to an end
- B. B can put the contract to an end
- C. C can put his contract with B to an end
- D. A must pay damages to B

103. Principle: Everyone shall be permitted to take advantage of his own wrong.

Facts: A legatee was heavily drunk and driving his car at a speed of 100 Km/per hour in a crowded market. All of a sudden his testator came on the road. There were other people on the road at that time. The car driven by legatee hit the testator and four other persons. All the five persons hit by the car died.

- A. The legatee can take the benefit under the will
- B. The legatee cannot take the benefit under the will
- C. The legatee will be punished
- D. The property of the testator will go to his heirs

104. Principle: Property can be transferred only by a living person to another living person.

Facts: 'A' transfers property of which he is the owner in favour of the unborn child of B.

- A. Property has been transferred to the unborn child
- B. Property has been transferred to B
- C. Property has not been transferred to the unborn child
- D. Property will be transferred to the unborn child after his birth

105. Principle: An interest created, dependent upon a condition fails, if the fulfilment of the condition is impossible.

Facts: A promises to pay ₹10 Lakh to B on condition that he shall marry A's daughter C. At the date on which A gave ₹10 Lac to B, C was dead.

- A. B's interest fails
- B. B's interest fails because of immorality
- C. B's interest fails because of prohibition by law
- D. B's interest does not fail

106. Principle: A condition must be complied with after the happening of the event to which such a condition is attached.

Facts: A promises to pay ₹5,000 to B on the condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage.

- A. B has fulfilled the condition
- B. B has not fulfilled the condition
- C. The condition is illegal
- D. B must divorce his wife

107. Principle: A condition must be complied in order to claim the benefit of an agreement.

Facts: A agrees to transfer a farm to B, if B shall not go to England within three years after the date of the agreement, his interest in the farm shall cease. B does not go to England within the term prescribed.

- A. B's interest in the farm continues
- B. B's interest in the farm does not continue
- C. B has a fundamental right to go to England or not to go to England and hence the condition is illegal
- D. The agreement between A and B is void

108. Principle: Existence of all the alleged facts is relevant whether they occurred at the same time and place or at different times and places.

Facts: A, a citizen of England, is accused of committing murder of B in India by taking part in a conspiracy hatched in England.

- A. The facts that A accused of commission of murder and of conspiracy are relevant facts
- B. Only the fact that A is accused of committing murder of B is relevant
- C. Only the fact that A is accused of conspiracy hatched in England is relevant
- D. A citizen of England cannot be tried in India

109. Principle: One who asserts must prove.

Facts: A desires a Court to give judgment that B, C and D shall be punished for a crime which A says B, C and D have committed.

- A. A must prove that B, C and D were present at the place of crime
- B. A must prove that B, C and D have committed the crime
- C. B, C and D must prove that they have not committed the crime
- D. Police must prove that B, C and D have committed the crime

110. Principle: Foreign judgment binds the parties and is conclusive unless it is obtained by fraud.

Facts: A obtains judgment from US court by producing fake documents.

- A. New Suit can be filed in India on the same facts
- B. Judgment can be enforced in US
- C. Judgment can be enforced in India
- D. New suit can not be filed in India on same facts

111. Principle: Decision of Court is Null and Void, if it is given by court which does not have jurisdiction over the subject matter.

Facts: A obtains decision from a court which did not have jurisdiction to deal with the subject matter.

- A. Decision can be enforced because both the parties were present
- B. Decision cannot be enforced because decision is null and void
- C. Decision can be enforced because it is given a court
- D. Decision can be enforced

112. Principle: Civil Suit can be filed where defendant resides or carries on business or where cause of action arises.

Facts: 'A' carries on business in Gurgaon, 'B' carries on Business in Mumbai. 'B' through his agent in Gurgaon purchases goods in Gurgaon and takes delivery through agent in Gurgaon. Where Civil Suit for payment of price can be filed by 'A'?

- A. Gurgaon only where cause of action arises
- B. At Mumbai where B carries on Business
- C. At either of the places *i.e.*, Mumbai or Gurgaon
- D. Anywhere in India

113. Principle: Civil Suit can be filed where defendant resides or carries on business or where cause of action arises.

Facts: An agreement is signed and executed in New Delhi between A and B for supply of goods wherein B is to supply goods to be delivered at New Delhi to client of A. A carries on business at Haryana and B carries on Business in UP. Civil suit by 'B' for payment of consideration can be filed against 'A' at

- A. Only at New Delhi, where cause of action arises
- B. Only at Haryana where 'A' carries on business
- C. Only at UP where 'B' carries on business
- D. At Haryana or at New Delhi

114. Principle: No court can execute the decisions unless it is having territorial jurisdiction over the property or the person against whom

decision is to be executed. The Court which gave the decision can transfer the matter to the court which has the territorial jurisdiction over the person or property.

Facts: A decision is given by court at New Delhi on a contractual matter against X in a suit between X and Y. X is resident of Maharashtra and he has properties in Maharashtra and Gujarat.

- A. New Delhi court can transfer the proceedings to Court at Maharashtra only
- B. New Delhi court can execute the decision because it had the jurisdiction to decide the matter so it can execute also
- C. New Delhi court can transfer the proceedings to court at Gujarat only
- D. New Delhi court can transfer the proceedings to either of the courts *i.e.* Maharashtra or Gujarat

115. Principle: Nothing is an offence by reason of any harm it may cause to another person, if it is done in good faith and for the benefit of that person even without that person's consent.

Facts: A is attacked by a Lion and Lion drags him while he is crying for help. B, a passer by picks up A's gun in good faith and fires at Lion which injures A. B has never used the gun before.

- A. B is liable for the injury because he knew that he can injure A as he has never used any gun before
- B. B is not liable as he has done the act in good faith
- C. B is liable because he has not taken A's consent before firing
- D. B is liable because he has used A's gun without his consent

116. Principle: Nothing is an offence if it is done under intoxication and the person committing the offence was incapable to understand the nature of the Act. Intoxication should be without knowledge or against the will of the person.

Facts: A, B and C were having a party in Bar where A persuaded B and C to take alcoholic drinks. On the persistent persuasion B and C also consumed alcohol along with A. B and C had never consumed alcohol before. After intoxication, there was some argument between B and C where C pushed B with full force causing serious injury to B.

- A. C is liable
- B. C is not liable because he was intoxicated
- C. A is liable because A persuaded them to consume alcohol whereas they had never consumed alcohol
- D. A and C both are liable

117. Principle: Everyone has the right of private defence to defend his body and property by use of reasonable force unless that person had time to have recourse to protection of public authorities.

Facts: X receives information at 5.00 pm that Y along with few friends is planning to burn his crop at midnight which is ready to be harvested. He does not inform the village Police Station which was just one kilometer away. He gathers his family members and directs them to collect some weapons in the form of swords and lathis to protect his field/crop. At around 11.00 pm Y and his aides attack the crop and a severe fight ensues wherein Y is seriously injured.

- A. X is not liable as he was exercising his right of private defence
- B. X and his family are not liable for the injuries caused as they were exercising the right of private defence
- C. X is liable
- D. X and his family is liable as they have not informed the police

118. Principle: Anyone who induces or attempts to induce a voter to vote in a particular manner on the ground that the voter will face divine displeasure, shall be guilty of offence of interfering with free exercise of right to vote.

Facts: During election campaign period one candidate X told the voters that if they do not vote for her, voters will be cursed because the election candidate is the God's own child and those who do not vote for her, they will not be liked by God.

- A. X has committed an offence
- B. X has not committed an offence because she only narrated what she felt
- C. X has not committed an offence because she has freedom of speech and expression
- D. X has not committed an offence because she did not compel anyone to vote for her

119. Principle: Doing of an act which causes common injury, danger or annoyance to public or which is likely to cause such injury or annoyance is Public nuisance. A

common nuisance is not excused because it causes some nuisance or advantage.

Facts: 'A' a farmer having large farmlands burns crop residue (stubble) on his fields after harvesting the crop to make the field ready for next crop as this is the easy, fast and convenient method of making the field ready for next crop. His farmlands are adjoining a densely inhabited residential area and people pass through the smoke while travelling on the road adjoining his farm-lands. The smoke caused by fire also enters the houses in the colony

- A. A has not committed any offence since he does not cause any specific injury to any specific person
- B. A has not committed any offence because he does not gain any advantage from persons living in the vicinity
- C. A has committed public nuisance
- D. A has not committed any offence because the alleged acts are done on the fields owned and used by him and acts are done without any intention to cause harm.

120. Principle: Death caused by rash or negligent act of a person is an offence.

Facts: X was driving his SUV car in a lonely road leading to a forest at 160 km per hour. Suddenly, someone appears from the forest on the road and in the resultant accident, the car hits the commuter causing his death.

- A. X is not guilty of an offence as the accident has occurred on a lonely road
- B. X is not guilty because there was no intention to kill the deceased
- C. X is guilty of an offence death by rash or negligent act
- D. X is not guilty because he was also injured in the accident

121. Principle: Whoever causes death by rash or negligent act commits an offence.

Facts: X is having a house on the roadside which is also having a street on the back of the house. He has a lawn on the back of his house where he has built a toilet. To prevent the intruders from entering his house, he got the fence charged with a high voltage live electric wire. Z was passing through the street at the backyard of the house of X and sat down to take rest near the fence.

