

**CS EXECUTIVE NEW SYLLABUS**  
**JURISPRUDENCE INTERPRETATION & GENERAL LAWS**

**Topic Name: Constitution of India, Civil Procedure Code and Criminal Procedure Code.**

**ATTEMPT ALL QUESTIONS**

**Time: 90 Minutes.**

**Marks-50**

**Q1. Case Study.**

**(20 marks)**

The Principal of a convent school, Vantara, Sister Mary Berno, filed a case against two persons named, Ali Khan and John Austin alleging that they had made defamatory remarks in the complaint which they had submitted to the Deputy Commissioner, Vantara. The accused stated in the complaint “that the building of the aforesaid school is quite unsafe and it may bring about any disaster upon the students of this school at any time; that it is as a money minting institution; that the indiscipline among the students is to an unlimited extent and this has created a great problem for the nearby residents. That it appears that this school has become a meeting place for the both sexes and the principal, Sister Mary Berno is turning a deaf ear towards the character of the students; that if these are not checked in time, they may become a great problem for the city”.

In an enquiry before the Sub Divisional Magistrate (SDM), the allegations of the accused were found to be false and their complaint was dismissed.

Consequently, Sister Mary Berno approaches police station to file criminal defamation case against the accused persons. Police registers a case of defamation, a bailable offence against Ali Khan and John Austin, who later files an application in Court asking for anticipatory bail.

Sister Mary Berno also files civil suits seeking compensation for defamation. In the reference of above facts answer the following questions :

- (a) What is criminal defamation in Indian law ? **(4 marks)**
- (b) Is the application for ‘anticipatory bail’ by accused Ali Khan and John Austin maintainable ? Explain. **(4 marks)**
- (c) Whether the complaint filed by the Ali Khan and John Austin against Sister Mary Berno leads to Libel defamation or Slander defamation ? Explain. **(3 marks)**
- (d) What is the jurisdiction of the Court to try civil suit ‘where wrong done to the person’ ? **(3 marks)**
- (e) What is ‘publication of defamatory words’ ? **(3 marks)**
- (f) What is the time period of limitation for compensation in defamation ? **(3 marks)**

**Answer:**

**Answer 1(a)**

According to Section 499 of Indian Penal Code, 1860 whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, 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 loathsome state, or in a state generally considered as disgraceful.

**Answer 1(b)**

Section 438 of the Code of Criminal Procedure, 1973 (Cr. P.C.) provides the provisions relating to ‘Anticipatory Bail’. According to section 438 of Cr. P.C. when any person has reason to believe that he may

be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

Defamation being a bailable offence and anticipatory bail under Cr.P.C. can be given only to a person who apprehends arrest for a non-bailable offence. Hence in the given situation application of Ali Khan and John Austin is non-maintainable.

**Answer 1(c)**

In libel, the defamatory statement is a representation made in some permanent and visible form, such as written words, caricatures, cinema films, effigy, statue, recorded words, printing or pictures.

In slander, it is made with spoken words or in some other transitory form, whether visible or audible, statement of temporary nature such as gestures, spoken words or inarticulate but significant sounds.

In the given situation, the complaint made can lead to be Libel defamation of Sister Mary Berno.

**Alternate Answer 1(c)**

Eight Exception provided under section 499 of the Indian Penal Code, 1860 provides that 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 to the eight exception provided under section 499 of the Indian Penal Code, 1860, provides that if A in good faith accuses 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, a child, to Z's father-A is within this exception.

In the given situation, the complaint made may not lead to defamation.

**Answer 1(d)**

Section 19 of the Code of Civil Procedure, 1908 provides the provisions relating to Suits for compensation for wrongs to person or movables. It states:

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

**Answer 1(e)**

'Publication of defamatory words' means the making known of the defamatory matter after it has been written to some person other than the person of whom it is written. The ambit of 'publish' is very wide. The publication of defamatory matter means that it is communicated to some person other than the person about whom it is addressed. In essence, publication is the communication of the statement to any third party i.e. not the claimant or the defendant.

**Answer 1(f)**

The time periods of limitation for compensation in defamation are as under: For compensation for libel: One year from when the libel is published.

For compensation for slander: One year when the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.

**Q2. Answer the following questions.**

**(5 marks each)**

1. Sujay, an accused, committed an offence of dacoity in 2015. At that time dacoity was punishable with imprisonment of 10 years. In 2016 during his trial, a law was passed which made dacoity punishable with life imprisonment. Which penalty would be applicable on accused Sujay? Discuss the answer with reference to Article 20(1) of the Indian Constitution.

**Answer:**

**Protection in respect of conviction for offences [Article 20(1)]:**

No person shall be convicted of any offence except for violation of a law in force at the time of 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.

If a particular act was not offence according to the law of the land at the time when the person did that act then he cannot be convicted under a law which with retrospective effect declaring that act as an offence.

In the given case, Sujay has committed offence of dacoity in the year 2015. At that time, it was punishable with imprisonment of 10 years. By a law passed after his committing the dacoity the penalty, for his act cannot be increased from 10 to 11 years or to life imprisonment.

