# CS Executive New Syllabus
# Jurisprudence, Interpretation & General Laws (JIGL)
# Suggested Answers
# Dec 2018 Exam

**BY**


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*JIGL suggested answers*
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***Que 1 (a)***

***John Austin*** a noted English legal theorist was the first occupant of the chair of Jurisprudence at the University of London. Austin is known for the Command Theory of law. Austin was a positivist, meaning that he concerned himself on what the law was instead of going into its justness or fairness.

Austin differentiated between 'Law properly so called' and 'laws improperly so called' and said that laws properly so called are general commands but not all of it is given by men for men. A specie of Laws properly so called are given by political superiors to political inferiors. According to Austin law is the command of sovereign that is backed by sanction. Austin has propagated that law is a command which imposes a duty and the failure to fulfill the duty is met with sanctions (punishment). Thus Law has three main features:

1. It is a command.
2. It is given by a sovereign authority.
3. It has a sanction behind it.

In order to properly appreciate Austin's theory of law, we need to understand his conception of command and sovereign.

*Command*

It is an expression of wish or desire of an intelligent person, directing another person to do or to forbear from doing some act, and the violation of this wish will be followed by evil consequences on the person so directed. Command requires the presence of two parties- the commander (political superior) and the commanded (political inferior).

*Sovereign*

In Austin's theory, sovereign is politically superior. He has defined sovereign as an authority that receives habitual obedience from the people but itself does not obey some other authority habitually. According to Austin, the sovereign is the source of all laws.

*Sanction*

Is the evil consequence that follows on the violation of a command. To identify a law, the magnitude of the sanction is not relevant but the absence of sanction disentitles an expression of the sovereign from being a law in Austinian sense. Sanction should not also be confused with a reward that might be on offer if a given conduct is followed or refrained from. Reward confers a positive right whereas a sanction is a negative consequence.

**Que 1(b)**

Section 10 provides that 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.

However, the pendency of a suit in a foreign court does not preclude the Courts in India from

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trying a suit founded on the same cause of action.
To prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue, Section 10 is enacted. The purpose is also to avoid conflict of decision. It is really intended to give effect to the rule of *res judicata*. The institution of second suit is not barred by Section 10. It merely says that the trial cannot be proceeded with.
A suit was instituted by the plaintiff company alleging infringement by the defendant company by using trade name of medicine and selling the same in wrapper and carton of identical design with same colour combination etc. as that of plaintiff company. A subsequent suit was instituted in different Court by the defendant company against the plaintiff company with same allegation. The Court held that subsequent suit should be stayed as simultaneous trial of the suits in different Courts might result in conflicting decisions as issue involved in two suits was totally identical (*M/s. Wings Pharmaceuticals (P) Ltd. and another* v. *M/s. Swan Pharmaceuticals and others*).
Even though if a case is not governed by the provisions of the Section and matters in issue may not be identical, yet the courts have inherent powers to stay suit on principle analogous to Section 10.

**Que 1(c)**
With a few exceptions, all the fundamental rights are available against the State. Under Article 12, unless the context otherwise requires, "the State" includes—

The expression 'local authorities' refers to authorities like Municipalities, District Boards, Panchayats, Improvement Trusts, Port Trusts and Mining Settlement Boards. The Supreme Court has held that 'other authorities' will include all authorities created by the Constitution or statute on whom powers are conferred by law and it is not necessary that the authority should engage in performing government functions (*Electricity Board, Rajasthan* v. *Mohanlal*, AIR 1967 SC 1957). The Calcutta High Court has held that the electricity authorities being State within the meaning of Article 12, their action can be judicially reviewed by this Court under Article 226 of the Constitution of India. (*In re: Angur Bala Parui,* It has also been held that a university is an authority (*University of Madras* v. *Shanta Bai,* The Gujarat High Court has held that the President is "State" when making an order under Article 359 of the Constitution (*Haroobhai* v. *State of Gujarat*, AIR 1967, Guj. 229). The words "under the control of the Government of India" bring, into the definition of State, not only every authority within the territory of India, but also those functioning outside, provided such authorities are under the control of the Government of India. In *Bidi Supply Co.* v. *Union of India*, State was interpreted to include its Income-tax department.
The Supreme Court in *Sukhdev Singh* v. *Bhagatram,* and in *R.D. Shetty* v. *International Airports Authority*, has pointed out that corporations acting as instrumentality or agency of government would become 'State' because obviously they are subjected to the same limitations in the field of constitutional or administrative law as the government itself, though in the eye of law they would be distinct and independent legal entities. In *Satish Nayak* v. *Cochin Stock Exchange Ltd.* the Kerala High Court held that since a Stock Exchange was independent of Government control and was not discharging any public duty, it cannot be treated as 'other authority' under Article 12.