While getting up, his hands came in contact with the fence which was connected to high voltage electric wire causing his death.

- A. X has not committed any offence because he has right to prevent trespass
- B. X has committed an offence of causing death by rash and negligent act
- C. X has committed no offence because he does not have any enmity with X
- D. X has committed an offence of Murder

122. Principle: Killing is not murder, if it is committed in a sudden fight without pre-meditation in a heat of passion upon a sudden quarrel.

Facts: X and Y were buying liquor from a liquor shop at 7 pm. Y abused X and there was quarrel between them. X told Y that he will not spare him and Y shouted that his house is adjoining the shop only and if X had the guts, he can come anytime. X went back to his shop which was nearby, procured a knife and went to Y's residence at 9 pm and stabbed him to death.

- A. X has committed murder
- B. X has not committed an offence of murder since it was committed in sudden fight in a heat of passion
- C. X has not committed murder of Y because he had no enmity with Y
- D. X has committed no offence

123. Principle: Use of criminal force intentionally knowing that it would cause or is likely to cause injury or annoyance to the person against whom force is used, is an offence.

Facts: X, a renowned social worker who had launched a movement for liberation of women, pulls up a Muslim women's veil in public in good faith without her consent causing annoyance to her.

- A. X is a renowned social worker and he has committed no offence because his motive was good
- B. X acted in good faith to liberate her from clutches of tradition and has hence has committed no offence
- C. X has done the act in public and not in secrecy therefore had not committed any offence
- D. X has committed an offence by use of criminal force

124. Principle: Inducing any animal to move or to change its motion and thereby intentionally causing fear of injury or annoyance to others by such act, is an offence of use of criminal force.

Facts: X incites his dog to chase and run after his neighbour Y, to teach Y to stay away from him. The act is done without neighbour consent and against his will

- A. X has committed no offence
- B. X has committed no offence because no harm is caused to Y
- C. X has committed no offence because his intention only to put fear in the mind of Y
- D. X has committed an offence of use of criminal force

125. Principle: A spouse is not permitted to put in evidence in any court, any communication during marriage between the spouses without the consent of the person who made the communication.

Facts: X who is the wife of Y saw her husband (Y) coming out of the neighbour's house at 6.00 am in the morning. Y told his wife X that he has murdered the neighbour and handed over the jewellery of that neighbour to his wife.

- A. X is allowed to appear as a witness in court to depose that her husband has told her that he committed a murder
- B. X is not allowed to appear as a witness at all in any court
- C. X is not allowed to appear as a witness to depose what was told by the husband to her, however, she can depose what she saw
- D. X is an independent woman and she can do whatever she wants

126. Principle: Oral evidence must always be direct *i.e.*, of the person who says he saw the event and hearsay evidence is no evidence.

Facts: X was told by Y (whom X trusts) that Z has murdered A

- A. Statement of X is admissible
- B. Statement of X is not admissible because he has not seen Z murdering A
- C. Statement of X is admissible because he trusts Y and Y never tells a lie
- D. Statement of X is admissible because he is a renowned social activist and has a huge reputation to fight for the truth

127. Principle: Terms of any written contract can be proved by producing the written contract only and oral evidence is excluded.

Facts: A gives B receipt for money paid by B. Oral evidence is offered to prove payment.

- A. Oral evidence to prove payment is allowed
- B. Oral evidence to prove payment is not allowed
- C. Oral evidence is always allowed to prove all facts
- D. Oral evidence is generally disallowed

128. Principle: Employer is liable for the injury caused to the employee in the course of his employment.

Facts: X organized a party and hired a caterer. During the party, generator set went out of order and he requested one employee of caterer *i.e.* Y to bring the mechanic on his vehicle and promised to pay ₹ 1000 for the same to Y. Y met with an accident while going to fetch the mechanic and he seeks compensation.

- A. X is liable as Y was working in the course of employment offered by X
- B. X is not liable as Y is not his employee
- C. X is liable because party was organized by him
- D. Caterer is liable as Y is his employee

129. Principle: Master is liable for the acts of his servant done in the course of his duties.

Facts: X hired an employee Y in his construction business. Y was the property in-charge who received construction material and gave receipts for the material received by him. Z claimed payment for cement supplied to X which was duly received by Y. X denied the payment on the ground that he has only received half of the material and the balance was misutilized by the employee Y.

- A. X is liable for the entire amount
- B. X is liable for the part amount only *i.e.* for payment of the cost of half of the material
- C. X is not liable for the misconduct/embezzlement of his employee
- D. Z can claim the balance payment only from Y

130. Article 51-A on Fundamental Duties was inserted into the Constitution of India through the:

- A. 41st Constitution (Amendment) Act, 1976
- B. 44th Constitution (Amendment) Act, 1978
- C. 40th Constitution (Amendment) Act, 1976
- D. 42nd Constitution (Amendment) Act, 1976

131. The highest law officer in India is the:

- A. Attorney General
- B. Advocate General
- C. Solicitor General
- D. Chief Justice of the Supreme Court of India

- 132.** How many languages are there in the Eighth Schedule of the Constitution of India?
 A. 21 B. 22
 C. 19 D. 18
- 133.** A Panchayat Samiti at the block level in India is only a/an:
 A. Administrative authority
 B. Co-ordinating and Supervisory authority
 C. Consultative Committee
 D. Advisory body
- 134.** Which of the following is NOT a fundamental duty as per the provisions of the Constitution of India?
 A. To uphold and protect the sovereignty, unity and integrity of India
 B. To join the Defence Forces of India
 C. To defend the country and render national service when called upon to do so
 D. To value and preserve the rich heritage of our composite culture
- 135.** The Right to Education Act, 2009 (RTE) provides for free and compulsory education to:
 A. All illiterate children of India
 B. All citizens of India
 C. Children aged between 6 and 14 years
 D. All children up to the age of 10 years
- 136.** The question below consists of two statements, one labelled as 'Assertion' (A) and another as 'Reason' (R). Examine these two statements carefully and select the answers to these items from the codes given below.
Assertion (A): It is the legal and constitutional duty of the State to provide legal aid to the poor.
Reason (R) : No one should be denied justice by reason of his poverty.
Codes:
 A. Both (A) and (R) are individually true and (R) is the correct explanation to (A)
 B. Both (A) and (R) are individually true but (R) is not the correct explanation to (A)
 C. (A) is true but (R) is false
 D. (A) is false but (R) is true
- 137.** Which was the law introduced by Sir William Bentinck to prohibit the practice of Sati?
 A. Bengal Sati Regulation, 1829
 B. U.P. Sati Prohibition Act, 1828
 C. Indian Sati Prohibition Act, 1827
 D. Rajasthan Sati (Prevention) Act, 1830
- 138. Legal Principle:** Nothing is an 'offence', if committed by a child below seven years of age.

Fact Situation: Adil, aged six years, is a student of class one. He placed his sharpened pencil on the bench with its pointed end up when his classmate Ajay stood up to answer a question from the teacher. Ajay gets hurt when he sits on the pencil and Adil and his friends have a good laugh. Ajay's father, on seeing his son injured when he returns home, wants action against Adil.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Adil has committed an 'offence'.
 B. Adil has not committed any 'offence'.
 C. Childish pranks cannot be investigated by the police.
 D. The class teacher must be arrested.

- 139. Legal Principle:** The doctrine of basic structure in Constitutional jurisprudence means that the Constitution of India has certain basic features that cannot be taken away through amendments by the Parliament. The power of judicial review is a part of the basic structure and it helps the constitutional Courts to determine whether an amendment is against the basic structure or not.

Fact Situation: Parliament proposes an amendment to limit the power of appeal against conviction for the offence of Sedition, to be exercised only by the Supreme Court of India.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. The proposed amendment is against the doctrine of basic structure.
 B. The proposed amendment is unconnected to the doctrine of basic structure.
 C. The proposed amendment can be reviewed and struck down by the Constitutional Courts.
 D. The proposed amendment is beyond the power of the Parliament.

- 140.** Who among the following was the first Chairman of the Constituent Assembly in India?
 A. Dr. Rajendra Prasad
 B. Dr. Sachchidananda Sinha
 C. Harendra Coomar Mookerjee
 D. Dr. B.R. Ambedkar

- 141. Legal Principle:** It is an offence to obstruct a public servant in the due discharge of his duty. Right of private defence is available to protect one's person and property.

Fact Situation: Sidhu comes to the rescue of his uncle who is sought to be taken into a car by some men. In the process, he causes injury to some of them. Later, it turns out that the men were police persons in plain clothes trying to enforce a warrant against his uncle.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Sidhu has committed the offence of obstructing a public servant in due discharge of his duty.
- B. Sidhu has not committed an offence since he did not know that the men were from the police.
- C. Sidhu's uncle has resisted arrest and should be proceeded against.
- D. Sidhu should not have tried to help his uncle without ascertaining the fact

- 142. Legal Principle:** An employer is liable for the act of his servant performed during the course of employment.

