

**AL-AMEEN COLLEGE OF LAW**  
(Affiliated to KSLU, Hubballi)  
Near Lal Bagh Main Gate, Hosur Road, Bengaluru.

## Model Answers December 2019

### I Semester 3 Year LL.B.

#### CRIMINAL LAW – I (Indian Penal Code)

Duration: 2 1/2 Hours

Max. Marks: 80

- Instructions:**
1. Answer **all five** units.
  2. **One** essay type question and **one** short note/problem is compulsory from each unit.
  3. Figures to the **right** indicate marks.
  4. Answers should be written either in **English** or in **Kannada completely**.

#### UNIT - I

Q. No. 1. (a) Explain the maxim “actus non facit reum nisi mens sit rea.” Marks : 10

OR

Critically examine the territorial and extraterritorial jurisdiction of the Indian Penal Code.

- (b) ‘S’ wants to kill his wife. On the suggestion of ‘T’ he gave a poisoned apple to his wife, but she innocently gave it to her girl child, who died from eating it. Decide the liability of ‘S’ and ‘T’. Marks : 06

OR

Write a short note on ‘Solitary confinement’.

ANSWER :

1(a). Territorial and extra-territorial jurisdiction of the Indian Penal Code.

**Title and extent of operation of the Code (Sec.1)** This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir.

**Punishment of offences committed within India (Sec.2)** Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which, he shall be guilty within India.

There is no exceptions infavour of any one but the following persons always exempted from the jurisdiction of every country.

- Foreign sovereigns
- Ambassadors
- Alien enemies
- Foreign army
- Warship
- President and Governors.

**2. With in India.** If the Offence is committed outside India it is not punishable under I.P.C unless it has been made so by means of special provisions such as section.3,4, 108A of etc of the code.

**Territorial Jurisdiction:-** The territorial waters extend into yhe sea 12 nautical mile to into the sea measured from appropriate base line. The territories strictly speaking of a state includes therefore not only the compass of land in the ordinary acceptance of the term belonging to such state but also that portion of sea lying along and washing its coasts which is commonly called its maritime territory. The laws of that state apply to acts committed with in them.

**Punishment of offences committed beyond but which by law may be tried within India (Sec.3)** Any person liable, by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

**Extension of Code to extra-territorial offences (Sec.4)** The provisions of this Code apply also to any offence committed by-

(1) any citizen of India in any place without and beyond India;

- a) **Crimes Committed outside India:-** Where an offence is committed beyond the limits of India but the offender is found within its limits, then
- b) He may be given up for trial in the country where the offences was committed.(extradition)
- c) He may be tried in India.

**Extra-territorial jurisdiction:-**

Indian courts are empowered to try offence committed out of India on

- a) Land
- b) High seas or
- c) Air craft.

(2) any person on any ship or aircraft registered in India wherever it may be.

Explanation- In this section the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code.

#### **Certain Laws not to be affected by this Act. ( Sec.5)**

Nothing in this act shall affect the provisions of any act for punishing mutiny and desertion of officers, soldiers, sailors or airman in the service of the govt of India or the provisions of any special or local law.

Though the code was intended to be a general one it was not thought desirable to make it exhaustive, and hence offences defined by local and special laws were left out of the code and merely declared to be punishable as theretofore held in *Ramachandrappa*(1883)6Mad249. Thus the personnel of the army, navy and airforce are governed by the provisions of the Army act 1950, Navy act 1957, the Indian airforce Act 1950 in regard to the offences of mutiny and desertion committed by them.

#### **Illustration**

A, who is a citizen of India , commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

#### **Case Law.**

#### **Mubarak ali v/s State of Bombay (1957)61 Bombay Lr58.**

A foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporal presence in India at the time.

#### **Syndicate transport co. 1963, 66 Bombay LR197.**

It has been held that a company cannot be indictable for offences which can be committed by human individual alone like treason , murder , perjury etc, or for offences which are compulsorily punishable with imprisonment or corporal punishment.

**Conclusion:-** Thus from the above explanation it comes to a conclusion that any person commit any offence within territory and extra territorial offences will be punished under this Act.

