

Question Bank



ALL SUBJECTS

Q.1) Which amendment of the Constitution has added the words, 'Secular' and 'Integrity' in the Preamble to the Constitution?

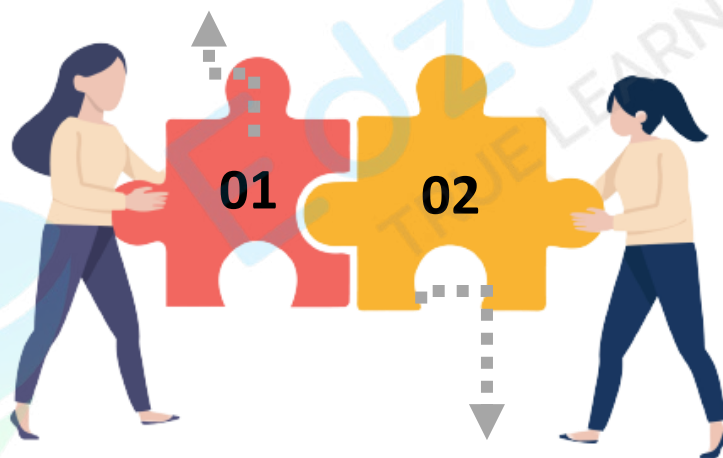
- a) 1st Amendment Act
- b) 24th Amendment Act
- c) 42nd Amendment Act
- d) 44th Amendment Act

Ans: C

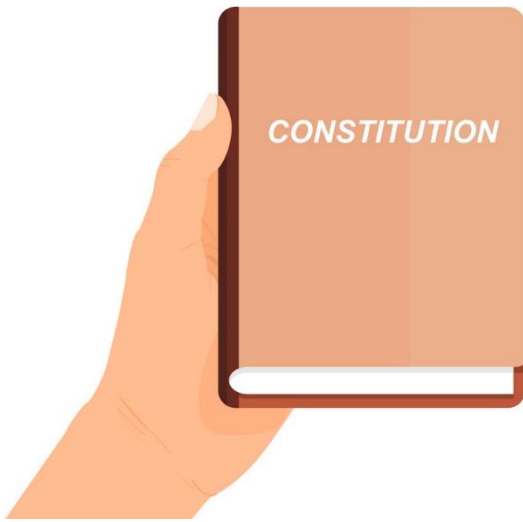
Explanation:

FORTY-SECOND AMENDMENT ACT, 1976
(Recommendations of Swaran Singh Committee)

- Added Three new words **SOCIALIST, SECULAR AND INTEGRITY** in the Preamble



- Added **FUNDAMENTAL DUTIES** by the citizens (**new Part IV-A**)



- It is also known as “**Mini Constitution**” due to several major amendments enacted to the Constitution;
- It was enacted under **Indira Gandhi Government**.

AMENDABILITY OF THE PREAMBLE



KESAVANANDA BHARATI (1973)

Preamble can be amended, subject to the condition that no amendment is done to the ‘**basic features**’.

BASIC ELEMENTS

FUNDAMENTAL FEATURES



cannot be altered by an amendment under **ARTICLE 368**.

Preamble has been amended only once so far, in 1976

42ND CONSTITUTIONAL AMENDMENT ACT

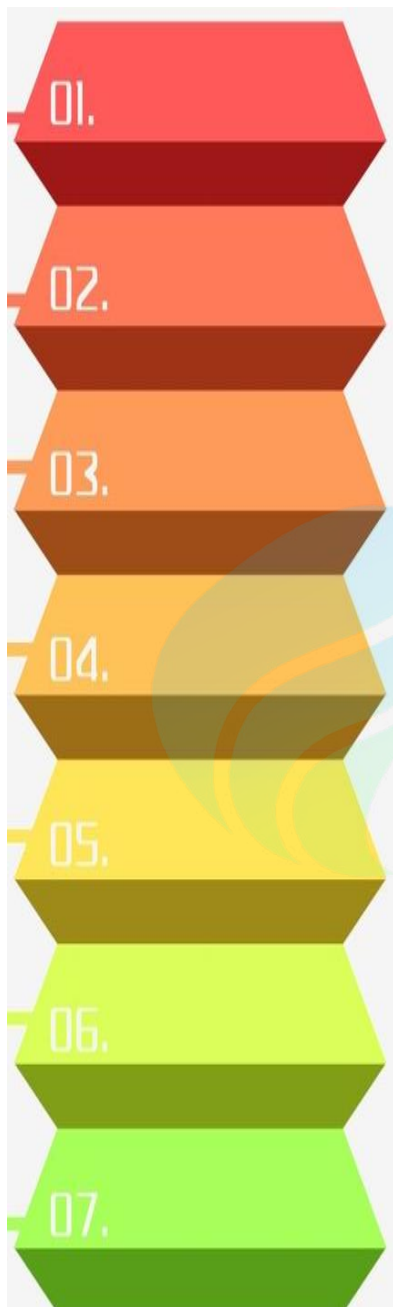
Added 3 new words

- **SOCIALIST**
- **SECULAR**
- **INTEGRITY**



This amendment was held to be valid.

How is 44th Amendment Act related to 42nd Amendment Act?



- It was **introduced in the year 1978** by the government to nullify the amendments made by 42 Amendment Act 1976
- It **removed Right to Property** and made it a legal right
- Replaced the word internal disturbances with the word armed rebellion,
- **Article 226** was amended to restore High Court's power to issue writs,
- Modified the Constitutional emergency provisions.
- Restored the secular and democratic ideals.
- It added one more Directive Principle, to minimize inequalities in income, status facilities, and opportunities under **Article 38.**

Q.2) Constitution is generally defined as:

- a) Law of the land
- b) Fundamental law of the land
- c) Administrative law of the land
- d) Constitutional law of the land

Ans: B

Explanation:

- Constitution: '**grundnorm**' of the land, a **German** word for **fundamental** norm of the land.
- **Grundnorm** - concept in the Pure Theory of Law by Kelsen to denote the basic norm, order, or rule that forms an underlying basis for a legal system.