Fact Situation: While working as a driver for Verma, Alok sometimes used to earn some side income by carrying parcels for others in Verma's car without his knowledge or permission. While going to pick Verma from the airport one day, Alok stopped to deliver a parcel he was carrying with him. While he was delivering the parcel, which unknown to him was one of contraband goods, the police arrested Alok.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Verma is liable for the act of Alok since he is Verma's driver.
- B. Verma is liable for the act of Alok since he had gone to pick Verma from the airport.
- C. Verma is not liable for the act of Alok since Alok himself did not know that he was carrying contraband goods.
- D. Verma is not liable for the act of Alok since carrying the parcel was not in the course of his employment.

- 143.** Which law introduced the system of dyarchy in India during the British reign?

- A. The Government of India Act, 1858
- B. The Government of India Act, 1909
- C. The Government of India Act, 1919
- D. The Government of India Act, 1935

- 144. Legal Principle:** The Latin maxim *nemo bis punitur pro eodem delicto* means that nobody can be punished twice for the same offence.

Fact Situation: Sajan, a petty thief, is caught and thrashed thoroughly by the people before being handed

over to the police. Sajan pleads before the magistrate that since he was already thrashed by the people he should not be again punished by the State.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Sajan is right since nobody should be punished for the same offence twice.
- B. Thrashing given by the people does not amount to legal punishment and so Sajan can be punished by the State.
- C. Giving a good thrashing to the thief is the best form of punishment to prevent future theft.
- D. The Magistrate should take into consideration the thrashing received by Sajan while fixing his punishment.

- 145. Legal Principle:** The Latin maxim *qui facit per alium, facit per se* means that he who acts through another, acts himself.

Fact Situation: Heema requests her minor sister Harika to purchase a bag for her from the local shop. Harika purchases the bag on credit telling the shop keeper that her sister will pay for it. Afterwards, Heema refuses to pay for the bag.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Since Heema has not purchased the bag herself she is not liable to pay for it.
- B. Harika being a minor the shop keeper should not have sold the bag to her.
- C. Since she purchased the bag through her sister, Heema is liable to pay for it.
- D. Harika being a minor should not have been entrusted by Heema for the purchase of the bag.

- 146. Legal Principle:** Negligence is the absence of care by one party which results in some damage to another. Damage is an essential ingredient to constitute a tort of negligence.

Fact Situation: Mistry left his ladder on the public road while unloading it from a truck when he went to open the shutters of his shop. Saini who was riding his motorcycle had to swerve hard to avoid hitting the ladder as he came with speed on the road. Saini fell down but was miraculously not injured.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Mistry is not liable for the tort of negligence since Saini was not injured though he fell down.
- B. Mistry is liable for the tort of negligence since Saini fell down due to the presence of the ladder.
- C. Mistry is not liable for the tort of negligence since Saini was speeding on the road.
- D. Mistry is liable for the tort of negligence since he was careless in leaving the ladder on the road.

147. Legal Principle: Every partner is liable alone and jointly with other partners for the debts of a partnership firm incurred for the business. Every partner is an agent of every other partner while being a principal in his own right in the business of the partnership.

Fact Situation: Varun is a partner in a firm with Chinmoy and Jaffar. Jaffar purchases a car for his personal purpose and obtains credit for the same in the name of the partnership behind the back of the other partners. He fails to pay the due amount on the expiry of the period of credit.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Varun, Chinmoy and Jaffar are liable to pay for the car since they are partners and the credit was obtained in the name of the firm.
- B. Varun and Chinmoy are not liable to pay for the car since Jaffar purchased it for his personal purpose.
- C. Varun, Chinmoy and Jaffar are liable as partners for all credit obtained in the name of the firm even if it is for the personal purpose of a partner.
- D. Jaffar can use the credit of the firm to make purchases even for personal purposes since he is a partner in the partnership.

148. Legal Principle: Parents are not liable for wrongs committed by their children unless they provide the opportunity for such wrongful acts to be committed by their children.

Fact Situation: Sunil, a minor, takes the keys to his father's car from the table top where his father keeps it, drives the car on the public road and hits a pedestrian who gets injured.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Since Sunil took the car without his father's permission, his father is not liable for Sunil's act resulting in the accident.
- B. Sunil's father is liable for the conduct of Sunil resulting in the accident since he left the car

keys where his son could easily take it without permission.

- C. Accidents happen despite utmost care and hence neither Sunil nor his father is liable in the instant case.
- D. Sunil's father is not liable since he had kept his car locked and securely deposited its keys without negligence on his table top.

149. Legal Principle: No remedy lies in law where an injury is caused to a person without any infringement of his legal right.

Fact Situation: Ashutosh started a tuition Centre right next to the one being run for the past twenty years by Gulshan. After Ashutosh started his Centre, a large number of students shifted from Gulshan's tuition Centre to Ashutosh's Centre forcing Gulshan to close down his establishment suffering huge losses. Can Gulshan initiate legal action against Ashutosh?

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Ashutosh must compensate Gulshan for his loss consequent to the start of the new tuition Centre.
- B. Gulshan cannot blame Ashutosh if he cannot retain his students.
- C. Ashutosh has not violated any legal right of Gulshan, though students shifted to Ashutosh's Centre and though Gulshan suffered loss, after he shut down his tuition Centre.
- D. Gulshan should have improved his quality with lower fees to retain his students in the light of competition brought in by Ashutosh.

150. Legal Principle: Article 20(3) of the Constitution of India states that no person accused of any offence shall be compelled to be a witness against himself.

Fact Situation: Ubaid refuses to give a sample of his blood after he is stopped by the police for driving over the speed limit. The police suspect him to be driving under the influence of alcohol, which is prohibited under the law.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Ubaid is protected by Article 20(3) in his refusal to give a blood sample.
- B. Ubaid is not protected by Article 20(3) as he was under the influence of alcohol.
- C. Ubaid is not protected by Article 20(3) in his refusal to give a blood sample since he is not accused of any offence yet.

D. Refusal to give a blood sample is a crime and Ubaid must be punished for the same.

151. The law which provides special powers to the Armed Forces in India is popularly known as:

- A. AFSPA B. POTA
C. TADA D. SARFAESI

152. Legal Principle: The law states that a food business operator must be registered with or licensed by the Food Safety and Standards Authority of India (FSSAI) to run a food business.

Fact Situation: Kavita's neighbours suffer food poisoning after consuming sweets gifted by her on the occasion of a celebration at her home. Kavita does not have a registration or license from the FSSAI.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Kavita is in violation of the law since she does not have a FSSAI registration or license.
B. Kavita is not in violation of the law since she did not make the sweets she gave by way of gift.
C. Law does not apply in cases like this where transactions happen between neighbours.
D. Kavita need not take a license or register with FSSAI since she is not running a food business.

153. Legal Principle: An agreement entered into by way of a wager/bet is unenforceable in law.

Fact Situation: Thomas is very good at predicting outcomes of cricket matches. Raja and Hoja give him rupees thousand each to enable him to bet with others about the outcome of a cricket match. Thomas wins rupees three lakh after betting three thousand rupees.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Thomas must share rupees three lakh with Raja and Hoja equally.
B. Thomas must return rupees thousand each to Raja and Hoja.
C. Thomas need not share the three lakh with Raja and Hoja since it is the outcome of an unenforceable agreement.
D. If Thomas does not pay them rupees two lakh each, Raja and Hoja can sue him to recover their share.

154. Legal Principle: '*Audi alteram partem*' is a Latin phrase which means 'hear the other side'. It is the principle that no person should be judged without a fair hearing.

Fact Situation: Sanjay, in Delhi, is accused of theft and brought before the Court. The magistrate discovers that Sanjay is mute.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. The principle is not applicable to Sanjay since he is mute.
B. The principle is applicable to Sanjay even though he cannot speak since he can be asked to write down his defence.
C. The Magistrate has to take all measures to understand what Sanjay has to convey about the accusation against him.
D. Since it is a Latin principle it is not applicable in India.

155. Legal Principle: An essential condition in a contract for sale of goods is that the seller has title over the goods sold.

Fact Situation: Ranjan pays rupees two thousand and buys a watch from Mohit who runs a watch showroom and a repair shop. Jatin sees the watch with Ranjan and tells him that it is his watch and was only given to Mohit for repairs. If what Jatin says is true.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Ranjan is now the owner of the watch since he paid rupees two thousand for it.
B. Ranjan is not the owner of the watch since Mohit did not have a title to it.
C. Mohit must pay Jatin rupees two thousand since he sold Jatin's watch.
D. Mohit is the owner of the watch since he sold it to Ranjan.

156. Legal Principle: The insurer agrees to pay no more than the actual amount of the loss.

Fact Situation: Sunny insures his car worth rupees five lakh with X, an insurance company, for its value. He again insures the same car with Y, another insurance company, on the same terms. There is an accident and the car suffers a total loss. In his separate suits against X and Y, if Sunny recovers rupees five lakh from X, how much can he recover from Y?