#### 1(b). Solitary confinement

**Solitary confinement (Sec.73)** Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say- a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two

months if the term of imprisonment shall exceed six months and shall not exceed one year; a time not exceeding three months if the term of imprisonment shall exceed one year.

**Limit of solitary confinement (Sec.74)** In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

## UNIT - II

Q. No. 2. (a) Explain the right of private defence. When does it extend to causing death while defending the body? Marks : 10

OR

**What is Criminal Conspiracy? How does it differ from abetment?**

(b) Four persons went armed with guns to the house of 'A' to commit robbery. One accused robbed the house, one accused caused injury to 'A' and the two other accused were standing outside the house to help co-accused. Whether all the four accused liable for the offence?

Marks : 06

OR

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. Whether A has committed any offence?

ANSWER :

### 2(a). Criminal Conspiracy

**Definition :- Section 120A.** Definition of criminal conspiracy When two or more persons agree to do, or cause to be done an illegal act.

#### Ingredients for Criminal Conspiracy

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

### **Punishment of criminal conspiracy (Sec.120B)**

- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
- (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

### **Abetment of a thing(Sec.107)**

A person abets the doing of a thing, who instigates any person to do that thing.

#### **Ingredients of abetment**

- a)- Instigates any person to do that thing; or
- b)- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
- c)- Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1- A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

#### **Illustration**

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

### **Abettor(sec 108)**

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- 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.

3- 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 intention or knowledge as that of the abettor, or any guilty intention or knowledge.

### **Difference between Criminal conspiracy and abetment.**

- 1) Conspiracy is a form of abetment
- 2) Abetment is committed in the various ways enumerated in sections 107 to 108 above of which conspiracy is one.
- 3) Abetment is not per se a substantive offence
- 4) Criminal conspiracy is a substantive offence by itself and punishable as such
- 5) A mere conspiracy would not amount to abetment and it would appear that if conspirator were detected before they had done more than discussed plan with a general intention to commit an offence they would not be liable as abettors.

### 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
- (c) 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.
- (d) with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence. A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder and he is therefore subject to the punishment of death.

### Conclusion:-

The above mentioned points are the difference between Criminal Conspiracy and abetment Criminal conspiracy is one of the offence under abetment.

2(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. Whether A has committed any offence?

Here A has committed no offence. Section 76 IPC reads;

S.76. 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 mistake of fact and not by reason of mistake of law in good faith believing himself to be, bound by law to do it.

Illustration (b) of this section resembles to the given problem. Thus in the given problem A has not committed any offence.

Q. No. 3. (a) Define Culpable Homicide and discuss when Culpable Homicide amounts to murder?

Marks : 10

OR

Explain 'Force', 'Criminal force' and 'Assault'.

(b) Write a short note on 'Dowry death'.

Marks : 06

OR

'A' causes 'B' to go within a room and locks 'B' in, with an intention to prevent him from proceeding in any direction beyond the room. What offence has 'A' committed?

ANSWER :

3(a) Culpable Homicide and Murder

**Definition:- Section.299. 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.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

**Explanation 1-** A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

**Explanation 2-** Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

**Explanation 3-** The causing. of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

## **Murder (Sec.300)**

- 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
- 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-
- 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-
- 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.

**Exception 3-** Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

**Exception 4.** -Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault. **Exception 5-** Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

### **Illustration**

A, by instigation, voluntarily causes Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

**Culpable homicide by causing death of person other than person whose death was intended (Sec.301)** If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

**Punishment for murder (Sec.302)** Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

## Case Law.

### Basappa 1960 CrLj 1222.(Mys)

Where a person attacked by his enemies on a roof and given a few cuts with a dangerous weapon and in order to avoid the attack he jumped from the roof to his death it was held that even if the death was caused by his own act of jumping the accused were guilty of murder as jumping was necessitated by their act.

**Conclusion:-** In Culpable homicide a person is killed and the person who is responsible for this killing is liable for punishment but in murder the person is having criminal intention to kill that person but in culpable homicide intention is not there so for the offence murder the punishment is more compared to culpable homicide.

