

Test 18 Indian Penal Code (Full Portions)

Answer 1

Section 34 of Indian Penal Code states that if any criminal act is committed by 2 or more than 2 persons in furtherance of their common intention, then all such persons are jointly liable for the acts done by another.

Not a proper sentence.

Instead of saying it as '2 or more persons'; use the statutory word 'several persons' and then explain it in the above-said way.

Section 34 does not create any specific offence, it makes the offenders jointly and constructively liable with respect to an offence committed by either of them in furtherance of any pre-arranged plan or prior agreement. The liability of ~~the~~ the main accused is constructed upon ~~the~~ all the members.

Noted.

In the landmark case of *Mahabub Shah v. Emperor*, the ~~law~~ **Relevant landmark case law mentioned. Good!** laid down certain guidelines regarding the application of S. 34. It held that:-

- (1) Essence of the application of S. 34 is common intention.
- (2) Common intention is present when the act is committed in furtherance of a prior agreement or pre-arranged plan.

Correct.

(3) Offence must be committed "after" such intention is entertained and shared by all the members.

In the *Borendra Kumar Ghosh v. Emperor*, Privy Council held that S. 34 imputes liability on persons who share the intention even though not actively participating in the commission of offence. The court held that "they also serve who only stand and watch".

Very good!

Another landmark judgement regarding the application of S. 34 came in the case of *Pandurang v. State of Hyderabad* wherein the Supreme court distinguishing between the common intention and similar intention held that common intention can also develop at the spur of the moment.

Noted.

Therefore, it is a concept of joint liability that impute criminal liability on all the persons for a criminal act which is committed by either all or some of them in furtherance of their common intention.

Good Attempt. 5/8.

1. Elements of Section 34 could have been written or explained in a better way.
2. Discussion on Section 33 would have been good.
3. Meaning of Common intention could have been explained.
4. Any case law (facts) or illustration for section 34 would have been helpful.
5. It is good that you have mentioned all relevant case laws.

Answer 3

Abetment

The offence of 'Abetment' imputes criminal liability on person who do not have any active participation in the commission of a criminal act, however, commission of such an act would be impossible without them or the criminal act might not have been committed without their interference.

Good Explanation.

The Hon'ble Supreme Court held in the case of Kartar Singh v. State of Haryana that to abet means to aid, to assist, to induce, to provoke, to convey, to harbour or, to counsel or to compel any person to commit an offence.

Noted.

According to Section 107 of the IPC, a person may abet the other into committing an offence in any of the 3 ways :-

(1) By Inducement

Use the word "instigate". Always use the elements as given in the statute.

It includes misleading the other person to commit an offence by wrongful provocation or wrongful concealment of material facts.

[Mention it as Explanation appended to Section 107]

Good.

Inducement may be by words, conduct or any other means by which the abettor can induce or mislead the person into committing an offence.

In the case of Chitresh Kumar Chopda v. State (NCT of Delhi), Hon'ble Supreme Court held that there must be a

This case is more relevant for Section 306.

direct and proximate connection between the inducement and the commission of offence and such inducement must be made with an intention to drive the other person into committing the offence. Do not synonymously use the word "inducement" and instigation"

In the ~~Queen~~ case of Queen v. Mohit, approval of an act was held to be an inducement within the meaning of Section 107 and all persons

chanting 'Sati Mata Ki Jai' "Rama, ramal" to encourage a woman to commit Sati were held criminally liable under IPC. This is not correct.

Facts of the case are of Tejsingh And Ors. vs The State - 'Sati mata ki jai'

(2) By Aid or Assist

Abettor can abet the commission of an offence with deliberate aid or assistance to facilitate the commission of an offence. Such act of aiding or assisting must be done with the mens rea to facilitate the other person in committing an act. (Sanjiv v. State of Rajasthan).

Is it not state of Madhya Pradesh?

Please check.

This category usually includes participants
criminally Accessories before the act.