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Sunny can recover rupees five lakhs from Y.

- B. Sunny cannot recover any amount from Y.
- C. Sunny must pay Y, the rupees five lakhs he received from X.
- D. Sunny cannot insure his car with both X and Y at the same time.

157. Legal Principle: When there is an infringement of the legal right of a person, he gets a right to sue the wrongdoer for remedy irrespective of any actual loss caused.

Fact Situation: Saroj is prevented from voting at an election. The candidate she intended to vote for, wins the election.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Saroj's legal right has been violated and she can sue the persons who prevented her from voting
- B. Since Saroj's candidate has won the election, her rights are not violated and she cannot sue.
- C. Since Saroj is not the candidate, her rights are not violated if she is prevented from voting.
- D. This principle is not at all applicable in this case.

158. Which of the following is the oldest law code in India?

- A. Hammurabi's code B. Prasarsmriti
- C. Manusmriti D. Naradasmriti

159. Legal Principle: A product cannot be sold in shops to consumers after its date of expiry.

Fact Situation: Lata, while shopping, notices that the milk packets on the shelves are due for expiry on that day. She objects to this to the shopkeeper, saying that since she was there to buy milk for the next day, keeping the milk on its date of expiry was against the law.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Lata is right and the shopkeeper should take the milk packets off his shelves.
- B. The shopkeeper should not sell the milk packets after the date of expiry is over.
- C. The shopkeeper must remove the milk packets from the shelves and keep it refrigerated.
- D. Milk is not a product and hence the principle is not applicable in this case.

160. Legal Principle: Nuisance is the unlawful interference with a person's enjoyment of his land or some rights over or in connection with it.

Fact Situation: Ashok, in his nineties, is hard of hearing and plays the radio very loudly throughout the day and on a daily basis. Raju, his neighbour, complains that he cannot listen to his favourite TV show in his home due to the radio of Ashok.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Listening to the radio is Ashok's freedom.
- B. Ashok is creating nuisance to his neighbour by playing the radio loud perpetually and disturbing Raju in being able to listen to the TV in his home.
- C. Raju is creating nuisance by complaining about Ashok's enjoyment of hearing his radio.
- D. Raju should appreciate that Ashok is aged and hard of hearing.

161. Legal Principle: Agreements in restraint of trade are void and unenforceable.

Fact Situation: Manu has been working as a blacksmith in his village for many decades. Somu has been undergoing training with him for the past three years. After his training is over, Somu enters into an agreement with Manu that he will not start a competing business in the same village while Manu is alive.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. This agreement is void and unenforceable since it is a restraint on trade.
- B. This agreement is valid and enforceable since Manu is Somu's teacher.
- C. This agreement is valid but not enforceable after Manu's death.
- D. This agreement is valid and enforceable since it is to protect Manu's interest in consideration for teaching Somu to be a blacksmith.

162. What does FIR stand for under the Criminal Law?

- A. Forensic Investigation Report
- B. First Investigation Report
- C. First Information Report
- D. Formal Interrogation Record

163. Under which of the following enactments, is the use of mobile phone while driving made punishable?

- A. The Information Technology Act
- B. The Indian Penal Code
- C. The Motor Vehicles Act
- D. The Criminal Procedure Code

164. Legal Principle: A person is liable to compensate others for harm caused by the escape of any inherently dangerous material that he keeps on his land.

Fact Situation: Ankit lights a bonfire in his courtyard to warm himself up during a cold winter evening. A strong wind suddenly blows some sparks from the fire, on to his neighbour's house which catches fire and gets completely destroyed.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Ankit's neighbour is liable to Ankit for distress caused by keeping a house that catches fire so quickly.
- B. Ankit is not liable because nobody could foresee that the sudden wind will blow the sparks to cause a fire.
- C. Ankit's neighbour cannot make Ankit liable for the loss of his house since it was an accidental fire that destroyed it.
- D. Ankit is liable to compensate because the fire escaped from his premises to burn down his neighbour's house.

165. Legal Principle: A characteristic feature of partnerships is the principle of mutual agency, *i.e.*, every partner is an agent for every other partner and will hence be able to bind them by his act, within the business of partnership.

Fact Situation: Ram and Shyam are partners of M/s R & S Trading Company which trades in rice varieties. Ram agrees to purchase ten tons of rice from Govind. Ram dies after the rice is delivered to the premises of M/s R & S Trading Company but before the payment of price is made. Is the agreement binding on Shyam?

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- A. Being partners, Ram's agreement to purchase rice for their partnership, is not binding on Shyam.
- B. Since Ram is no more, the agreement is not binding on Shyam.
- C. Being partners, Ram's agreement to purchase rice for their partnership, is binding on Shyam.
- D. The agreement is binding on Ram and not on Shyam since the rice is delivered only to M/s R & S Trading Company and not to Shyam.

166. Who is an Ombudsman?

- A. A judicial officer designated to receive complaints against the violation of rights of citizens.

- B. An official who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or a violation of rights.
- C. An elected representative of the people to investigate and address the complaints of maladministration or a violation of rights.
- D. A specially designated police officer assigned with the power to investigate and address the complaints of maladministration or a violation of rights.

167. Which authority in India notified the guidelines for the protection of persons assisting accident victims on Indian roads based on the Supreme Court direction?

- A. Ministry of Surface Transport, Govt. of India
- B. Ministry of Social Justice, Govt. of India
- C. Ministry of Road Transport and Highways, Govt. of India
- D. National Human Rights Commission

168. Article 1 of a legal instrument reads: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

Which is the legal instrument being referred to above?

- A. National Human Rights Act, 1995
- B. Constitution of India, 1951
- C. Universal Declaration of Human Rights, 1948
- D. Philadelphia Declaration, 1944

Directions (Qs. No. 169-172): Examine the Statement and Conclusions given below and choose a suitable answer from the options given:

169. Statement: It is a fundamental duty, which is unenforceable in a Court of Law that every citizen shall renounce practices derogatory to the dignity of women.

Conclusions:

- 1. Reservation of seats for women in employment is violative of the principle stated.
- 2. Asking a lady inappropriate questions about her personal life is violative of the principle stated.
- A. Only Conclusion 1 follows.
- B. Only Conclusion 2 follows.
- C. Conclusions 1 and 2 follow.
- D. Neither Conclusion 1 nor 2 follows.

170. Statement: A punishment is the imposition of an undesirable or unpleasant outcome upon a group or individual, meted out by an authority.

Conclusions:

- 1. Eye for an eye and tooth for a tooth is an example of punishment.

2. Imposition of fine on someone who inflicted bodily injury on another is justified by the statement.
- Only Conclusion 1 follows.
 - Only Conclusion 2 follows.
 - Conclusions 1 and 2 follow.
 - Neither Conclusion 1 nor 2 follows.

171. Statement: Necessity knows no law.

Conclusions:

- The act of a captain throwing some cargo into the ocean to save the ship from sinking is justified by the principle.
 - The act of a man out of poverty and starvation stealing some food from a hotel is justified by the principle.
 - The act of a tourist killing a tiger when it was attacking a villager is justified by the principle.
- Only Conclusion 1 follows.
 - Only Conclusion 2 follows.
 - Only Conclusion 1 and 3 follow.
 - All Conclusions follow.

172. Statements:

- Justice delayed is justice denied. Justice hurried is justice buried.
- More than 3 crore cases are pending in the Indian Courts.

Conclusions:

- People are not getting justice in India.
 - Disposal of cases by 'Fast track courts' results in injustice.
 - Cases must be disposed off within a reasonable time.
- Only Conclusion 1 follows.
 - Only Conclusion 2 follows.
 - Only Conclusion 3 follows.
 - No Conclusion follows.

173. Legal Principle: One of the principles of 'Natural Justice' states that, "No person shall be a judge in his own cause".

Facts: A, a driver of B, a Branch Manager of ABC Bank was caught, suspecting theft, in the bank premises. The Bank management instituted an enquiry and made B the enquiry officer.

Which of the following statements is correct?

- As B is a Bank Manager and not a judge, this principle is inapplicable.
- Since the suspected theft was in the bank premises, the manager is the only competent person to enquire. Hence, the principle is not applicable.

- Since B is the employer of A, B should not be conducting the enquiry on the basis of the given principle.
- The principle will be applicable, only if the theft committed by A was in relation to the car.

174. Legal Principle: Justice should not only be done, but also seen to be done.

Facts: L, an honest Lawyer had 200 shares in Company X. Later, L was elevated to the High Court as a Judge and had to deal with Company matters. A dispute between Company X and its creditors came before L for decision.

Which among the following proposition is true?

- L, as an honest person will definitely judge the matter on the merits only. So, the principle cannot apply.
- A judge cannot excuse himself from taking up a case posted before him by the Court Registry.
- L should refrain from hearing the matter as he holds shares of the Company X.
- Since, L has only 200 shares he has no substantial interest in the company and hence can decide the matter.

175. Legal Principle: A person who keeps hazardous substances in his premises, is responsible for the fault if that substance escapes in any manner and causes damage.