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**Que 1 (d)**
Normally, the tortfeasor is liable for his tort. But in some cases a person may be held liable for the tort committed by another. A master is vicariously liable for the tort of his servant, principal for the tort of his agent and partners for the tort of a partner. This is know as vicarious liability in tort.

It is to be remembered that an employer is vicariously liable for the torts of his servants committed in the course of their employment, but he is not liable for the torts of those who are his independent contractors.

A servant is a person who is employed by another (the employer) to perform services in connection with the affairs of the employer, and over whom the employer has control in the performance of these services. An *independent contractor* is one who works for another but who is not controlled by that other in his conduct in the performance of that work. These definitions show that a person is a servant where the employer "retains the control of the actual performance" of the work.

Que 2(a)
***Ratio Decidendi***
The underlying principle of a judicial decision, which is only authoritative, is termed as ***ratio decidendi***. The proposition of law which is necessary for the decision or could be extracted from the decision constitutes the ratio. The concrete decision is binding between the parties to it. The abstract ratio decidendi alone has the force of law as regards the world at large. In other words, the authority of a decision as a precedent lies in its ***ratio decidendi***.
***Prof. Goodhart*** says that ***ratio decidendi*** is nothing more than the decision based on the material facts of the case.

Where an issue requires to be answered on principles, the principles which are deduced by way of abstraction of the material facts of the case eliminating the immaterial elements is known as ***ratio decidendi*** and such principle is not only applicable to that case but to other cases also which are of similar nature.

It is the ***ratio decidendi*** or the general principle which has the binding effect as a precedent, and not the ***obiter dictum***. However, the determination or separation of ***ratio decidendi*** from obiter dictum is not so easy. It is for the judge to determine the ***ratio decidendi*** and to apply it on case to be decided.

***Obiter Dicta***
The *literal* meaning of this Latin expression is "said by the way". The expression is used especially to denote those judicial utterances in the course of delivering a judgement which taken by themselves, were not strictly necessary for the decision of the particular issue raised. These statements thus go beyond the requirement of a particular case and have the force of persuasive precedents only. The judges are not bound to follow them although they can take advantage of them. They some times help the cause of the reform of law.

***Obiter Dicta*** are of different kinds and of varying degree of weight. Some obiter dicta are

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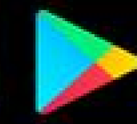

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deliberate expressions of opinion given after consideration on a point clearly brought and argued before the court. It is quite often too difficult for lawyers and courts to see whether an expression is the ratio of judgement or just a causal opinion by the judge. It is open, no doubt, to other judges to give a decision contrary to such obiter dicta.

**Ques 2 (b)**

Sections 17 to 31 lay down the first exception to the general rule known as admissions and confessions.

***Admissions***

An admission is defined in Section 17 as a statement, oral or documentary or *contained in electronic form* which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances mentioned under Sections 18 to 20. Thus, whether a statement amounts to an admission or not depends upon the question whether it was made by any of the persons and in any of the circumstances described in Sections 18-20 and whether it suggests an inference as to a fact in issue or a relevant fact in the case. Thus admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc.

(However, the word 'statement' has not been defined in the Act. Therefore the ordinary dictionary meaning is to be followed which is "something that is stated.")

An admission may be made by a party, by the agent or predecessor-in-interest of a party, by a person having joint propriety of pecuniary interest in the subject matter (Section 18) or by a "reference" (Section 20).