Suddenly aspect of accessories is introduced in the answer.

~~(3) By engaging in a conspiracy with
others to commit an offence. This
is different from section 107-A as to
impute criminal liability under this
part, there must be some overt act
done towards the commission of offence
in (Kehar Singh v. State of Punjab~~

Mentioning wrong case titles will
make the whole thing wrong.

State (Delhi Admn.)

1/8. Wrong mentioning of case laws. Section 107 not explained with relevant
keywords or elements. Read this concept well again.

Answer 5

Section 80 of the Indian Penal
Code states that while doing a
lawful act in a lawful manner
with proper lawful means and exercising
due care and caution an act
is caused which constitutes an
offence, person doing the act shall
not be liable for it. Correct.

Thus, section 80 exempts a
person from any criminal liability for
the unforeseeable and unintended
consequences of his acts. Good.

He must neither intend nor
knew such acts to be likely to
be committed in the exercise of
his lawful functions.

Thus, Exemption under section 80

Noted.

is available only in the cases where there is an absolute absence of mens rea, negligence, misconduct and knowledge. Criminal Act must be unavoidable in the sense it could not have been avoided by the person by exercising due care and caution.

1. Points seems to be repetitive.
2. Section 80 and its elements are not explained properly. For example, the word 'misfortune' is not even mentioned.
3. No illustration or case law.

2/8

Answer 6

Punishments under IPC

Section 53 of the IPC enumerates 5 kinds of punishments that are provided to the convicts persons convicted of an offence. These are :-

Correct.

(1) Death Penalty

- This punishment is provided only in the rarest of rare cases that collectively shock the conscience of nation. Under the (Machi Singh v. State of Punjab)

Machi

- Under this punishment, the convict is hanged by neck till he is dead.
- Judicial Magistrates are not authorized to sentence a person to death.
- Sessions Court can only sentence a

person to death only when such sentence is confirmed by the High Court.

Very good. If possible cite relevant provision of CrPC.

(2) Imprisonment For life
- Under this punishment, the convict is sentenced to imprisonment in a jail for a period not exceeding 20 years. It is granted only in the cases of grave offences.

- For certain offences like Rape under Section 376 (3), 376 AB, 376 A, 376 D, 376 DA, 376 DB and in certain cases of Human Trafficking, it may extend to the lifetime of the convict.

- Judicial Magistrates are not authorized to grant life imprisonment as per Section 29(1), CrPC.

Good.

(3) Imprisonment

Imprisonment is of 2 types :-

(1) Simple

(2) Rigorous

Rigorous imprisonment may also involve solitary confinement for some period. Unlike simple imprisonment, it

Jail authorities are enjoined by law to impose hard labour on a particular section of the convicted prisoners who were sentenced to rigorous imprisonment. Section 53 of the Indian Penal Code which falls under the Chapter entitled "Of Punishments" vivisepts punishments into five categories, of which the category "imprisonment" has been further sub divided into two sub categories as "rigorous" and "simple". Rigorous imprisonment is explained as "imprisonment with hard labour".

A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work.

State Of Gujarat And Anr vs Hon'ble High Court Of Gujarat

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involves hard-labour in the jail houses. Good.

- Judicial Magistrate First class is authorized to pass a sentence of imprisonment that may extend to 3 years. (Section 29 (2) CrPc)

- Judicial Magistrate Second class is authorized to pass a sentence of imprisonment that may extend to 1 year. (Section 29 (3) CrPc)

Noted.

(4) Forfeiture of Property

- This is usually passed for the purpose of Recovery of Fine as enumerated under Section 421 of CrPc.

- Property of the convict is forfeited to the State Government. (News Paper/book/document - sec.95)

- Example :- Section 95 CrPc.

Good.

(5) Fine

- Court may also impose fine on the convict.

- Where fine is imposed, court must also provide a sentence of imprisonment to be undergone by the accused in case he makes a default in the payment of fine.