In short, so far as criminal law creates a new offence or increase the penalty, it shall be applicable only to those offences which are committed after its coming into force and cannot cover those offences which have already been committed in the past.

2. "Reference & Review are various remedies provided under the Civil Procedure Code, 1908 to cater to different situations." Explain.

**Answer :**

Reference to High Court [Section 113]: At any time before judgment, a Court in which a suit has been instituted may state a case and refer the same for opinion of the High Court and the High Court may make such order thereon as it thinks fit.

Review [Section 114]: Any person considering himself aggrieved by a decree or order may apply for a review of judgment to the Court which passed the decree or order on any of the grounds as mentioned below:

(a) Discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made.

(b) On account of some mistake or error apparent on the face of the record.

(c) Any other sufficient reason.

Revision [Section 115]: The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies and if such subordinate Court appears:

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity the High Court may make such order as it thinks fit

**Q3. Answer the following questions.**

**(5 marks each)**

1. Praveen takes property belonging to Ganesh out of Ganesh possession in good faith belonging at the time when he takes it that the property belongs to himself. Later on Praveen discovers his mistake, dishonestly misappropriates the property to his own use. Explain 2019 offence he has done?

**Answer:**

**Dishonest misappropriation of property [Section 403]:** Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished

With imprisonment of either description for a term which may extend to 2 years or With fine or

With both

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

Facts given in case are similar to illustration appended to the Section 403 of the Indian Penal Code, 1860 and thus if Praveen dishonestly appropriates the property to his own use he commits the offence of 'dishonest misappropriation of property and will be liable to punishment as stated above.

2. "Trade, commerce and Intercourse throughout the territory of India shall be free". Critically examine this statement with reference to Indian Constitution.

**Answer:**

**Freedom of trade, commerce and intercourse [Article 301]:** Trade, commerce and intercourse throughout the territory of India shall be free.

The word 'free' in Article 301 cannot mean an absolute freedom such measures as traffic regulations, licensing of vehicles etc. are not open to challenge. The Supreme Court held that gambling is not trade. Similarly, price competition beings of gambling in nature, cannot be regarded as trade or commerce and as such, is not protected under this Article. [State of Bombay v. RMDC].

The Supreme Court in *Atiabari Tea Co. v. State of Assam*, declared that only those laws which "directly and immediately" restrict or impede the freedom of trade and commerce are covered by Article 301.

**Power of Parliament to impose restrictions [Article 302]:** Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one state and another or within any party of territory of India as may be required in the public interest.

**Restrictions on the legislative powers [Article 303]:** It prevents to Parliament/State Legislature to make any law giving, any preference to one State over another, or authorizing any discrimination between one State and another.

**Restrictions on trade, commerce and intercourse among States [Article 304]:** The legislature of State may impose a tax on goods imported from other States or union territory to which similar goods manufactured or produced in that State are subject. However the State should not discriminate between goods imported from one State with goods of that State. State can also impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest.

**Saving laws providing for State monopoly [Article 305]:**

The law which creates State monopoly in any trade is saved from the attack under Article 301.

**Appointment of authority [Article 307]:** Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of Articles 301 to 304 and confer such powers and duties as it thinks necessary.

#### **Q4. Answer the following questions.**

**(5 marks each)**

1. Discuss the provisions of Civil Procedure Code, 1908 which prevents multiplicity of suits in respect of same cause of action.

**Answer :**

Stay of suit (Doctrine of res sub judice) [Section 10]: No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court (in India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court. The provision of Section 10 popularly known as principal of res sub judice.

In simple words if suit is pending in one Court then other Court cannot take such suit in which matter is same i.e. to say two courts cannot deal with the same matter at the same time.

Essential conditions for stay of suits:

- (1) There must be two suits instituted at different times.
- (2) The matter in issue in the later suit should be directly and substantially in issue in the earlier suit.
- (3) Such earlier suit should be between the same parties.
- (4) Such earlier suit is still pending either in the same Court or in any other competent Court but not before a foreign Court.

Object of Section 10: Object of Section 10 is to prevent multiplicity of proceedings with regard to the same subject matter and avoid contradictory judgment being given by the Courts.

2. A prostitute communicated venereal disease to X who had sexual intercourse with her, on the strength of her representation that she is free from any disease. Write a short note on cheating by personation.

**Answer:**

**Cheating by personation [Section 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.

**Punishment for cheating by personation [Section 419]:** Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to 3 years, or with fine, or with both.

**Example:** Renuka receives a Face Book message and friend request that appears to have been sent from a young and smart boy-Rahul. The information sent by Rahul shows that he is Government Officer working in Satara and draws attractive salary and also that he is bachelor and seeking a beautiful girl for marriage. Attracted by the message of Rahul, Renuka meets with Rahul and they fall in love. Gradually it led to sexual relations. Later Rahul began to ask money from Renuka for one or other reason. In enquiry, it is discovered that Rahul is not a Government employee and he has taken education only up to 10th Standard. Rahul has committed offence of cheating by personation u/s 416 and will be punished u/s 419 of the Indian Penal Code, 1860.

**BEST OF LUCK**

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