An admission is the best evidence against the party making the same unless it is untrue and made under the circumstances which does not make it binding on him.

An admission by the Government is merely relevant and non conclusive, unless the party to whom they are made has acted upon and thus altered his detriment.

An admission must be clear, precise, not vague or ambiguous. In *Basant Singh* v. *Janky Singh*,

**The Supreme Court held:**

1. Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admission. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive and it is open to the party to show that it is not true.
2. All the statements made in the plaint are admissible as evidence. The Court is, however, not bound to accept all the statements as correct. The Court may accept some of the statements and reject the rest."

Admission means conceding something against the person making the admission. That is why it is stated as a general rule (the exceptions are in Section 21), that admissions must be self-harming; and because a person is unlikely to make a statement which is self-harming unless it is true evidence of such admissions as received in Court.

These Sections deal only with admissions oral and written. Admissions by conduct are not covered by these sections. The relevancy of such admissions by conduct depends upon

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Section 8 and its explanations.
*Oral admissions as to the contents of electronic records are not relevant unless the genuineness of the record produced is in question. (Section 22A)*

***Confessions***
The Act does not define a confession but includes in it admissions of which it is a species. Thus confessions are special form of admissions. Whereas every confession must be an admission but every admission may not amount to a confession. Sections 27 to 30 deal with confessions which the Court will take into account. A confession is relevant as an admission unless it is made:

i. To a person in authority in consequence of some inducement, threat or promise held out by him in reference to the charge against the accused;
ii. To a Police Officer; or
iii. To any one at a time when the accused is in the custody of a Police Officer and no Magistrate is present.

Thus, a statement made by an accused person if it is an admission, is admissible in evidence. The confession is evidence only against its maker and against another person who is being jointly tried with him for an offence.

**Ques 2 (C)**
**Damnum Sine Injuria**
*Damnum* means harm, loss or damage in respect of money, comfort, health, etc. *Injuria* means infringement of a right conferred by law on the plaintiff. The maxim means that in a given case, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts. Therefore, causing damage, however substantial to another person is not actionable in law unless there is also a violation of a legal right of the plaintiff. Common examples are, where the damage results from an act done in the exercise of legal rights. Thus, if I own a shop and you open a shop in the neighbourhood, as a result of which I lose some customers and my profits fall off, I cannot sue you for the lose in profits, because you are exercising your legal right.

**Injuria Sine Damnum**
It means injury without damage, i.e., where there is no damage resulted yet it is an injury or wrong in tort, i.e. where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort.

Some rights or interests are so important that their violation is an actionable tort without proof of damage. Thus when there is an invasion of an "absolute" private right of an individual, there is an *injuria* and the plaintiff's action will succeed even if there is no *Domnum* or damages. An absolute right is one, the violation of which is actionable *per se*, i.e., without the proof of any damage. *Injuria sine domno* covers such cases and action lies when the right is violated even though no damage has occurred. Thus the act of trespassing upon another's land is actionable even though it has not caused the plaintiff even the slightest

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harm.

**Que 2(d)**
***Preparation***
Preparation means to arrange necessary measures for commission of intended criminal act. Preparation itself is not punishable as it is difficult to prove that necessary preparations were made for commission of the offence. But in certain exceptional cases mere preparation is also punishable.

Under the IPC, mere preparation to commit offences is punishable as they are considered to be grave offences. Some of them are as follows:

i. Preparation to wage war against the Government.
ii. Preparation for counterfeiting of coins or Government Stamps.
iii. Possessing counterfeit coins, false weights or measurements and forged documents.

iv. Making preparation to commit dacoity.

Ques 2A(a)
"***Electronic signature***" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature. [Section 2(1) (ta)]

"***Digital signature***" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3.

**Ques 2A (b)**
In some torts, the defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant's part. In other words, the defendant is held liable without fault. These cases fall under the following categories:

i. ***Liability for Inevitable Accident*** – Such liability arises in cases where damage is done by the escape of dangerous substances brought or kept by anyone upon his land. Such cases are where a man is made by law an insurer of other against the result of his activities.
ii. ***Liability for Inevitable Mistake*** – Such cases are where a person interferes with the property or reputation of another.
iii. ***Vicarious Liability for Wrongs committed by others*** – Responsibility in such cases is imputed by law on grounds of social policy or expediency. These case involve liability of master for the acts of his servant.