Facts: A, an industrialist stored 1000 litres of liquid ammonia in a tank in his premises for his industrial use. There was a leakage from the tank due to which there was ammonia vapour in the surroundings. Many workers in other industries as well as his own industry and some members from the public suffered serious health hazards. Examine the liability of A, if any.

- A may be liable for the injury sustained by his workers only and not others.
- A is liable as he is responsible for the injury caused by the leakage of ammonia from his premises.
- A is not liable because there was no fault on his part for the escape of the dangerous substance.
- A is not liable because he did not expect a leakage from the tank.

176. Legal Principle: In the law of evidence, a person missing for long and not heard of, for over seven years is presumed to have died.

Facts: A, B and C are children of F and M. At the age of 20, A went out in search of a job and was not contacting the family. All attempts to trace A by the family failed. Eight years after the death of the parents,

B and C entered into a partition and took equal share in the property of F and M. One year after this, A returned home with his wife and two children and claimed his share in the property. Whether A's claim is legally sustainable?

- A. Since A was not heard of, for more than eight years, the legal presumption of death will apply and hence, he cannot claim a share in the property.
- B. It was A's duty to be in touch with the family at least once in a year. The failure of this duty will disentitle him from claiming property.
- C. A will succeed because he is a legitimate son of F and M.
- D. B and C are legally bound to give 1/3rd share of the property to A.

177. Legal Principle: 'Gift' means transfer of certain existing property made voluntarily and without consideration, by a donor, to a donee, and accepted by or on behalf of the donee during the lifetime of the donor.

Facts: Amit executed a gift deed for property 'X' in favour of Sooraj, who happened to be Amit's loyal servant's son settled in the U.S. Two months thereafter, Amit died without leaving a will regarding his assets. Amit's children initiated steps to partition his entire property, including property 'X' among themselves. At that time, Sooraj came to India, and learning about the gift, claimed the property 'X'.

- A. Sooraj can legally get the property 'X', as soon as he gets to know about the gift.
- B. Sooraj cannot legally claim the property 'X' because, the children of Amit have already initiated steps for partition.
- C. Sooraj can claim the property 'X', because, his acceptance of the gift is implicit by his conduct of claiming the property as soon as he came to know about the gift.
- D. Sooraj apparently did not comply with the essential requirements of a gift and hence, the entire property including property 'X', can be partitioned among the children of Amit.

178. The right to information under the Right to Information Act, 2005 is a:

- A. Legal Right
- B. Fundamental Right
- C. Human Right
- D. Constitutional Right

179. The primary legislation relating to organ donation and transplantation, aimed at regulation of removal, storage and transplantation of human organs for therapeutic purposes and for prevention of commercial dealings

in human organs in India, namely, the Transplantation of Human Organs Act, was passed in the year

- A. 1994
- B. 1998
- C. 2004
- D. 2014

Directions (Qs. No. 180-214): These questions consists of legal proposition(s)/ principle(s) (hereinafter referred to as 'principle') and facts. Such principles may or may not be true in the real and legal sense, yet you have to conclusively assume them to be true for the purposes of this Section. In other words, in answering these questions, you must not rely on any principle except the principles those are given herein below for every question. Further, you must not assume any facts other than those stated in the question. The objective of this section is to test your interest towards study of law, research aptitude and problem solving ability, even if the 'most reasonable conclusion' arrived at may be absurd or unacceptable for any other reason. It is not the objective of this section to test your knowledge of law. Therefore, to answer a question, principle is to be applied to the given facts and to choose the most appropriate option.

180. Principle: According to law, a person is deemed to have attained the age of majority when he completes the age of 18 years, except in the case of a person where a guardian of a minor's person or property has been appointed under the Guardians and Wards Act, 1890 or where the superintendence of a minor's property is assumed by a Court of Wards. Indian law expressly forbids a minor from entering into a contract. Hence, any contract entered into by a minor is void-a-binitio regardless of whether the other party was aware of his minority or not. Further, though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.

Facts: Lal executed a promissory note in favour of Gurudutt, aged 16 years stating that he would pay Gurudutt a sum of ₹ 2 Lakhs when he attains the age of majority. On attaining the age of 18, Gurudutt demanded the amount from Lal, who refused to pay. Gurudutt wants to take legal action against Lal. Identify the most appropriate legal position from the following:

- A. Gurudutt should not have entered into a contract with Lal when he was a minor.
- B. Lal was not aware of the fact that Gurudutt was a minor.
- C. Lal argues that as per the Guardians and Wards Act, 1890, Gurudutt can claim the money only after he attains the age of 21.
- D. A promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

181. Principle: In criminal law, misappropriation is the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose, particularly by a public official, a trustee of a trust, an executor or administrator of a dead person's estate or by any person with a responsibility to care for and protect another's assets. Embezzlement is misappropriation when the funds involved have been lawfully entrusted to the embezzler. On the contrary, theft is the illegal taking of another person's property or services without that person's permission or consent with the intent to deprive the rightful owner of it.

Facts: A went for swimming at the Municipal Swimming Pool. A handed over all his valuables, including some cash to X, the guard on duty for safe custody, as notified by the Municipality. After swimming for an hour, A came out and searched for X. He found another guard on duty and that guard informed A that X had gone home after completing his shift and did not hand over anything to be given to A. A registered a complaint with the police. X was traced but he told the police that he sold all the valuables and the entire cash was used for drinking liquor. What offence, if any, was/were committed by X?

- A. If at all X is liable, it is for criminal misappropriation only.
- B. X is liable for criminal misappropriation and embezzlement.
- C. X is not guilty of criminal misappropriation as he did not make any personal gain out of those items with him.
- D. X is liable for theft as he took A's property without X's permission.

182. Principle: Every agreement, by which any party is restricted absolutely from enforcing his right in respect of any contract, by the usual legal proceedings in the ordinary Tribunals, is void to that extent. The law also provides that nobody can confer jurisdiction to a civil court by an agreement between parties.

Facts: A and B entered into a valid contract for rendering certain service. A clause in the contract was that in case of any dispute arose out of the contract; it shall be referred to for Arbitration only. Is the contract valid?

- A. Arbitrator cannot be termed as an ordinary Tribunal. Hence, the agreement is void and would be unenforceable.
- B. The parties were trying to confer jurisdiction to some authority to decide a dispute and hence the clause would be invalid.

- C. The contract is valid but the clause regarding Arbitration is void.
- D. Arbitration is also a valid dispute settlement machinery recognized by law and hence the entire contract is valid.

183. Principle: Every agreement, of which the object or consideration is opposed to public policy, is void. An agreement which has the tendency to injure public interest or public welfare is one against public policy. What constitutes an injury to public interest or public welfare would depend upon the times and the circumstances.

Facts: 'A' promises to obtain for 'B' an employment in the public service, and 'B' promises to pay rupees 5,00,000/ to 'A'.

- A. The agreement is valid, as it is a contract between two parties with their free consent.
- B. The agreement is void because rupees 5,00,000 is excessive.
- C. The agreement is void, as the object and consideration for it is opposed to public policy.
- D. The agreement is valid, as it is with consideration for public service.

184. Principle: According to the law of trade unions in India, no suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or in furtherance of a trade dispute.

Facts: Soloman, the Secretary of a registered Trade Union took a loan from a Bank for the higher education of his daughter. Soon after completing the course she was married to an NRI Engineer. Solomon did not repay the loan. The Bank demanded the payments from Soloman and warned him that the Bank will take suitable legal action against him. Identify the legal position in this regard.

- A. The Bank can file a suit for recovery of the loan amount against Soloman as he took the loan for a personal purpose and in such case no immunity will work.
- B. The Bank cannot initiate any action against Soloman as he is the Secretary of a Registered Trade Union.
- C. The Bank can recover the loan amount from the Trade Union as Soloman is the Secretary of the Union.
- D. As Soloman did not use the loan amount for his use and hence, no action can be initiated against him.

185. Principle: When a person who has made a promise to another person to do something does not fulfill his promise, the other person becomes entitled to receive, from the person who did not fulfill his promise, compensation in the form of money.

Facts: 'X' made a promise to 'Y' to repair his car engine. 'Y' made the payment for repair. After the repair, 'Y' went for a drive in the same car. While driving the car, 'Y' met with an accident due to bursting of a tyre.

- A. 'X' will not be entitled to receive compensation.
- B. 'Y' will not be entitled to receive compensation from 'X'.
- C. 'X' will be entitled to receive compensation from 'Y' in the form of money.
- D. 'Y' will be entitled to receive compensation from 'X' in the form of money.

186. Principle: An agreement, the terms of which are not certain, or capable of being made certain, is void.

Facts: Sunder agreed to take Bhola's penthouse on rent for three years at the rate of rupees 12,00,000/ per annum provided the house was put to thorough repairs and the living rooms were decorated according to contemporary style.

- A. It is voidable contract at the option of Bhola.
- B. There is a valid contract because there is an offer from Sunder and acceptance from Bhola
- C. There is a valid contract because all the terms of contract are certain and not vague as the rent is fixed by both of them and the term 'present style' only can be interpreted to mean the latest style.
- D. There is no valid contract because it has vague and uncertain terms, as the term 'present style' may mean one thing to Sunder and another to Bhola.