CATEGORY	CONSTITUTIONALISM	CONSTITUTION
Meaning	<ul style="list-style-type: none">• A principle which is not just a constitution but put limitations to the <u>activities of individuals and the government</u>.	<ul style="list-style-type: none">• The fundamental laws custom, conventions, rules and regulations, stipulating how a country is governed.

Idea	<ul style="list-style-type: none"> • Limitations upon governmental powers. 	<ul style="list-style-type: none"> • Confers power to the government, and restrains them.
Limitations	<ul style="list-style-type: none"> • In exercising its powers, the government should be limited by law. 	<ul style="list-style-type: none"> • Those limitations are usually <u>enshrined in the constitution.</u>
Written/ Unwritten	<ul style="list-style-type: none"> • Generally Unwritten. 	<ul style="list-style-type: none"> • Generally a Written document.
Example	<ul style="list-style-type: none"> • Separation of Power under Article 245 and 246 promotes the spirit of Constitutionalism. 	<ul style="list-style-type: none"> • China has a 'Constitution' but not 'Constitutionalism'.

Did you Know?

The **USA** is the **first country** to make the constitution on June 21, 1788.



Reference: The Constitutional Law of India by M.P. Jain; 6th Ed, 2012, Page No: 1-6

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Q.3) Which provision of the ICA mentions time-barred debt?

- a) Section 25(1)
- b) Section 25(2)
- c) Section 25(3)
- d) Section 25(4)

Ans: C

Explanation:

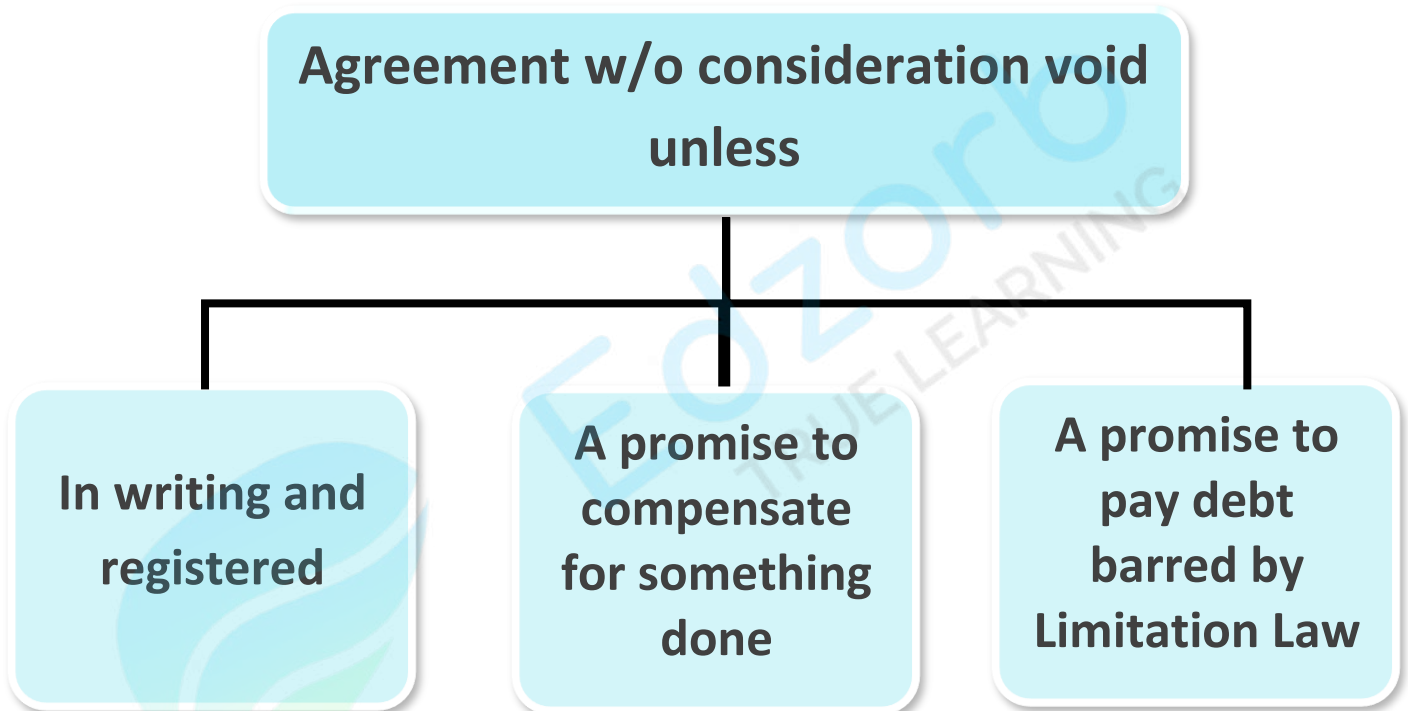


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Section 25:

An agreement made without consideration are void, unless



No Consideration



- A promise, for no consideration, to give to B Rs. 1,000. This is a **void agreement**



- Because you have scored good marks, I will buy your favorite video game out of love and affection. I will write this and register this.

- Nothing shall affect the validity, as **between the donor and donee, of any gift actually made.**
- An agreement to which the **consent of the promisor is freely given is not void.**



- Court to determine the question whether the **consent of the promisor was freely given.**

Rajlakhi Vs Bhootnath (1900) 4 Cai WH 488

- In spite of the fact that there is close relation between the parties,
- But there does not exist mutual love and affection.
- Hence in such a situation an agreement between the parties is void.

Section 25(3) of Indian Contract Act, 1872 lays down an **exception dealing with a promise to pay a time barred debt.**



- As per this provision a promise to pay time barred debt is enforceable when the following conditions are satisfied.
- The Promise must be in writing and Signed by the promisor or by his agent generally OF Specially authorized in that behalf,
- The promise must be to pay the whole or any part of the debt;
- The debt must be such of which the creditor might have enforced payment but for the law for the limits of suits.

Did you Know?

