

## COMMON LAW ADMISSION TEST-2020-UG

### Legal Reasoning

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]*

67. 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.

**CORRECT ANSWER : OPTION B**

68. 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.

**CORRECT ANSWER : OPTION C**

69. 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.

**CORRECT ANSWER : OPTION B**

70. 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.

**CORRECT ANSWER : OPTION D**

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.

71. A, daily local newspaper called ‘Ramanand Bazar Patrika’ having wide circulation in Anandnagar published, on 1<sup>st</sup> 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 picturises 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).

**CORRECT ANSWER : OPTION C**

72. 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.

**CORRECT ANSWER : OPTION A**

73. 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.

**CORRECT ANSWER : OPTION B**

74. 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.

**CORRECT ANSWER : OPTION C**

75. 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.

**CORRECT ANSWER : OPTION C**

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.

76. Under which of the following principles, will the company LG Polymers be liable?

- a) Polluter Pays Principle
- b) Strict Liability
- c) Absolute Liability
- d) All of the above

**CORRECT ANSWER : OPTION D**

77. As per the Polluter Pays Principle, LG Polymers will be liable to pay:

- a) Amount of Money for restoration of environment only.
- b) Amount of Money for restoration of environment and compensation to Individuals who suffered the loss.
- c) Compensation to the victims.
- d) None of the above.

**CORRECT ANSWER : OPTION B**

78. 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:

- a) ABC Limited can be held liable under the principles of Strict and Absolute Liability and Polluter pays principle as well.
- b) 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.
- c) ABC Limited will not be held liable under any of the Principles.
- d) 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.

**CORRECT ANSWER : OPTION B**

79. The argument of LG Polymers that, they did not know that the Styrene Gas could leak:

- a) is a strong argument and can reduce their liability under the Polluter Pays Principle.
- b) is a strong argument and can reduce their liability under the Strict Liability Principle.
- c) is a weak argument and will not help in reducing the liability of LG Polymers under any of the principles.
- d) is a weak argument but may help in reducing their liability under the Strict Liability Principle.

**CORRECT ANSWER : OPTION C**

80. 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,

- a) XYZ will be absolutely liable but not strictly liable.
- b) XYZ will not be liable under the Strict and Absolute liability principles because the leakage only killed the pests and insects.
- c) 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.

**CORRECT ANSWER : OPTION C**



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 - 12<sup>th</sup> June, 2019)*

81. "*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?
- (a) Bias rule
  - (b) Reasoned decision rule
  - (c) Hearing rule
  - (d) All of the above.

**CORRECT ANSWER : OPTION A**

82. 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?
- (a) Mrs Y is an employee of the same institution and the inquiry should have been conducted by a person outside the institution.
  - (b) The complaint was filed by a female employee, so the inquiry must have been conducted by a male employee.
  - (c) 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.
  - (d) Mr. X being the accused should have conducted the inquiry himself.

**CORRECT ANSWER : OPTION C**

83. 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.

- (a) Being a judge himself, Mr. A cannot issue such notice of eviction.
- (b) Mr. A can issue such notice because it is his duty as a Judge, apart from being a landlord.
- (c) Such notice is illegal as Mr. B was not given an opportunity to present his case.
- (d) Mr. A issued such notice in his personal capacity as a landlord and not being a judge.

**CORRECT ANSWER : OPTION D**

84. Which of the following is not in violation of the principles of Natural justice?

- (a) Withholding of an increment of a public servant without giving him an opportunity to defend.
- (b) Non-renewal of a contract of employment of an employee after the period of contract is over.
- (c) Initiating a departmental inquiry against a public servant, without giving him an opportunity to submit representation during such inquiry.
- (d) All of the above.

**CORRECT ANSWER : OPTION B**

85. On the basis of your understanding about Natural Justice in the passage above, state which of the following is true:

- a) Adherence to the reasoned decision rule is not required if other two rules are complied with.
- b) Compliance of bias rule itself rejects the need of the hearing and the reasoned decision rule.
- c) Principle of Natural Justice is incomplete without the compliance of any of its rules.
- d) The Reasoned Decision rule is a substitute for the bias rule.

**CORRECT ANSWER : OPTION C**

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 Gadakchinchale 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, iron 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)*

86. Which of the following statements given below justifies criminalisation of Mob Lynching?

- (a) In a democracy the actual power rests with the people and their actions cannot be penalised by the state.
- (b) There is no law in India which specifically prohibits mob lynching and therefore it is a justified act of the people.
- (c) It is impossible to punish the wrongdoer in case of Mob Lynching.
- (d) Violence cannot be a tool to implement the will of the majority and such actions are failure of the state.