3(b). 'A' Causes 'B' to go within a room and locks 'B' in, with an intention to prevent him from proceeding in any direction beyond the room. What offence has 'A' committed.

"A" is committed an offence called Wrongful Confinement.

'A' is liable for the punishment under this act he is locked 'B' in room and not allowed to move in any directions so he committed the offence of Wrongful Confinement under Section 340.

## UNIT - IV

Q. No. 4. (a) What is kidnapping from lawful guardianship? How does it differ from abduction? Marks : 10

OR

**What is robbery? When does it becomes dacoity?**

(b) A cuts down a tree on B's land dishonestly without B's consent. Decide the offence of 'A'. Marks : 06

OR

Write a short note on 'Cheating'.

ANSWER :

### Robbery and Dacoity

**Definition:-Section 390. Robbery** In all robbery there is either theft or extortion. When theft is robbery-

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carving away or attempting to carry away property obtained by the theft, the offender, for

that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

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

Explanation- The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

### **Illustrations**

(a) A holds Z down and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high roads, shows a pistol, and demands Z's purse. Z in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying- "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

**Dacoity (Sec.391)** When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

**Punishment for robbery (Sec.392)** Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

**Attempt to commit robbery (Sec.393)**Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**Voluntarily causing hurt in committing robbery (Sec.394)**If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting, to commit such robbery, shall be punished

with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Punishment for dacoity (Sec.395)** Whoever commits dacoity shall be punished with 152[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Dacoity with murder (Sec.396)** If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Robbery, or dacoity, with attempt to cause death or grievous hurt (Sec.397)** If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

**Attempt to commit robbery or dacoity when armed with deadly weapon (Sec.398)** If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

**Making preparation to commit dacoity (Sec.399)** Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Punishment for belonging to gang of dacoits (Sec.400)** Whoever, at any time after the passing of' this Act, shall belong, to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with 152[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Punishment for belonging to gang of thieves (Sec.401)** Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of 'thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**Assembling for purpose of committing dacoity (Sec.402)** Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

#### **Case Law.**

Padmanava mahapatra 1983CrIj NOC238 (Ori)

In order to make an offence of theft a robbery there must be either theft and injury or threat of injury while committing theft.

**Conclusion:-** When five or more persons jointly attempt to commit robbery and they jointly helping each other while committing the offence is considered as dacoity.

#### 4(b). Cheating

**Definition :- Section 415. 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.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.

**Cheating by personation (Sec.416)** A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. Explanation- The offence is committed whether the individual personated is a real or imaginary person.

#### Illustration

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

**Punishment for cheating (Sec.417)** Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

### UNIT - V

Q. No. 5. (a) Explain the offence of mischief. Substantiate your answer with illustrations. Marks : 10

OR

**What is defamation? Explain its ingredients.**

(b) Write a short note on 'Bigamy'. Marks : 06

OR

Write a note on 'Criminal intimidation'.

ANSWER :

#### 5(a) Defamation

**Definition:- Section.499.** Defamation Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

**Explanation 1-** It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

**Explanation 2-** It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

**Explanation 3-** An imputation in the form of an alternative or expressed ironically, may amount to defamation.

**Explanation 4-** No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loath some state, or in a state generally considered as disgraceful.

#### Illustrations

(a) A says-"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

**First Exception-** imputation of truth which public good, requires to be made or published- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

**Second Exception-** Public conduct of public servants- It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

**Third Exception-** Conduct of any person touching any public question- It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

### **Illustration**

it is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending a such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharges of the duties of which the public is interested.

**Fourth Exception-** Publication of reports of proceedings of Courts- It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation- A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

**Fifth Exception-** Merits of case decided in Court or conduct of witnesses and others concerned- It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

## **Illustrations**

(a) A says-"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says-"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

**Sixth Exception-** Merits of public performance- It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgement of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation- A performance may be submitted to the judgement of the public expressly or by acts on the part of the author which imply such submission to the judgement of the public.

## **Illustrations**

(a) A person who publishes a book, submits that book to the judgement of the public.