The rule in *Rylands* v. *Flethcer* is that a man acts at his peril and is the insurer of the safety of his neighbour against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants. It was held in that case that: "If a person brings or accumulates on his land anything which, if it should escape may cause damage to his neighbours, he does so at his own peril. If it does not escape and cause damage

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he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent damage."

The facts of this case were as follows: B, a mill owner employed independent contractors, who were apparently competent to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir which the contractors failed to observe because they were filled with earth. The contractors therefore, did not block them. When the water was filled in the reservoir, it bursts through the shafts and flooded the plaintiff's coal mines on the adjoining land. It was found as a fact that B did not know of the shafts and had not been negligent, though the independent contractors, had been, B was held liable. Blackburn, J., observed; "We think that the true rule of law is that the person, who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and if, he does not do so is, *prima facie* answerable for all the damage which is the natural consequence of its escape."

**Ques 2A (c)**

***Harmonious Construction:*** Different entries in the different lists are to be interpreted in such a way that a conflict between them is avoided and each of them is given effect. It must be accepted that the Constitution does not want to create conflict and make any entry nugatory. Therefore, when there appears a conflict between two entries in the two different lists the two entries should be so interpreted, that each of them is given effect and, for that purpose the scope and meaning of one may be restricted so as to give meaning to the other also.

**Que 2A (d)**

***Protection against ex-post facto laws (Article 20)***

*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.*

Ex-post facto laws are laws which punished what had been lawful when done. If a particular act was not an 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 declares that act as an offence. For example, what was not an offence in 1972 cannot be declared as an offence under a law made in 1974 giving operation to such law from a back date, say from 1972.

Even the penalty for the commission of an offence cannot be increased with retrospective effect. For example, suppose for committing dacoity the penalty in 1970 was 10 years imprisonment and a person commits dacoity in that year. 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 *Shiv Bahadur Singh* v. *State of Vindhya Pradesh*, it was clarified that Article 20(1) prohibited the conviction under an *ex post facto law*, and that too the substantive law. This

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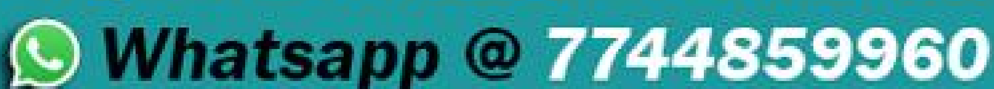

protection is not available with respect to procedural law. Thus, no one has a vested right in procedure. A law which nullifies the rigour of criminal law is not affected by the rule against *ex post facto law* (*Rattan Lal* v. *State of Punjab)*

**Que 3 (b)**
Restriction on right to freedom of speech and expression

- Sovereignty and integrity of India
- Security of state
- Friendly relation with foreign states
- Public order
- Decency or morality or
- Competent of court
- Defamation
- Incitement to an offence

**Que 3 (c)**
Section 48 of the Act enumerates the conditions for enforcement of foreign awards and provides that the party, against whom the award is invoked, may use one or more of the following grounds for the purpose of opposing enforcement of a foreign award, namely:

i. the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
ii. the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
iii. the award deals with a difference not contemplated by or not failing within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matter submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or
iv. the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
v. the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which. or under the law of which, that award was made; or
vi. the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or
vii. the enforcement of the award would be contrary to the public policy of India.

**Que 3 (d)**
*Mens rea* means a guilty mind. The fundamental principle of penal liability is embodied in the

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maxim *actus non facit ream nisi mens sit rea*. The act itself does not constitute guilt unless done with a guilty intent. Thus, unless an act is done with a guilty intention, it will not be criminally punishable. The general rule to be stated is "there must be a mind at fault before there can be a crime". *Mens rea* is a subjective matter. Thus *mens rea* in an essential ingredient in every criminal offence.