- Mere acknowledgement of debt will not be sufficient,
- To invoke **Section 25(3)**, it is necessary that **there must be an express promise in writing to pay the time-barred debt.**
- And it should be an express and not implied promise.
- **Limitation Act is applicable to debt and after the expiry of the limitation period**, debt will be time barred



Reference: The Indian Contract Act, 1872, Central Law Agency, Diglot Edition, P.9

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Q.4) Contract without consideration is

- a) Illegal
- b) Void
- c) Voidable
- d) Enforceable

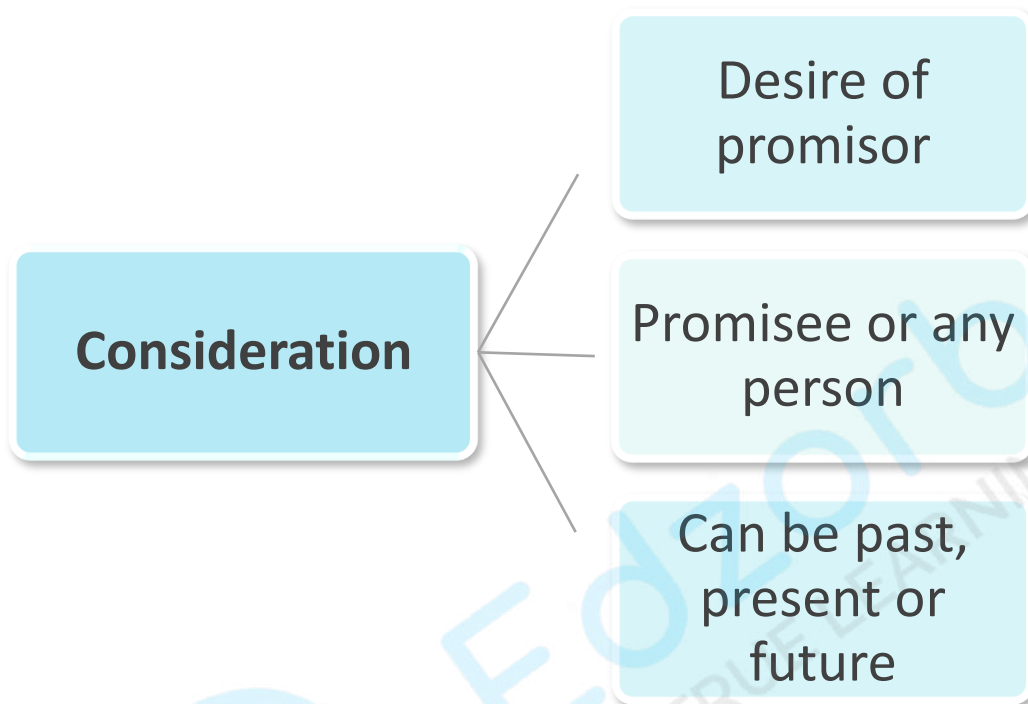
Ans: B

Explanation:

Consideration- Sec.2(d)

- When at the **desire of the promisor**,
- The promisee or any other person,
- Has **done or abstained from doing**, or does or abstains from doing or promises to do or to abstain from doing something,
- Such **act or abstinence or promise** is called consideration for promise.





- It must be at the desire of promisor. It should not be voluntary.
- There is no Doctrine of privity of consideration as opposed to provision in English Law.

Desire

No Doctrine

Consideration

PPF

Three Types

- It must be past, present & future consideration.
- Consideration must be of three types.

Congratulations,
here are your new
property papers.!!

Thank you, this is
your money...!!



A Contract where Mrs. X agrees to sell her house to Mrs. Y for
Rs. 10.00.000

Durga Prasad Vs Baldeo (1880) 3 All 221

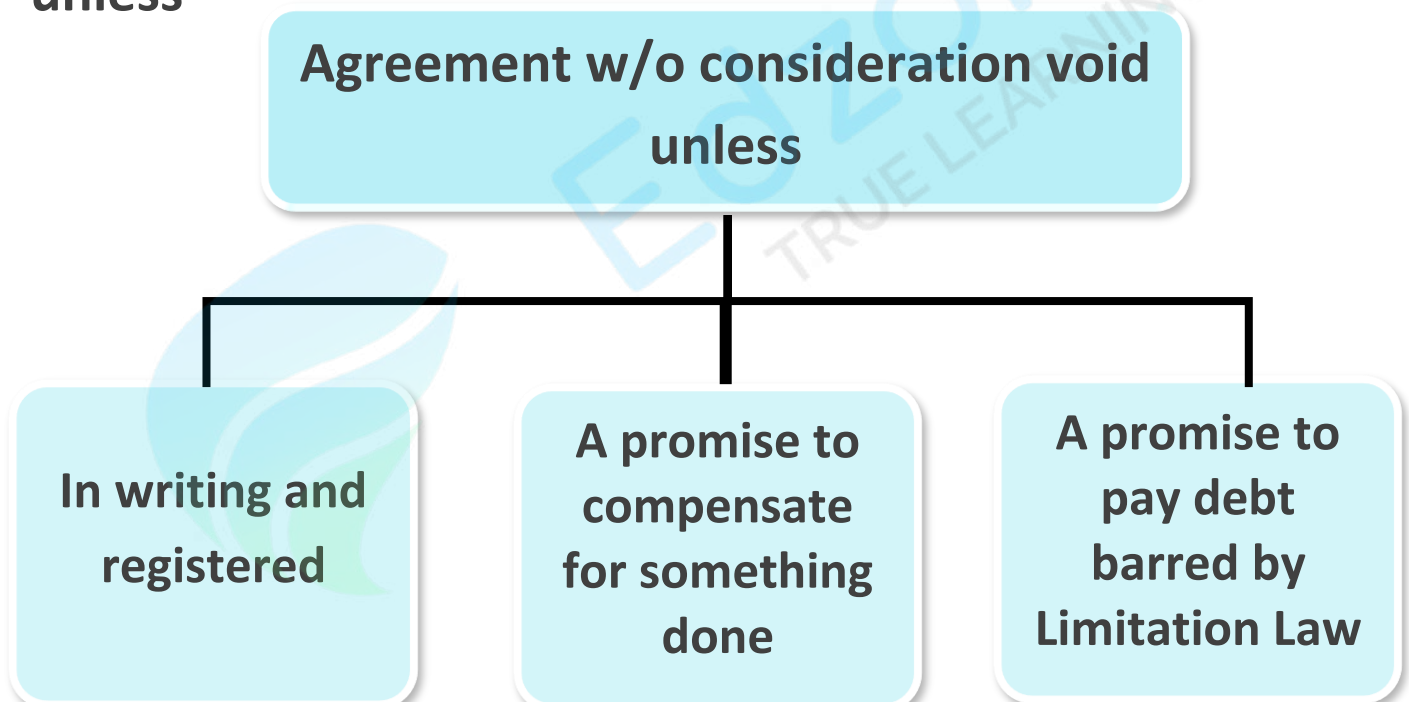
- **Facts-** The defendant occupied the shop in consideration of the plaintiff having spent money promised to pay him a commission sold through their agency.
- **Held-** If act is done at the desire of the promisor, then it will furnish a good consideration.
- If the act is not done at the desire of the promisor, then it will not be considered to be a consideration.