(b) A person who makes a speech in public, submits that speech to the judgement of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing in the judgement of the public.

(d) A says of a book published by Z- "Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says-"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine. A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

**Seventh Exception-** Censure passed in good faith by person having lawful authority over another- It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

## **Illustration**

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring

in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier-are within the exception.

**Eight Exception-** Accusation preferred in good faith to authorised person- It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

### **Illustration**

If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, and child, to Z's father-A is within this exception. Ninth Exception- Imputation made in good faith by person for protection of his or other's interests- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

A, a shopkeeper, says to B, who manages his business-"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

**Tenth Exception-** Caution intended for good of person to whom conveyed or for public good- it is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

**Punishment for defamation (Sec.500)** Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

**Printing or engraving matter known to be defamatory (Sec.501)** Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

**Sale of printed or engraved substance containing defamatory matter (Sec.502)** Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both

## **Case Law.**

### **Gautham sahu v/s State of Orissa 1999 CrIj 838**

The accused married the complainant by exchange of garlands in a temple. He lived with her for a few days and then started demanding money and described her as unchaste woman and not decent looking the court said that the ingredients of section 500 prima facie made out and therefore the accused liable to be prosecuted.

**Conclusion:-** by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is called defamation.

5(b) Criminal intimidation

### **Criminal intimidation: Section 503 IPC**

This section defines the offence of criminal intimidation. It says that whoever threatens another with any injury either to his person, reputation or property, or to the person or reputation of anyone in whom that person is interested, with the intention of causing alarm to that person, or to cause that person to do any such act which he is not legally bound to do, or to omit to do any act which that other person is entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. There is an explanation attached to the section according to which a threat to injure the reputation of any person who is dead in whom the person threatened is interested, is within this section.

The section contemplates that the offender must threaten another with any injury to his person, reputation or property, or to the person or reputation, and not to property, of any one in whom that person is interested. The intention of the offender must be to cause alarm to the person threatened, or to cause the person threatened either to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, as the means of avoiding the execution of such threat.

The explanation that a threat to injure the reputation of any deceased person in whom the person threatened is interested within this section, is similar to the provisions in the first explanation of section 499 dealing with defamation. The threat under this section is not dependent on the nerves of the victim because the section nowhere says so.

It may not necessarily be direct; it is sufficient if it reaches the victim through third parties. A mere advice to another not to deal with a person cannot constitute threatening because the threatening must be with any injury to the person, reputation or property of another or the person or reputation of anyone in whom the victim is interested.

The word 'injury' has the same meaning as given under section 44 of the Code, and therefore, threatening with divine displeasure or spiritual hardship and the like, cannot form the basis of any guilt for criminal intimidation. The language of the section unambiguously says that if the offender threatens not the victim but anyone in whom the victim is interested then the threat must be to the person or reputation of such person and threat to property has been deliberately omitted from this part of the section.

Threat of excommunication from the caste, or of social boycott does not attract section 503 because there is no threat of injury to one's person, reputation or property. Similarly, threat of picketing in those days when it was not prohibited by law would not be criminal intimidation on similar grounds.

The capacity of the accused may sometimes have relevance in a case dealing with this offence. Where the accused, a sick man of seventy-four years of age, while talking with four or five persons including the complainant, got infuriated and threatened the complainant, he was held not guilty of criminal intimidation. Threat to ruin another by false cases does not amount to criminal intimidation.

Where a charge-sheeted employee on meeting the chairman of the company was told that his days were numbered this section was held to be inapplicable because he may have intended that the services of the complainant were not expected to last after some time. Where the offender, while threatening, used abusive language and threatened to pull the woman complainant by hair and kicked her on the waist, it was held that the accused was guilty of committing criminal intimidation.

Where the lady teacher complainant was threatened by the head master of the school that if she did not sign certain blank papers, he would spoil her modesty, he was held guilty of this offence. Where indecent photographs of a girl were taken and her father was threatened to pay hush money failing which the photographs would be published, it was held that the offence committed was criminal intimidation and not attempted extortion.

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