The motive is not an intention. Intention involves foresight or knowledge of the probable or likely consequences of an injury. In short, *mens rea* is the state of mind which accompanies and directs the conduct resulting in the *actus reus*.

Que 4 (a)
A *"document"* means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used for the purpose of recording that matter. Documents produced for the inspection of the Court is called Documentary Evidence. Section 60 provides that the contents of a document must be proved either by primary or by secondary evidence.

***Primary evidence***
"*Primary evidence*" means the document itself produced for the inspection of the Court (Section 62). The rule that the best evidence must be given of which the nature of the case permits has often been regarded as expressing the great fundamental principles upon which the law of evidence depends. The general rule requiring primary evidence of producing documents is commonly said to be based on the best evidence principle and to be supported by the so called presumption that if inferior evidence is produced where better might be given, the latter would tell against the withholder.

***Secondary evidence***
Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Section 63 defines the kind of secondary evidence permitted by the Act. According to Section 63, "secondary evidence" means and includes.

1. certified copies given under the provisions hereafter contained;
2. copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
3. copies made from or compared with the original;
4. counterparts of documents as against the parties who did not execute them; (5) oral accounts of the contents of a document given by some person who has himself seen it.

**Que 4 (c)**
***International Commercial Arbitration***
International commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in for in India and where at least one of the parties is-

i. an individual who is a national of, or habitually resident in, any country other than

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India; or

ii. a body corporate which is incorporated in any country other than India; or
iii. an association or a body of individuals whose central management and control is exercised in any country other than India; or
iv. the Government of a foreign country.

**Que 4 (d)**
**A defendant has four remedies available if an *ex-parte* decree is passed against him**:

i. He may file an appeal against the *ex-parte* decree under Section 96 of the C.P.C.
ii. He may file an application for review of the judgement. (O.47, R.1)
iii. He may apply for setting aside the *ex-parte* decree.
iv. A suit can also be filed to set aside an *ex-parte* decree obtained by fraud but no suit shall lie for non-service of summons.

It is open to a party at the trial of a suit to use in evidence any one or more of the answers or any part of the answer of the opposite party to interrogatories without putting in the others or the whole of such answers. But the court may direct that any connected answer should also be put in.

**Ques 5 (d)**

**Challenge procedure**
Section 13 of the Act contains detailed provisions regarding challenge procedure. Sub-section (1) provides that subject to provisions of Sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator. Sub-Section (4) states that if a challenge under any procedure agreed upon by the parties or under the procedure under Sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award. But at that stage, the challenging party has the right to make an application in the Court to set aside the award in accordance with Section 34 of the Act.

Sub-section (2) provides that failing any agreement referred to in sub-section (1) of Section 13, a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in Sub-section (3) of Section 12, send a written statement of the reasons for the challenge to the arbitral tribunal. The tribunal shall decide on the challenge unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge. It is also provided that where an award is set aside on an application made under sub-section (5) of Section 13 of the Act, the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

**Que 5 (b)**
***Procedure established by law:*** The expression 'procedure established by law' means procedure laid down by statute or procedure prescribed by the law of the State. Accordingly,

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first, there must be a law justifying interference with the person's life or personal liberty, and secondly, the law should be a valid law, and thirdly, the procedure laid down by the law should have been strictly followed.

The law laid down in *A.K. Gopalan* v. *State of Madras*, that the expression 'procedure established by law' means only the procedure enacted by a law made by the State was held to be incorrect in the *Bank Nationalisation Case*. Subsequently, in *Maneka Gandhi's* case, it was laid down, that the law must now be taken to be well settled that Article 21 does not exclude Article 19 and a law prescribing a procedure for depriving a person of 'personal liberty' will have to meet the requirements of Article 21 and also of Article 19, as well as of Article 14.

The procedure must be fair, just and reasonable. It must not be arbitrary fanciful or oppressive. An interesting, follow-up of the *Maneka Gandhi's* case came in a series of cases. In *Bachan Singh* v. *State of Punjab,* AIR 1980 S.C. 898, it was reiterated that in Article 21 the founding fathers recognised the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law.