Difference between English law and Indian Law

English Law	Indian Law
<ul style="list-style-type: none">• The contracts which are oral they must be supported by consideration.	<ul style="list-style-type: none">• Consideration is a must in India.
<ul style="list-style-type: none">• The contract in writing is called contract under seal and do not require consideration	<ul style="list-style-type: none">• S.10 says that consideration is an essential ingredient for enforceability of contract, at the desire of promisor

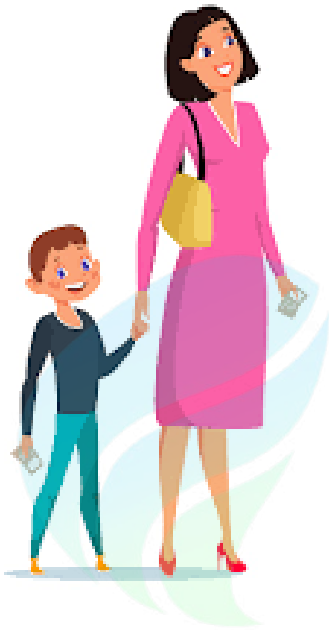
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- The debt must be such of which the creditor might have enforced payment but for the law for the limits of suits.

Currie Vs Misa

(1875) LR 10 Ex 153

- A **valuable consideration**, in the sense of the law, may consist either of some **right, interest, profit or benefit** accruing to the one party, or some **forbearance, detriment loss or responsibility**, given, suffered or undertaken by the other.

Reference: The Indian Contract Act, 1872, Central Law Agency, Diglot Edition, P.9

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Q.5) For the purpose of the Limitation Act, 1963, a suit is instituted in the case of a pauper,

- a) When the plaint is presented to the proper officer
- b) When his application for leave to sue as a pauper is made
- c) When the plea of pauper is pleaded
- d) None of the above

Ans: B

Explanation:

Section 3. Bar of limitation

(a) a suit is instituted-

In an **ordinary case**, when the plaint is **presented to the proper officer**;



In the case of a **pauper**, when his **application for leave to sue as a pauper is made**.

In the case of a claim against a company which is being wound up by the court, **when the claimant first sends in his claim to the official liquidator.**



Order 33 (Suits by Indigent Persons)

'Indigent Person' a person who is suffering from extreme poverty, impoverishment, or one who lacks the basic resources required in normal life.

In legal parlance, an indigent person does not possess the financial capacity to pay the court fee.



Reference: Limitation Act, 1963

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Q.6) Any appeal or any application, other than an application under any of the provisions of.....may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period

- a) Order XXI of the Code of Civil Procedure, 1908
- b) Criminal Procedure Code, 1973
- c) Any special law
- d) None of the above

Ans: A

Explanation:

Section 5 Extension of prescribed period in certain cases:

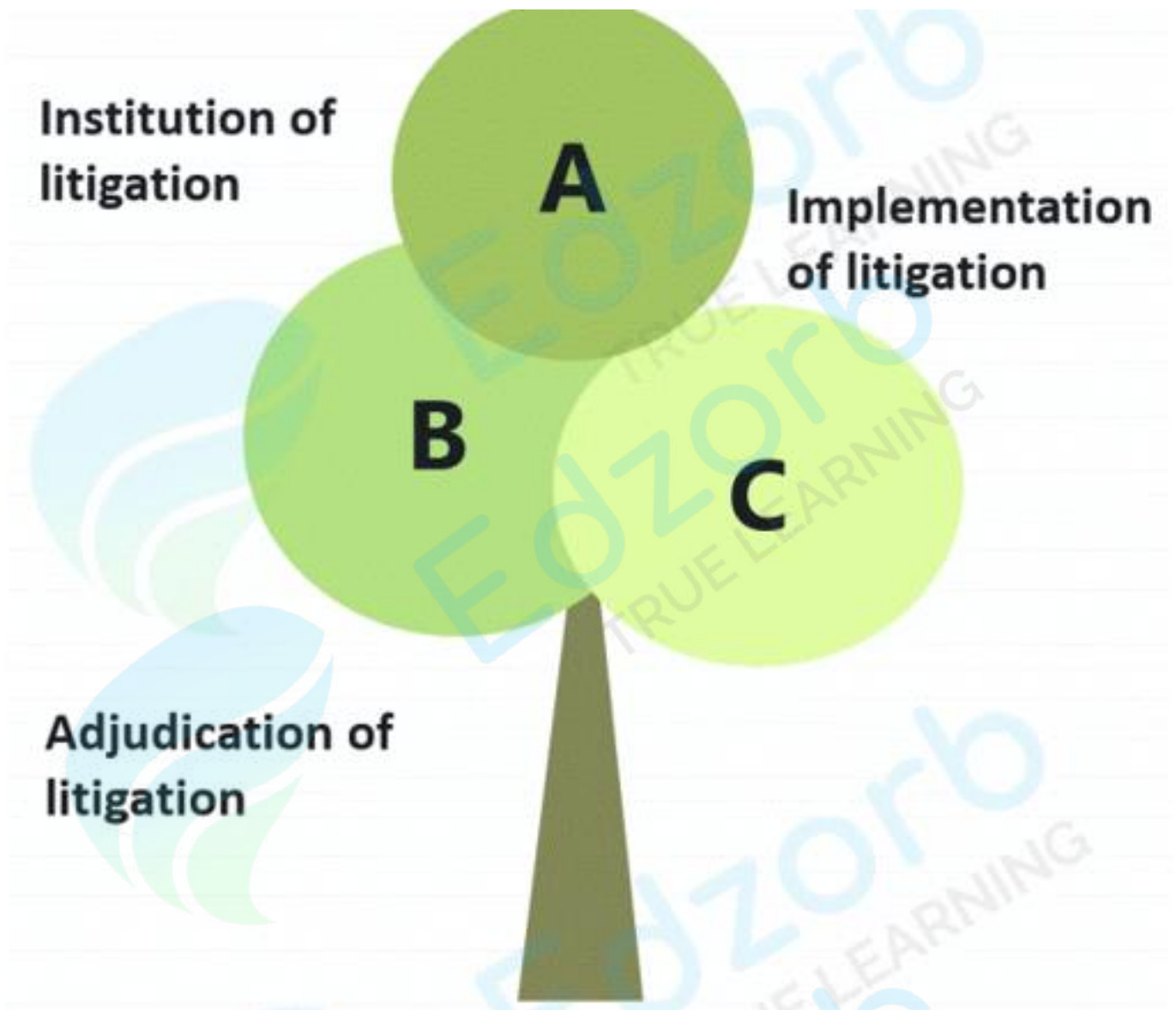
- The appeal or application may be admitted after the prescribed period if the sufficient cause is shown.
- **Section 5** does not apply to:

Suit

Execution under
Order 21



Order XXI of the CPC is the lengthiest order provides detailed provisions for making an application for execution and the manner that, how they are to be entertained, dealt with and decided.



- There are **three stages** in litigation-
- **Execution** is the **last stage** of any civil litigation.
- Implementation of litigation is also known as execution.

'Sufficient Cause': The term 'sufficient cause' used here has not been defined in this Act. It can be defined as a cause, which is beyond the control of the party invoking the aid of this Section.

Example:



Illness



Imprisonment



**Mistaken Legal
Advice**



**Delay in obtaining
copies**



Illiteracy

University of Delhi Vs Union of India and others

2019, SC

Facts: There was a delay of 916 days.

Held: The consideration for condonation of delay would not depend on the status of the party namely the Government or the public bodies.

- Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective.
- While considering condonation of delay, ***the routine explanation would not be enough*** but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case.

Reference: Civil Procedure & Limitation Act by C.K. Takwani 8th Ed. 2013, Page No 773

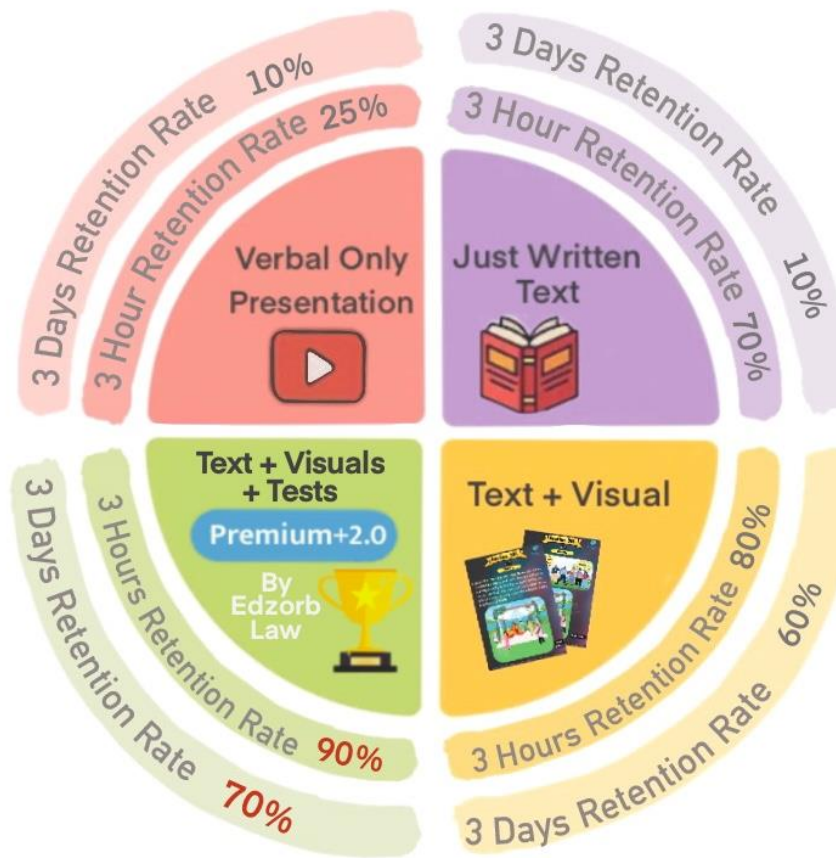
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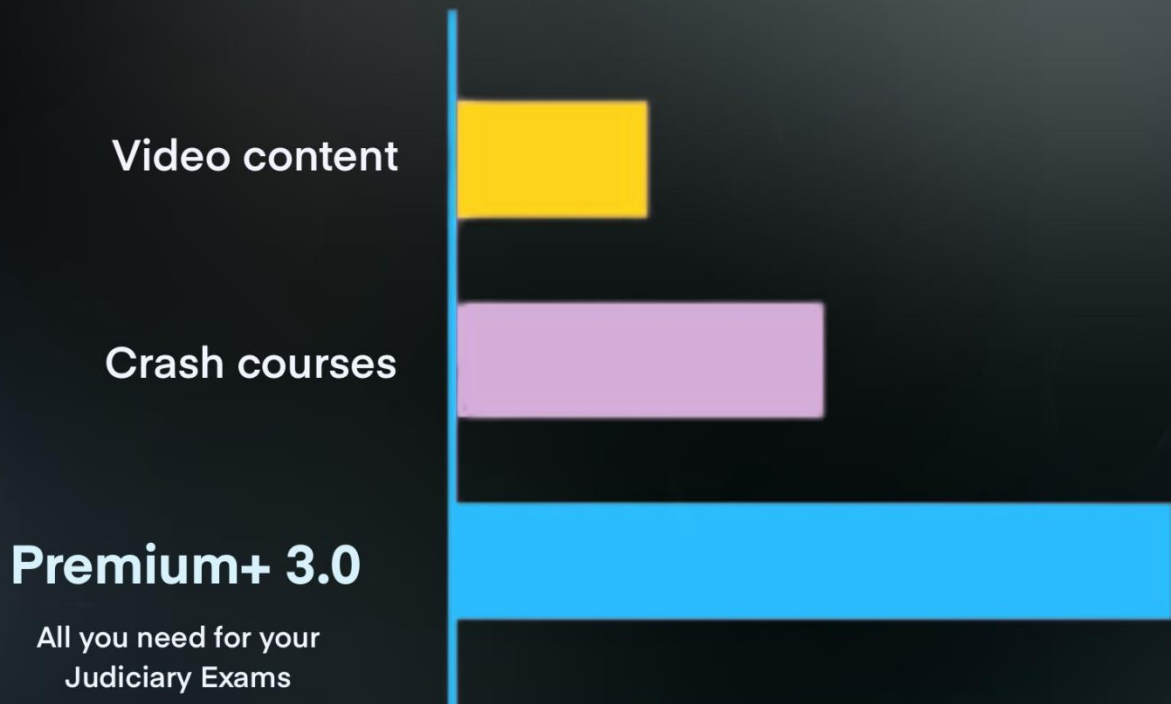
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Q.7) In a suit under Section of the Specific Relief Act, the plaintiff can be defeated if the defendant proves his superior title to the land.