- Judicial Magistrate First class
may impose a fine not exceeding
Rs. 10,000.

- Judicial Magistrate second class
may impose a fine not exceeding Rs.
5,000.

Good Attempt. 6/8.

Answer 7

Wrongful Restraint

As enumerated under
section 339 of the Indian penal
code, Wrongful Restraint is an offence
which is committed when a person
restricts or prohibits another person
from moving proceeding in a certain
direction in which he has a
right to proceed. **Noted.**

The offence of wrongful
Restraint is punishable under section
341 of the Indian Penal Code.

Good.

Wrongful Confinement

As enumerated under section
340 of the Indian Penal Code,
Wrongful Confinement is an offence

which is committed against a person when he is restricted or prohibited from moving beyond certain circumscribed limits.

Key words are mentioned. Good.

Based on the duration of wrongful confinement, manner of committing the offence, Purpose of the wrongful confinement and whether a writ has been issued for the release of such person or not, the accused is punishable under sections 142-148 of the Indian Penal Code. ?

From the above discussion, it can be concluded that the offence of wrongful Restraint and wrongful confinement are committed against the Personal liberty and Freedom of the individual to move freely.

Noted.

The only material difference between wrongful Restraint and wrongful Confinement is that in the latter, the Restraint on the liberty of individual is absolute. He cannot proceed in any direction whereas, in wrongful restraint such person is restrained from proceeding in a particular direction in which he has a right to proceed. He is at liberty to proceed in the other directions.

Good Explanation of the core difference.

Use of Force

the case of *Man'ble Supreme Court held in*
UP that the use of force is
not necessary to commit the offence
of Wrongful Restraint or Wrongful Confinement.
It is sufficient that a
reasonable apprehension is created in
the mind of victim that he is
not at liberty to move and
if he attempts to do so, he
will be forcefully restrained.

Shyam Lal Sharma v State of Madhya Pradesh 1972

4/8.

Answer 9

Kidnapping

According to Section 359,
 there are 2 kinds of kidnapping
 as per Section 360 and 361.

(1) Kidnapping ^{Noted.} Beyond India

This kind of kidnapping is
 provided under Section 360 of IPC.
 This offence is committed when a person
 is kidnapped conveyed beyond the territory
 of India without his consent or
 without the consent of any person
 who is lawfully authorized to give
 consent on his behalf. This offence is
 known as Kidnapping from the territory of
 India.



(2) Kidnapping from the custody of lawful guardian

- It is provided under Section 361 of the Indian Penal Code. - It is committed when a person by way of any inducement or otherwise, takes out a minor person or an unsound person from the custody of his/her lawful guardian without his consent.

Good.

- For the purpose of this section, Minor includes a boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years.

Very good.

'Takes Away'

In the case of *Vandargan v. State of Madhya Pradesh*, Hon'ble Supreme Court held that the use of force in order to take away the minor u/s 361 is not necessary. However, there must be some active participation by the accused that must have induced or compelled the minor to leave the custody of guardian.

Very good. Good case law.

'Inducement or Allurement'

Hon'ble Supreme Court held in the case of *T.P. Vadyamma v. State*

The word "entice" is important.

of Gujarat that there must be an inducement or allurement which must have caused the minor to leave the custody of guardian

Explanation and Exception to Section 361 is missed.

Abduction

Section 362 defines 'Abduction' as the offence of :-
(i) conveying a person forcefully, or
(ii) causing a person to move from one place, or
(iii) inducing a person to go from one place, by forceful or deceitful means.

Very good.

Hon'ble Supreme Court held in a case that Abduction per se is not an offence. However, when it is done for any purpose ~~for~~ or falls within the ambit of S. 364, 365, 366, 367 and 368, it becomes an offence.

Noted.

- Good Attempt.
1. Illustrations could have been added.
 2. Abduction and kidnapping - difference, which was core of the question, was not answered satisfactorily.