Presently, this term personal liberty extends to variety of matters like right to bail, right not to be handcuffed except under very few cases, right to speedy trial, right to free legal aid etc.

## Ques 6(a)

***Principle of Estoppel***

Estoppel is based on the maxim *'allegans contratia non est audiendus'* i.e. a person alleging contrary facts should not be heard. The principles of estoppel covers one kind of facts. It says that man cannot approbate and reprobate, or that a man cannot blow hot and cold, or that a man shall not say one thing at one time and later on say a different thing.

The doctrine of estoppel is based on the principle that it would be most inequitable and unjust that if one person, by a representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it (*Sorat Chunder* v. *Gopal Chunder*).

Estoppel is a rule of evidence and does not give rise to a cause of action. Estoppel by record results from the judgement of a competent Court (Section 40, 41). It was laid down by the Privy Council in *Mohori Bibee* v. *Dharmodas Ghosh*, that the rule of estoppel does not apply where the statement is made to a person who knows the real facts represented and is not accordingly misled by it. The principle is that in such a case the conduct of the person seeking to invoke rule of estoppel is in no sense the effect of the representation made to him. The main determining element is not the effect of his representation or conduct as having induced another to act on the faith of such representation or conduct.

In *Biju Patnaik University of Tech. Orissa v. Sairam College*, , one private university permitted

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to conduct special examination of students prosecuting studies under one time approval policy. After inspection, 67 students were permitted to appear in the examination and their results declared. However, university declined to issue degree certificates to the students on the ground that they had to appear for further examination for another condensed course as per syllabus of university. It was held that once students appeared in an examination and their results declared, the university is estopped from taking decision withholding degree certificate after declaration of results.

**Que 6(b)**

"Lease" means a lease of immovable property and includes also:

i. A *patta*;
ii. A *kabuliyat* or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy or pay or deliver rent for, immovable property;
iii. Any instrument by which tolls of any description are let;
iv. Any writing on an application for a lease intended to signify that the application is granted. [Section 2(16)]

Section 105 of the Transfer of Property Act defines lease as a transfer of a right to enjoy such property, made for a certain time, expressed or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

**Que 6(c)**

**The Mischief Rule or Heydon's Rule**

In *Heydon's Case*, in 1584, it was resolved by the Barons of the Exchequer "that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered:

1. What was the Common Law before the making of the Act;
2. What was the mischief and defect for which the Common Law did not provide;
3. What remedy the Parliament had resolved and appointed to cure the disease of the Commonwealth; and
4. The true reason of the remedy.

Although judges are unlikely to propound formally in their judgments the four questions in Heydon's Case, consideration of the "mischief" or "object" of the enactment is common and will often provide the solution to a problem of interpretation. Therefore, when the material words are capable of bearing two or more constructions, the most firmly established rule for construction of such words is the rule laid down in Heydon's case which has "now attained the status of a classic". The rule directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy". But this does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregard the context and the collection in which they occur.

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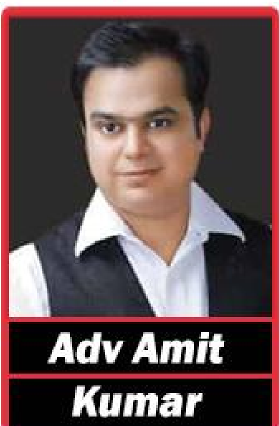


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The Supreme Court in Sodra Devi's case, AIR 1957 S.C. 832 has expressed the view that the rule in Heydon's case is applicable only when the words in question are ambiguous and are reasonably capable of more than one meaning.

The correct principle is that after the words have been construed in their context and it is found that the language is capable of bearing only one construction, the rule in Heydon's case ceases to be controlling and gives way to the plain meaning rule.

**Ques 6(d)**
**Judicial Remedies**
Three types of judicial remedies are available to the plaintiff in an action for tort namely:

(i) Damages,
(ii) Injunction, and
(iii) Specific Restitution of Property.