- a) Section 3
- b) Section 4
- c) Section 5
- d) Section 6



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Section 5: Recovery of specific immovable property

A person **entitled** to the **possession of immovable property**

- He may recover the possession as manner provided by CPC.



Extra Information

The essence of S.5 is **'title'**, i.e., the person who has better title is a person entitled to the possession. The title may be on the basis of ownership or possession.

- Ankush enters into peaceful possession of land claiming it as his own although he might have no title to it.
- Still, he can sue another who has forcibly ousted him from possession and who has no better title to it, because Ankush, although he has no legal title, has at least a possessory title.

Let me see if someone is coming to claim this house as his own.



Ravinder Kaur Vs Manjit Kaur

(2019) 8 SCC 729

- The concept of suit based on a possessory title under **Section 5** of Specific Relief Act read with **Article 64** of Schedule to Limitation Act, overlaps with the concept of adverse possession.
- Therefore, the concept of possessory title generally termed as “better title” as against all but the true owner, when accompanied with other ingredients such as un-interrupted, peaceful and open possession, the same can be stretched little further and made applicable in cases against true owner also.
- *The suit has to be filed within 12 years.*

Section 6 and Article 64 of Schedule to the Limitation

Section 6		Article 64	
Similarity			
<ul style="list-style-type: none">Deals with recovery of possession on the basis of previous possession rather than title.			
Difference			
<ul style="list-style-type: none">Limitation Period: 6 months.		<ul style="list-style-type: none">Limitation Period- 12 years.	
<ul style="list-style-type: none">No right of appeal against the order.		<ul style="list-style-type: none">Appeal can be filed.	

Act

Nair Service Society Vs K.C Alexandar 1968 AIR 1165, 1968 SCR (3) 163

Issues:

- Can a suit U/S 5, **Art.64** and **Art. 65** be clubbed with **S.6**
- Can court consolidate various causes of action

Held:

For Issue No. 1

- It does not bar such suit can be clubbed together.
- Court does not deny it as given facts of this case specifically

Reasoning:

- Though court allowed suit to clubbed together but mentioned that **S.6** does not confer any suit on basis of title it only provides recovery of possession on basis of illegal dispossession.
- The main purpose of **S.6** is to give fast and speedy relief, such consolidation of different cause of action.



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Q.8) Section 6 of the Specific Relief Act is a reproduction of Section 15 of the Limitation Act 1859. The statement is

- a) True
- b) False
- c) Partly correct
- d) None of the above

Ans: A

Explanation



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Section 6: Suit by person dispossessed of immovable property:

(1) Dispossession from immovable property:

- Any person is **dispossessed** from **immovable property** without:
 - His consent
 - Due course of law
- He or any person through whom he has been in possession or any person claiming through him may file suit for recovery of **possession irrespective of title to the property.**



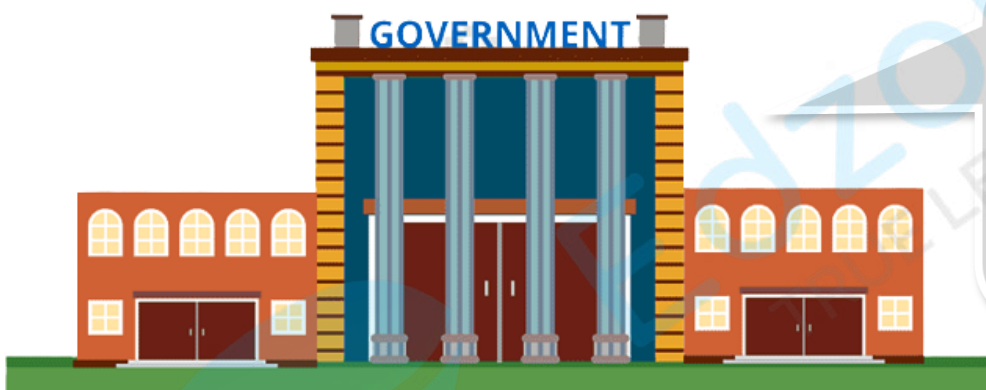
(2) No suit under this section shall be brought:

- After expiry of **six months** from the date of **dispossession**.