187. Principle: According to Sec. 2 of the Industrial Disputes Act, 1947, 'Industrial dispute means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person'.

Facts: The employees of DK Enterprises met the management and requested half a day leave to allow them to celebrate a lunar eclipse, which was going to happen two days later. The management refused the request. Does this situation amount to an 'industrial dispute'?

- A. No as declaring holidays is a prerogative of the employer. So no industrial dispute.

- B. No as Lunar eclipse is unconnected with employment.
- C. As the difference of opinion between the employees and employer is on declaration of holiday it amounts to an issue connected with employment or with the terms of employment and hence, an industrial dispute.
- D. Yes, because there is some difference of opinion it would be an industrial dispute.

188. Principle: When a person falsifies something with the intent to deceive another person or entity is forgery and is a criminal act. Changing or adding the signature on a document, deleting it, using or possessing the false writing is also considered forgery. In the case of writing to fall under the definition, the material included must have been fabricated or altered significantly in order to represent something it is actually not.

Facts: John was a publisher of ancient books and papers. In one of his books on the World Wars, he gave photograph of some letters written by famous historic personalities. A researcher in history noted that in the pictures of some of the letters printed in the book, John had added some words or sentences in his own handwriting to give completeness to the sentences, so that the readers will get a clear picture of the writer's intention. The researcher challenges the originality of those pictures and claims that the book containing the forged letters should be banned. Examine the validity of the researcher's demand.

- A. The additions were made to give clarity to the original document and did not in any sense change the contents of the documents and hence there is no forgery as alleged by the researcher.
- B. As forgery amounts to adding or deleting anything from an original document, the demand of the researcher is valid.
- C. The additions in the letters were made by the publisher in his own handwriting would have made material alteration to the original meaning and hence amounted to forgery.
- D. Allowing forged publications to be circulated among the public is as good as committing fraud on the public, so the publication should be banned.

189. Principle: A violation of a legal right of someone, whether results in a legal injury or not, gives rise to an action in tort for compensation. At the same time, an action by someone, which results in some loss or damage to somebody else is not actionable, if there is no violation of a right of that somebody.

Facts: AB Coaching Centre was a popular CLAT coaching academy with several good trainers. A lot

of aspirants used to attend its coaching classes from all over and was making good profit. This was going on for the past several years. During a session, T, one of the very good and popular trainers of ABCC, had some difference of opinion with the owner of ABCC and left the coaching centre. In August 2016, T started another Entrance Coaching Centre closer to ABCC which resulted in a substantial drop in its students and huge financial loss. The owner of ABCC wants to file a case against T for the loss sustained by ABCC. What do you think is the right legal position?

- A. T will be liable to compensate the loss to ABCC.
- B. T started the new coaching centre near ABCC intentionally, and shall be liable to compensate the loss of ABCC.
- C. 'T' should have consulted ABCC before starting his coaching centre.
- D. T has not violated any of ABCC's legal right though they sustained some financial loss, and not legally bound to compensate ABCC.

190. Principle: Section 34 of Indian Penal Code provides that '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.'

Facts: Three vagabonds, Sanju, Dilbag and Sushil decided to commit burglary. In the night, Sushil opened the lock and they broke into a rich man's house when the entire family was on a pilgrimage. Sanju had gone to that house earlier in connection with some cleaning job. There was only a servant lady in the house. Hearing some sounds from the master bed room, the servant switched on the lights and went up to the room from where she heard the sound. Noticing that the servant was going to cry for help, Sanju grabbed her and covered her mouth with his hands and dragged her into the nearby room. The other two were collecting whatever they could from the room. When they were ready to go out of the house, they looked for Sanju and found him committing rape on the servant. They all left the house and the servant reported the matter to the police and identified Sanju. Subsequently, all three were arrested in connection with the offences of house breaking, burglary and rape. Identify the legal liability of the three.

- A. Only Sanju will be liable for rape as he was the one who actually committed the offence.
- B. All three are liable for all the offences as there was common intention to commit the crimes.
- C. Only Dilbag and Sushil are liable for burglary in looting the house, and all three will be liable

for housebreaking and rape as they did not stop Sanju from committing the offence and hence were accomplice to the offence.

- D. Sanju will be liable only for housebreaking and rape as he did not participate in the burglary.

191. Principle: An offer made by one party when accepted by another makes it a contract.

Transactions:

1. P offered to sell his house for ₹ 20 lakhs to R; R told P that he was interested to buy a house for 15 lakhs only.
2. C was looking for a house for not more than 25 lakhs; P informed C that his house was available for 20 lakhs.
3. K wanted to buy some old furniture; L told K that he would sell his furniture for ₹ 10,000.
4. R advertised to sell his old car for a price of ₹ Three lakhs; S found the advertisement and offered to buy it for ₹ 2 lakhs 50 thousand; R agrees to sell it to S.

Which among the above is actually a contract?

- A. Situation 3 only is a contract
- B. Situations 1 and 2 are contracts
- C. Situation 4 only is a contract
- D. Situations 2 and 4 are contracts

192. Principle: Where one of the parties to a contract was in a position to dominate the decision of the other party, the contract is enforceable only at the option of the party who was in a position to dominate the decision of the other party.

Facts: A doctor asked his patient to make a payment of rupees Ten Lakh for treatment of his fever. The patient paid an amount of rupees Five Lakh and promised to pay the remaining amount after the treatment. After treatment the patient recovered from fever. The doctor demanded the remaining amount from the patient. The patient refused to pay.

- A. The contract is enforceable against the patient by the doctor.
- B. The contract is enforceable against the doctor.
- C. The contract is not enforceable without the consent of the patient.
- D. The contract is not enforceable as doctor was in dominating position.

193. Principle: According to law, a person who find goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee. Bailee is a person or party to whom goods are delivered for a purpose, such as custody or repair, without transfer of ownership. The finder of the goods legally can sell

the goods found by him under certain circumstances including the situation that the owner refuses to pay the lawful charges of the finder.

Facts: P, a college student, while coming out of a Cricket stadium found a necklace, studded with apparently precious diamonds. P kept it for two days thinking that the owner would notify it in a local newspaper. Since he did not notice any such notification, P published a small classified advertisement in a local newspaper. In two days' time, P was contacted by a film actor claiming that it was her Necklace and requested P to return it to her. P told her that she should compensate him for the advertisement charges then only he would return it otherwise he will sell it and make good his expenses. The film star told P that she had advertised in a national newspaper about her lost Necklace which was lost somewhere in the Cricket Stadium. The advertisement was published for three consecutive days incurring a large expenditure for her. Mentioning all this she refuses to pay P and claims the Necklace back. Which among the following is the most appropriate answer to this?

- A. As it was wrong on the part of P to bargain over a property belonging to a celebrity and he should have accepted some gift which might have been given by the film star and returned the Necklace instead of threatening her that he would sell it.
- B. As the film star had notified in the newspaper, P ought to have read it and contacted her instead of publishing another notification. So he cannot claim any compensation.
- C. P was requesting the film star for the actual expenditure incurred by him before returning the Necklace. This request is legally sustainable.
- D. The film star was right in refusing P, as she did not offer any reward for anyone who would return the Necklace.

- 194. Principle:** The Constitution of India guarantees certain fundamental rights to its citizens. The Constitution also provides that these rights cannot be taken away by state even by a law. For violation of this, the person adversely affected by the law may approach the High Court or the Supreme Court for the issuance of an appropriate writ. One of these rights includes the freedom to form association that implies the right to join an association or not to join such an association.

Facts: Owing to some industrial disturbances created by XATU, one of the several trade unions in AB Chemicals (Pvt) Ltd., the Company issued a circular to all its employees that as far as possible the employees

may disassociate with XATU. Navin is an employee of AB Chemicals and the current General Secretary of XATU. Aggrieved by this circular, which affected the fundamental rights of his and other members of the Union, approaches the High Court of the state for a relief. Identify the most reasonable legal proposition.

- A. Circular issued by a Company amounts to law in the constitutional sense and hence the High Court can issue a writ as pleaded for by Navin.
- B. The circular interferes with the freedom guaranteed by the Constitution and hence the High Court can issue an appropriate writ.
- C. The prohibition against any imposition of restriction against a fundamental right is not applicable to anybody other than the state and hence Navin will not get any relief from the High Court.
- D. The Company's circular is illegal and has to be quashed by the Court.

- 195. Principle:** Contract is a written or spoken agreement, with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration. Such an agreement is intended to be enforceable by law. A unilateral contract is one in which there is a promise to pay or give other consideration in return for actual performance.

Facts: A Toilet Soap Manufacturing Company in India in order to promote the sale of their product, published an advertisement in all the Newspapers on January 1, 2017 that the Company has kept a model ignition key of an Audi A3 Car. The advertisement also stated that whoever gets the said key before December 31, 2017 from a soap bar will be gifted with the Audi A3 Car. Mr. Martin, a foreigner who came to India as a Tourist who was staying in a Hotel found a Key similar to same Car Ignition Key. Mr. Martin brought this matter to the notice of the Hotel Manager. The Manager informed Mr. Martin about the Company's advertisement on January 1, 2017. Mr. Martin wants to claim the Car. Will he succeed?