**Extra Judicial Remedies**
In certain cases it is lawful to redress one's injuries by means of self help without recourse to the court. These remedies are:

a) *Self Defence*

It is lawful for any person to use reasonable forces to protect himself, or any other person against any unlawful use of force.

b) *Prevention of Trespass*

An occupier of land or any person with his authority may use reasonable force to prevent trespassers entering or to eject them but the force should be reasonable for the purpose.

c) *Re-entry on Land*

*A person wrongfully disposed of land may retake possession of land if he can do so in a* peaceful and reasonable manner.

d) *Re-caption of Goods*

It is neither a crime nor a tort for a person entitled to possession of a chattel to take it either peacefully or by the use of a reasonable force from one who has wrongly taken it or wrongfully detained it.

e) *Abatement of Nuisance*

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The occupier of land may lawfully abate (i.e. terminate by his own act), any nuisance injuriously affecting it. Thus, he may cut overhanging branches as spreading roots from his neighbour's trees, but

(i) upon giving notice;
(ii) by choosing the least mischievous method;
(iii) avoiding unnecessary damage.

f) *Distress Damage Feasant*

An occupier may lawfully seize any cattle or any chattel which are unlawfully on his land doing damage there and detain them until compensation is paid for the damage. The right is known as that of distress damage feasant-to distrain things which are doing damage.

**Ques 6A (i)**

Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected. (Section 43A)

A person failing to provide information or failing to file a return etc. (as required by the Act), has to pay a penalty not exceeding ten thousand rupees for every day during which the failure continues. (Section 44)

Contravention of a rule or regulation attracts liability to pay compensation up-to 25,000 rupees, to the person affected by such contravention or to pay penalty up-to that amount. (Section 45)

**Ques 6A (ii)**

The Central Information Commission is to be constituted by the Central Government through a Gazette Notification. The Central Information Commission consists of the Chief Information Commissioner and Central Information Commissioners not exceeding 10. These shall be appointed by the President of India on the recommendations of a committee consisting of PM who is the Chairman of the Committee; the leader of Opposition in the Lok Sabha; and a Union Cabinet Minister to be nominated by the Prime Minister.

The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. CIC/IC shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory. He shall not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.
The general superintendence, direction and management of the affairs of the Commission vests in the Chief Information Commissioner who shall be assisted by the Information

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Commissioners. Commission shall have its Headquarters in Delhi. Other offices may be established in other parts of the country with the approval of the Central Government. Commission will exercise its powers without being subjected to directions by any other authority. (Section 12)

CIC shall be appointed for a term of 5 years from date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier. CIC is not eligible for reappointment. Salary will be the same as that of the Chief Election Commissioner. This will not be varied to the disadvantage of the CIC during service.

**Que 6A(iii)**

Rule of fair hearing (audi alteram partem) The second principle of natural justice is audi alteram partem (hear the other side) i.e. no one should be condemned unheard. It requires that both sides should be heard before passing the order. This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given opportunity to submit his explanation thereto. Following are the ingredients of the rule of fair hearing.

**Que 6A(iv)**

Summary trial means the "speedy disposal" of cases. By summary cases is meant a case which can be tried and disposed of at once. Generally, it will apply to such offences not punishable with imprisonment for a term exceeding 2 years.

Section 260(1) of the Criminal Procedure Code sets out the provisions for summary trials. It says:

a. any Chief Judicial Magistrate;
b. any Metropolitan Magistrate;
c. any Magistrate of the First class who is specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:

i. offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
ii. theft under Section 379, Section 380 or Section 381 of the Indian Penal Code, where the value of the property stolen does not exceed `200;
iii. receiving or retaining stolen property, under Section 411 of the Indian Penal Code, where the value of such property, does not exceed `200;
iv. assisting in the concealment or disposal of stolen property, under Section 414 of the Indian Penal Code, where the value of such property does not exceed `200;
v. offences under Sections 454 and 456 of the Indian Penal Code;
vi. insult with intent to provoke a breach of the peace, under Section 504 of the Indian Penal Code;
vii. abetment of any of the foregoing offences;
viii. an attempt to commit any of the foregoing offences, when such attempt is an offence;

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ix. any offence constituted by an act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871.

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