Answer 10

On order to establish the criminal liability of A, it is essential to determine the offence committed by Z's wife first.

Noted.

Offence committed by Z's wife satisfies all the essential ingredients of a theft as she :-

- (1) Moved the property belonging to Z dishonestly.
- (2) From Z's possession
- (3) Without the consent of Z.

Therefore, she is guilty for having committed the offence of Theft.

Too much of confusion. Please check Illustration (c) under Section 378. This is theft by A.

Offence committed by A

- A cannot be said to have committed the offence of theft as he did not move the property out of the possession of Z.

- Furthermore, there is no evidence to assume that the act of theft was committed in furtherance of common intention within the meaning of Section 34 of Indian Penal Code.

Thus, he cannot be held jointly liable for the offence committed by Z's wife.

- However, He is guilty for the offence of receiving a stolen property with the knowledge that such property is a stolen property and thereby punishable under Section 411 of Indian Penal Code.

Please read the illustrations carefully. No marks awarded.

Answer 11

- Section 299 deals with culpable Homicide and Section 300 deals with Murder.

Section 299

According to Section 299, causing the death of another person would constitute culpable Homicide if act causing the death is done :-

- (1) with the intention of causing death, or
- (2) with the intention of causing such bodily injury likely to cause death, or
- (3) with the knowledge that such act is likely to cause death of other.

Noted.

Section 300

Culpable Homicide become Murder when the act is done :-

(1) With the intention of causing death.

(2) With the intention of causing such bodily injury knowing that it is likely to cause the death of the person.

(3) With the intention of causing such bodily injury sufficient in the ordinary course of nature to cause death.

(4) With the knowledge that such act is so imminently dangerous that in all probability it will result in the death of the person or cause such bodily injury likely to cause death.

Noted.

Thus, in order to establish murder, the case must fall within the ambit of Section 299 constituting culpable homicide. Culpable homicide amounts to murder when it falls within the ambit of section 302.

The major difference between the ingredients of Section 299 & 302 is that the act falling under S. 302 is certain or highly probable in resulting in the death rather than a mere likelihood as in the case of cases wherein the culpable homicide does not amount to murder.

Noted.

Thus, the cases that satisfy the ingredients of ~~S. 299~~ S. 299 but not S. 300 fall within the ambit of culpable homicide not amounting to Murder.

Furthermore, there may be circumstances that satisfy all the ingredients of S. 300 but still do not amount to Murder. Section 300 Expressly provides certain circumstances wherein culpable homicide do not amount to Murder.

This much of explanation for the question asked. One could have started directly with Exceptions.

(1) Grave and Sudden Provocation

Those cases where the death of another person is caused by the accused under which he was deprived of his power of self control on account of grave and sudden provocation. The lethal blow must be traced to the provocation and there must be no cooling off period in between. (K.M. Nanavati v. State of Maharashtra).

Noted.

Furthermore, such provocation must not be voluntarily sought to justify the act.

This exception is not applicable in cases of grave & sudden provocation against

- (i) a person acting in the exercise of right of private defence.
- (ii) Private servant acting under the colours of his powers authority.

(2) Those cases where a person exercising his right of private defence exceeds his powers in a good faith and cause the death of another person **without premeditation.**

Noted.

(3) Those cases where a public servant believing himself to be lawful justified to do so acts in the excess of his powers and causes the death of any person without any ill will towards such person. Also applicable to persons acting under the directions of a public servant.

Noted.

(4) Those cases where a person causes the death of another person in a sudden quarrel without having any and advantage over the deceased person without acting in a cool manner. The accused must be under a heat of passion on a sudden fight.

(5) Those cases where the victim above the age of 18 years gave his consent to suffer the risks of death or

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such bodily injury that may result in
his death. **Good.**

- 4/8. 1. Exceptions could have been explained better.
- 2. No Illustrations/case laws.

26/56.