- A. No. The Soap Company has not entered into a contract with Mr. Martin as he was not in India on January 1, 2017 when the advertisement was published.
- B. Mr. Martin obtained the Key before the stipulated date from the Soap Bar. So he is covered by the offer of the Soap Company and can claim the car.
- C. No. Actual intention of the Company was to promote the sale of the Soap.
- D. The Hotel Manager who could legally claim the Car as he was the one actually purchased the soap for the use in the Hotel.

196. Principle: Penal laws provide that whoever voluntarily has carnal intercourse against the order of nature with any man or woman, shall be punished for rape.

Facts: A Police Officer found a man engaged in carnal intercourse with an animal. The Police Officer arrested the man and produced him before the Court.

- A. Court will not punish the police officer.
- B. Court will punish the police officer.
- C. Court will not punish the man for rape.
- D. Court will punish the man for rape.

197. Principle: Acceptance of a proposal must be absolute and unqualified.

Facts: 'A' made a proposal to sell his motorcycle to 'B' for rupees 25,000/-. 'B' agreed to buy it for rupees 24,000. 'A' sold his motorcycle to 'C' for 26,000 the next day. 'B' sues 'A' for damages.

- A. 'B' will get the difference of rupees 1,000 only
- B. 'B' will not get any damages from 'A'
- C. 'B' will get damages from 'A'
- D. 'B' can proceed against 'C'

198. Principle: It is a case of fraud where a party to a contract knows or believes a fact to be true, but conceals it actively from the other party with a view to induce that person to enter into the contract.

Facts: While taking a life insurance policy, in reply to questions by the insurance company during the inquiry into his proposal, Zameer deliberately concealed the fact of his medical treatment for a serious ailment, which he had undergone only a few weeks ago.

- A. The concealment of fact by Zameer amounted to fraud.
- B. The act of Zameer amounted to innocent misrepresentation.
- C. The act of Zameer did not amount to any misrepresentation.
- D. The act of Zameer did not amount to fraud, as disclosing the fact would have resulted in exposure of his privacy.

199. Principle: There are legal provisions to give authority to a person to use necessary force against an assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the state machinery is not readily available; and in so doing he is not answerable in law for his deeds.

Facts: X, a rich man was taking his morning walk. Due to the threat of robbers in the locality, he was carrying his pistol also. From the opposite direction, another person was coming with a ferocious looking dog. All of a sudden, the dog which was on a chain

held by the owner, started barking at X. The owner of the dog called the dog to be calm. They crossed each other without any problem. But suddenly, the dog started barking again from a distance. X immediately took out his pistol. By seeing the pistol the dog stopped barking and started walking with the owner. However, X shot at the dog which died instantly. The owner of the dog files a complaint against X, which in due course reached the Magistrate Court. X pleads the right of private defence. Decide,

- A. There was no imminent danger to X as the dog stopped barking and was walking with the owner. Hence, shooting it amounted to excessive use of the right of private defence and hence liable for killing the dog.
- B. The right of private defence is available to persons against assailants or wrong-doers only and a dog does not fall in this category.
- C. Shooting a fierce dog is not to be brought under the criminal law. So the case should be dismissed.
- D. As there was no guarantee that the dog would not bark again, shooting it was a precautionary measure and hence within the right available to X under law.

200. Principle: Under the Employees Compensation Act, 1923, an employer is liable to pay compensation to his workmen for injuries sustained by them by an accident arising out of and in the course of employment.

Facts: M, the Manager of SRK Industries asked his secretary S to submit a report at the Government Labour Office. 'S' submitted the report as directed. On his way back S met one of his class mates. He then decided to have a cup of tea together on a way side restaurant. Some time later, 'S' got a message from his office to report back as it was long time since he left the office. 'S' rushed back on his Motor Cycle. On his way back a Truck which was coming from a side road hit 'S'. He was admitted in a nearby hospital with multiple injuries. He claims compensation under the Employees Compensation Act from his employer.

- A. The Employer is liable to pay compensation as the accident took place arising out of and in the course of employment.
- B. The Employer is not liable as the truck driver was negligent.
- C. The Employer is not liable as he was admitted in a private hospital and not a Government Hospital.
- D. The Employer is liable as S had to rush back to the office, because of the message from the office.

201. Principle: When a person falsifies something with the intent to deceive another person or entity is forgery and is a criminal act. Changing or adding the signature

on a document, deleting it, using or possessing the false writing is also considered forgery. In the case of writing/painting to fall under the definition, the material included must have been fabricated or altered significantly in order to represent something it is actually not.

Facts: David made a living travelling from city to city, selling paintings that he claimed were done by great artists. Since the artists' signatures were in place, many people fell for them and purchased the paintings. One of these artists saw three of his alleged paintings in a City gallery containing his name. He knew these were not his works and he complained to the police. Police traced David and initiated legal proceedings. Is David guilty of any offence?

- A. There is no point in taking legal action against David as the signature has not done any alteration to the art work.
- B. David is guilty of forgery as the addition of the signature was with an intention to make people believe that those were the paintings of the great artists.
- C. Those who buy the art pieces from David ought to have been careful in checking it and ensuring that they were originals before purchasing it.
- D. David is not guilty of any offence as he was selling the art pieces for his living.

202. Principle: If a party to a contract agrees to it under undue influence of any other party then the party under the undue influence may refuse to perform in accordance with the agreement.

Facts: A, a rich youngster became a member of a religious group and soon he was appointed by P the head of the group as his personal secretary. As per the rules of the group, all officials and staff of the group were supposed to stay in the group's official premises itself. Some days later, A was asked by P to execute a Gift deed in favour of P, in which it was mentioned that all immovable properties in his name are being gifted to P. A was unwilling to execute the deed, but he was forcefully restrained by P and his body guards in P's office and made A sign the gift deed. Soon after this A left the group and refused to hand over the property as agreed to in the gift deed. Is A's action valid?

- A. As Gift is also a contract, the consent of A was not obtained by P while executing the deed.
- B. It is illegal for religious groups acquire property from its members.
- C. A executed the deed, under compulsion and undue influence, and was right in withdrawing from the contract.

D. As the gift deed was executed by A, he cannot refuse.

203. Principle: Whoever takes away with him any minor less than sixteen years of age if a male, or less than eighteen years of age if a female, out of the custody of parents of such minor without the consent of such parents, is said to commit no offence.

Facts: 'A', a man, took away a girl below sixteen years to Mumbai without informing the parents of the girl.

- A. 'A' committed no offence against the parents of the girl.
- B. 'A' committed no offence against the girl as well as her parents.
- C. 'A' committed an offence against the girl.
- D. 'A' committed an offence against the girl as well as her parents.

204. Principle: Nothing is an offence which is done in the exercise of the right of private defence.

Facts: 'A', under the influence of madness, attempts to kill 'B'. 'B' to save his life kills 'A'.

- A. 'B' has committed an offence.
- B. 'A' has not committed an offence because he was mad.
- C. 'B' has not committed any offence.
- D. 'A' has committed the offence of attempt to murder.

205. Principle: Negligence is actionable in law. In simple terms, negligence is the failure to take proper care over something.

Facts: A, a doctor, conducted a hysterectomy sincerely on B and left a small cotton swab inside the abdomen. As a consequence of which B developed some medical problems and had to undergo another surgery. Is A liable?

- A. A is not liable as he did not foresee any consequences at the time of surgery.
- B. As only a small swab was left in the abdomen, there was no negligence.
- C. A is liable for the negligence as he failed to take proper care during the surgery.
- D. Liability for negligence does not arise here as A performed the operation sincerely.

206. Principle: When a person interferes with peaceful possession of another person without the permission of the person in possession of those premises, commits trespass to land.

Facts: 'T' just walked over the land of 'P' to reach his house as it was a short cut. 'P' had displayed a notice that it is not a thoroughfare. 'P' did not cause any damage to the land.

- A. 'T' has not committed any trespass on the land of 'P'.
- B. 'T' has violated privacy of 'P'
- C. 'T' has committed trespass to land
- D. 'T' has created nuisance for 'P'

207. Principle: A contract would be invalid and unlawful, if the contract is for an immoral or illegal purpose.

Facts: P, was a young and helpless widow, living on the pavement. R, a neighbour gave her a house, registered in her name, on the condition that she should allow R to keep his smuggled goods and drugs in her house. After the registration was done, according to the condition in the contract, R's agents went to keep some packets in her house, she refused. R told her the condition under which the house was given to her. She still refused. Is P justified in her action?

- A. As R was making the contract for illegal activities, P's stand is valid in law.
- B. R can take back the house by cancelling the transfer deed.
- C. P is right as she did not like smuggled goods to be kept in her house.
- D. P is not justified as she did not have the right to deny R's request.

208. Principle: When a person consented to an act to be done by another, he cannot claim any damages resulting from doing that act, provided the act done is the same for which consent is given.