**CORRECT ANSWER : OPTION D**

87. Which of the following statement justifies the criminalisation of mob lynching as a distinct offence apart from ‘Murder’?

- (a) The offence of Murder is committed by a single individual or a group but mob lynching involves a large group of individuals.
- (b) 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.
- (c) Mob lynching is an offence which supports the idea of ‘might is right’, and cannot be accepted in a democratic society.
- (d) All of the above.

**CORRECT ANSWER : OPTION D**

88. 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 if the following statement is correct?

- (a) The villagers should not be punished as there was a genuine mistake on their part.
- (b) The villagers should be punished as they do not have any right to punish any person unless he is an offender.
- (c) The villagers should be punished as no individual in the country is entitled to take law in his own hand and punish the wrongdoer.
- (d) 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.

**CORRECT ANSWER : OPTION C**

89. In the light of the above passage which of the following incidents of mob violence would be justified?

- (a) A group of people committing violence against people who are selling meat of an animal considered to be sacred under their religious beliefs.
- (b) The residents of a boy's hostel caught a drug paddler selling drugs in their hostel and killed him by beating.
- (c) The villagers injured a woman by pelting stone on her considering her to be witch.
- (d) None of the above.

**CORRECT ANSWER : OPTION D**

90. 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.

- (a) Both (A) and (R) are correct
- (b) (A) is correct but (R) is incorrect
- (c) Both (A) and (R) are incorrect
- (d) (A) is incorrect but (R) is correct.

**CORRECT ANSWER : OPTION C**

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]

91. 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.

**CORRECT ANSWER : OPTION B**

92. 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.

**CORRECT ANSWER : OPTION D**

93. 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.

**CORRECT ANSWER : OPTION A**

94. 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.

**CORRECT ANSWER : OPTION A**

95. 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.

**CORRECT ANSWER : OPTION A**

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.

96. 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.
- (a) Mr. A is not liable for murder as he was outside the bank and there was no common intention.
  - (b) Mr. A along with all other members of the gang are liable for murder as there was common intention.
  - (c) Only that person is liable for murder who actually fired the gun.
  - (d) Mr. A is liable only for the heist and no other offence.

**CORRECT ANSWER : OPTION B**

97. 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, chose the correct option.

- (a) Both Raman and Raghav are liable for murder as there was a common intention developed on the spot.
- (b) Raghav is not liable for murder as there was no common intention to kill Aman.
- (c) No one is liable as Aman was a wrongdoer himself and he started the fight.
- (d) Only Raghav is liable for murder as he started abusing Aman.

**CORRECT ANSWER : OPTION B**

98. After reading the passage which of the following is not correct in relation to the difference between Common and Similar intention?

- (a) Similar intention is developed prior to the commission of offence but the common intention is developed only at the time of commission of offence.
- (b) Under Common intention each of the offender is equally liable for the offence but under similar intention each of the offender is differently liable.
- (c) In order to determine the existence of Similar or Common intention, one must analyse the fact and circumstances of each case.
- (d) The boundary between Similar and Common intention is very fine and it may sometime overlap.

**CORRECT ANSWER : OPTION A**

99. 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.

- (a) Both Theft and Sexual Assault as there was a Common intention.
- (b) Only Theft as there was a Similar intention.
- (c) Only Theft as Mr. X had a different intention from Y.
- (d) He would not be liable for any offence.

**CORRECT ANSWER : OPTION C**

100. Which of the following statements is correct in relation to the difference between common intention and similar intention?

- (a) The intention of the accused and co-accused can be inferred from the facts and circumstances of each case.
- (b) Under common intention, it is considered that all the accused have jointly committed the offence themselves and are jointly liable.
- (c) Each accused is liable for the offence he has actually committed, if the common intention cannot be proved.
- (d) All of the above.

**CORRECT ANSWER : OPTION D**

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.

101. 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.

**CORRECT ANSWER : OPTION D**

102. 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.

**CORRECT ANSWER : OPTION C**



103. 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 19<sup>th</sup> 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.

**CORRECT ANSWER : OPTION A**

104. 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.

**CORRECT ANSWER : OPTION C**

105. 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.

**CORRECT ANSWER : OPTION A**