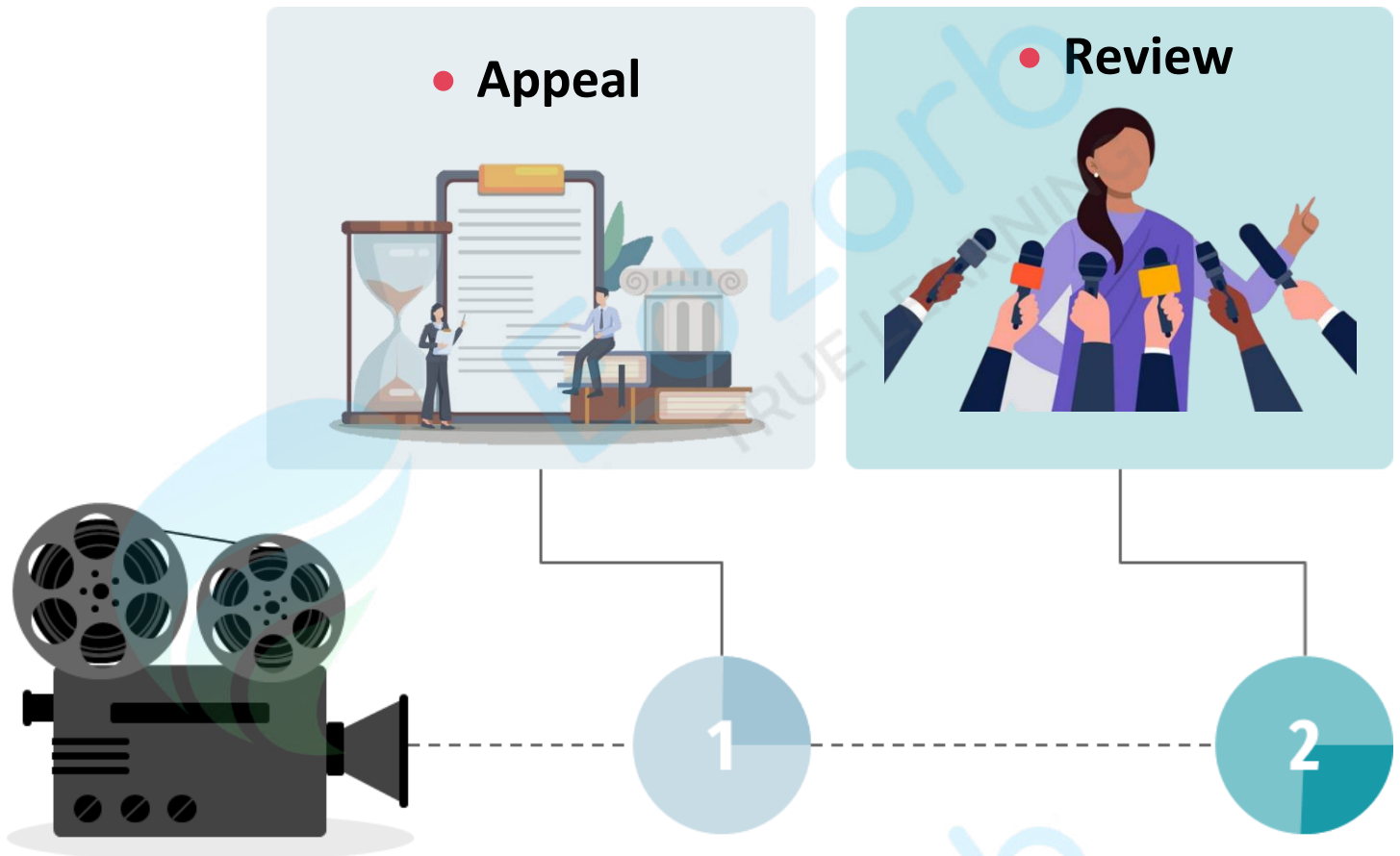
Mr. Tenant, you have to come to me within 6 months as per **Section 6 (2)** of SRA

- **Against Government**



I am Govt., I have a right to make laws in my favour. Don't I??

(3) No appeal or review shall lie from any order or decree passed in any suit instituted under this section.



No appeal or review Not against **Section 6**

Food for thought

Revision can be filed under decree passed **u/s 6** SRA



Whether **S 6 (3)** also bar Letter Patent Appeal (LPA):

Vinita M. Khanolkar Vs Pragna M. Pai

AIR 1998 SC 424

- Section 6 (3) bars appeal and review against any order passed under Section 6. However, the **statutory** provision cannot cut across the **constitutional power** of the High Court.
- Unless the concerned **statute expressly** bars LPA, the power of High Court under LPA would not be excluded.

(4) This section does not bar any person from suing to:

- **Establish his title** to such property and
- Recover the possession.

You got the property u/S.6 SRA but I will get it in normal suit without any doubt.

We will see to it.



Types of Possession:

- **Actual Possession:** Actual possession is physically having an item in one's personal custody or having direct control over that item.



- **Constructive Possession:** Constructive possession is when an individual has actual control over chattels without actually having physical control of the same assets.

- **Symbolic Possession:** Symbolic possession is when the bank has the legal right over a property, even though the previous owner continues to have physical possession in the property.



Possession under **Section 6**

**Supdt. and Remembrancer of Legal Affairs, W.B. Vs
Anil Kumar Bhunja
(1979) 4 SCC 274**

The word "dispossession" occurring in Section 6 of the said Act and gave a wider meaning to it and imbibed within itself the concept of constructive and / or symbolic possession in juxtaposition with a physical and actual possession.

The object of **Section 6** are two-folds:

**To provide
speedy
remedy**

**To prevent
people from
forcible
dispossession**

Suit by trespasser under **Section 6**:

K. Krishna Vs A.N Paramkusha Bai **AIR 2011 AP 165**

- A tenant was dispossessed forcibly by the owner but he himself get forcible repossession.
- **Held:** “Tenant could institute suit for repossession immediately when he was forcibly ousted, but as soon as he takes forcible repossession, he became trespasser and therefore could not be regarded to be in lawful possession.”

Suit by Tenant holding over

Holdover tenant: A holdover tenant is a tenant who continues to pay rent, even after the lease has expired.

Ejaz Vs T.N. Handloom Weavers' Coop Society Ltd **(2002) 3 SCC 137**

- The possession of a tenant after the termination of the tenancy continues to be a juridical possession.
- His right to possession remains unless the owner gets a decree of eviction against him. Till then if he is dispossessed, he is entitled to seek restitution of his possession.