Facts: 'P' submitted a written consent to a surgeon 'S' for undergoing a surgical operation for removal of appendicitis. The surgeon while doing surgery also removed the gall bladder of 'A'.

- A. 'P' is required to pay expenses for surgery for Appendicitis but not for gall bladder
- B. 'P' is not bound to pay expenses of the surgery
- C. 'P' can claim damages from 'S'
- D. 'P' cannot claim damages from 'S'

209. Principle: A master shall be liable for the fraudulent acts of his servants committed in the course of employment. However, the master and third parties must exercise reasonable care in this regard.

Facts: Rahul was a door to door salesman with United Manufacturing Company (the Company). The Company was manufacturing Water Purifiers. Rahul, along with the Company's products, used to carry Water Purifiers manufactured by his Cousin in a local Industrial Estate. He used to sell the local product at a lower rate giving the impression to the buyers that he is offering a discount on the Company's product. The

Company Management detected the fraudulent activity of Rahul and dismissed him from service. Rahul still continued to carry on with his activity of selling the local product pretending that he was still a salesman of the Company. Several customers got cheated in this process. The fraud was noticed by the Company when the customers began to complain about the product. The customers demanded the Company to compensate their loss.

- A. The Company is liable to compensate all the customers as it did not inform the public about Rahul's fraudulent conduct and the subsequent dismissal.
- B. The liability rests with the local manufacturer as it was a defective product.
- C. The Company is not liable as Rahul was dismissed by the Company.
- D. The Company is liable to the customers who purchased the local product from Rahul only till he remained as a salesman of the Company.

210. Principle: A person is said to do a thing fraudulently, if he does that thing with intent to defraud, but not otherwise.

Facts: 'A' occasionally hands over his ATM card to 'B' to withdraw money for 'A'. On one occasion 'B' without the knowledge of 'A', uses 'A's' ATM card to find out the balance in 'A's' account, but does not withdraw any money.

- A. 'B' has not committed the act fraudulently
- B. 'B' has committed the act fraudulently
- C. 'B' has committed misappropriation
- D. 'B' has committed breach of faith

211. Principle: Assault is causing bodily injury to another person by use of physical force.

Facts: Rustum while entering into compartment of a train raised his fist in anger towards a person Sheetal, just in front of him in the row, to get way to enter into the train first, but did not hit him. Rustum has:

- A. Insulted Sheetal
- B. Rightly showed his anger
- C. Committed an assault on Sheetal
- D. Not committed an assault on Sheetal

212. Principle: Ownership in property consists of right to possess, right to use, right to alienate and right to exclude others. Sale is complete when property gets transferred from the seller to the buyer on sale.

Facts: 'A' sold his car to 'B'. After this, 'B' requested 'A' to keep the car in his care on behalf 'B' for one month. 'A' agreed.

- A. Sale will be automatically completed after the expiry of one month
 B. Sale will be completed when 'B' will take the delivery of the car.
 C. Sale of car is not complete
 D. Sale of car is complete.
- 213. Principle:** When a person makes such a statement which lowers other person's reputation in the estimation of other persons, is liable for committing defamation.
- Facts:** 'A' writes a letter to 'B' in which he uses abusive language against 'B' and also states that 'B' is a dishonest person. 'A' put the letter in a sealed envelope and delivered it to 'B'.
- A. 'A' has committed defamation
 B. 'A' has not committed moral wrong
 C. 'A' has not committed defamation
 D. 'A' has committed a moral wrong
- 214. Principle:** The concept of natural justice is against bias and for the right to a fair hearing. While the term natural justice is often retained as a general concept, and it has largely been replaced and extended by the general 'duty to act fairly'.
- Fact:** 'X', a male employee of a company was dismissed by the employer just on the basis of a complaint by 'Y', a female employee of the company that 'X' was trying to be too friendly with her and often requested her to accompany him to the canteen. Is the dismissal of 'X' valid?
- A. No, because the employer did not give a chance to 'X' to explain his side, thereby violated the principles of natural justice.
 B. Yes, moral law is antique and therefore, not applicable in modern times, therefore the termination is valid and no violations of the principles of natural justice occurred.
 C. Yes, because men are not supposed to behave improperly with women and hence there is no violation of any principles of law.
 D. No, because in the modern times this type of behaviour is common.
- Directions (Qs. No. 215-230):** Legal phrases are followed by four meanings. Choose the most appropriate option:
- 215.** In pari delicto:
 A. Where the petitioner is at fault
 B. Where both parties to a dispute are equally at fault
 C. Where the lawyer is at fault
 D. Where the judge is at fault
- 216.** Turpis arbiter' means:
 A. Inefficient lawyer
 B. Corrupt judge
 C. Inefficient judge
 D. Corrupt prosecutor
- 217.** Caveat venditor:
 A. Manufacturer beware
 B. Buyer beware
 C. Seller beware
 D. Transporter beware
- 218.** 'Animus possidendi' means:
 A. Intent to contract
 B. Intention to harm
 C. Intention to return
 D. Intention to possess
- 219.** Malus animus:
 A. Bad intention
 B. Animal farm
 C. Good intention
 D. Physical force
- 220.** Lex loci:
 A. Italian laws
 B. Domestic laws
 C. Latin regulations
 D. Law of a place
- 221.** Per incuriam:
 A. Mistaken decision
 B. Supremacy of law
 C. Mistaken identity
 D. Supremacy of the Constitution
- 222.** 'Sine die' means:
 A. Adjourned for the day and scheduled to meet next day again.
 B. Adjourned for the day and meet after one week.
 C. Adjourned without fixing any date for the next meeting.
 D. Adjourned for the day and meet after one month.
- 223.** Bona vacantia:
 A. Vacant land.
 B. Order of the court for eviction.
 C. Goods that have no owner.
 D. Vacant building.
- 224.** 'Jus Gentium' means:
 A. Global administrative law
 B. Law of Societies
 C. Law among Nations
 D. Global justice
- 225.** Pari passu:
 A. On an unequal status
 B. Supremacy of law
 C. Diverse nature
 D. On equal footing

226. ‘Punctum Temporis’ means:

- A. Temporary position
- B. Point of time
- C. Functional authority
- D. Timely assistance

227. Autrefois convict:

- A. Formerly convicted
- B. Doubtful conviction
- C. Failed prosecution
- D. To be convicted

228. Lis pendens:

- A. Facts of case proved
- B. Decided case

C. Pending suit

D. No legal issues involved

229. Faux pas:

- A. Passage of time
- B. Cheating
- C. Pausing for a while
- D. Tactless mistake

230. ‘audi alteram partem’ means:

- A. Not connected to facts.
- B. Following the substantive law.
- C. A transferee cannot retransfer.
- D. Giving opportunity of hearing of the other side.

ANSWERS

1	2	3	4	5	6	7	8	9	10
B	A	A	D	C	A	C	B	D	D
11	12	13	14	15	16	17	18	19	20
B	D	A	C	B	A	D	A	D	B
21	22	23	24	25	26	27	28	29	30
D	C	D	D	B	D	A	B	D	C
31	32	33	34	35	36	37	38	39	40
C	A	B	B	D	A	C	D	B	C
41	42	43	44	45	46	47	48	49	50
B	C	B	D	C	A	B	C	C	D
51	52	53	54	55	56	57	58	59	60
B	B	C	C	A	C	D	B	C	D
61	62	63	64	65	66	67	68	69	70
D	C	D	C	B	D	A	A	A	B
71	72	73	74	75	76	77	78	79	80
B	A	C	D	D	C	A	C	A	B
81	82	83	84	85	86	87	88	89	90
D	B	D	A	A	A	A	B	B	B
91	92	93	94	95	96	97	98	99	100
D	B	A	C	D	A	B	B	A	A
101	102	103	104	105	106	107	108	109	110
B	A	A	C	A	A	B	A	B	A
111	112	113	114	115	116	117	118	119	120
B	C	D	D	B	A	D	A	C	C
121	122	123	124	125	126	127	128	129	130
B	A	D	D	C	B	A	A	A	D
131	132	133	134	135	136	137	138	139	140
A	A	B	B	C	A	A	B	C	B
141	142	143	144	145	146	147	148	149	150
B	D	C	B	C	B	B	B	C	C

151 A	152 D	153 C	154 C	155 B	156 B	157 A	158 C	159 B	160 B
161 A	162 C	163 C	164 D	165 C	166 B	167 C	168 C	169 B	170 C
171 C	172 C	173 C	174 C	175 B	176 A	177 D	178 A	179 A	180 D
181 B	182 D	183 C	184 A	185 B	186 D	187 C	188 A	189 D	190 A
191 C	192 A	193 C	194 C	195 B	196 C	197 B	198 A	199 A	200 A
201 B	202 C	203 B	204 C	205 C	206 C	207 A	208 C	209 A	210 A
211 D	212 D	213 C	214 A	215 B	216 B	217 C	218 D	219 A	220 D
221 A	222 C	223 C	224 C	225 D	226 B	227 A	228 C	229 D	230 D