East India Hotels Ltd. Vs Syndicate Bank

1997 (1) BomCR 234

Facts:

- The plaintiff, which runs hotels, provided the defendants with a space on lease and license for 12 years.
- Plaintiff had written a letter to the defendant asking for vacating the space on the expiry of the time whereas defendant asked for renewal of deed.
- There was a fire outbreak in the plaintiff's hotel which affected the suit premises as well. The defendant vacated the place soon after.
- Later the defendant had asked to give back the possession to him but the plaintiff denied.
- The defendant had filed a suit u/S.6.
- The plaintiff filed an injunction u/S.6(4).

Held:

Under **S.6**, the plaintiff can be provided with the **remedy of possession** of the land but **not for an injunction**.

But this decision was opposed by other Counsels.

Following the rule of **harmonious construction** for **S.6 (1) and 6(4)**, a suit for an injunction can be claimed under **Section 6(4)**.

- Taking note of this case, it can be said that if the party is still in possession of the place then a suit for an injunction can definitely be filed.

Section 6 and Article 64 of Schedule to the Limitation

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must withstand the test

Article 19(1)(a). Freedom of press means
There can be no relationship in the press.
public articles or matters of public interest
to exercise the right of the
however, restrictions can be imposed on the
but those restrictions must stand the test of
democratic organisation
In *Bennett Case*, the Union of
India (1972), the Supreme Court
the freedom of the press embodies the right of the

Ques 1

* Rule of
Convenience
* maxim
vigilantibus
non
dormientibus
jura subvertunt

Sec 21(1), of Code of Civil procedure provides that, no objection as to place of suing will be allowed by an appellate or revisional court unless following conditions are satisfied:

Court of first Instance

1. The objection was taken at first instance in court
2. It was taken at earliest possible opportunity and in cases where issues are settled at or before settlement of issues; and
3. There has been consequent failure of justice

Ques 2.

* provision
rising
Art. 16, 335,
338, 340,
341 & 342

Reservation of posts in government services is a broad and infamous subject. The basis of reservation was always to bring every class of people on equal footing majorly on financial and social aspects. So the basis and limit of reservation should still be the financial status as discrimination on caste and class level has been decreased but financial gap has been increased from past recent years.

* Indira Sawhney case
* Balaji vs State of Mysore
9

Ques 3

No, a remand order cannot confer jurisdiction on the subordinate court when such court originally do not have such power. It is settled principle that no appellate court can confer jurisdiction on a subordinate court, however high appellate court may be as, jurisdiction of a court is determined by statute. In case of Venkatarama & Angathayammal it is held that

(1)

an appellate court remanding a case to an inferior court cannot confer jurisdiction on court if it inherently lacked the same.

Ques 4

A suit is of civil nature if the principal question therein relates to the determination of a civil right and its enforcement.

It is subject matter of suit which determines whether it is suit of civil nature or not.

In a suit in which right to property or to an office is contested whether it is of civil nature or not, what needs to be determined is whether it entirely depends on religious rites or ceremonies or not?

If its decision does not entirely depend on religious rites or ceremonies it is a suit of civil nature.

(i) Right to take out religious procession is a suit of civil nature

(ii) Right of Pandanashen lady to observe parda is a suit of civil nature

(iii) Right to franchise is a suit of civil nature

11/5
3

Ques 5

Doctrine of res judicata applies between co-defendant only if plaintiff claimed any relief and he cannot get his relief without trying and deciding a case between the co-defendants. However it has been stated that requisite conditions should be fulfilled to apply principle of res judicata as between defendant and that are:

Start with Sec 9 of CPC along with explanation
Meaning of Civil Suit
Kehar Singh vs Custodian General
Shankar Narayan Potti vs K. Sreedhar

Provision 9 Maxim



- 1) There must be conflict of interest between the defendants concerned
- 2) it must be necessary to decide the conflict in order to give the reliefs which plaintiff claims.
- 3) the question between plaintiff the defendants must have been finally decided.
- 4) the co-defendants were necessary or proper party in former suit. (Joindammal by LR is Vaidgarathan)

Section 10 CPC



Res judicata

- suit ^{which} is finally decided by competent court
- In this a case is heard & finally decided
- Subsequent suit on same subject matter is prohibited
- Objective is to prevent multiple litigation

Res judicata

- In this suit is finally heard & decided which cannot be presented further as a suit
- Object is to prohibit multiplicity of litigation
- It is result of judgment of court

Res subjudice

- A suit which is pending in a competent court
- In res subjudice, case is pending in court
- subsequent suit on same subject matter is stayed.
- Objective is prohibition of concurrent justice

Res Estoppel

- In this a person cannot be allowed to change his position if he makes another to believe in good faith
- Its object is to protect right of such person who acts in good faith
- It is based on act of parties

→ Sec 115 IEA
→ Pickard vs Scott

* Sec 11 CPC

Maxims & Nemo debet bis vexari Pro Una Causa

Manohar Lal vs Seth Hiralal



Ques 24 (a) Right of private defence of property extend to causing of death

Such right of private defence of property extending to cause death is dealt under Sec 103 of Indian Penal Code. It permits a person to extend its right of private defence to cause death only under certain circumstances as mentioned under the provision of the Code. Such circumstances are

1. When robbery is committed

2. When offence of housebreaking by night is committed

3. When mischief by fire is committed on any building, tent or vessel, which is used as human dwelling or as a place for the custody of property

4. If when theft, mischief or house trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be consequence, if such right of private defence is not exercised.

This right commences as soon as a reasonable apprehension of danger to body arises from an attempt, or threat to commit offence, although offence may not have committed but not until there is that reasonable apprehension. The right lasts as long as reasonable apprehension exist

Amma Martin v State of Kerala.

S. 104
P. S. 103
should also
be mentioned

* Case law
without
principal
useless
(S. 105)

(b) Police officer's report after completing investigation

Police Off Officers submit its report after completing investigation under sec 173 of Code of Criminal proceeding. Procedure Code

It is stated that every investigation should be completed without unnecessary delay. In case investigation relates to an offence under sec 376, 376 A, 376 B, 376 AB, 376 C, 376 D, 376 DD or 376 E of Indian Penal Code it ~~shall~~ should be completed within 2 months which shall be calculated from date of information was recorded by officer in charge of police station.

Such report shall be forwarded from officer in charge of police station to Magistrate empowered to take cognizance of offence under sec 173(2) of IPC.

Such report shall be in format or form as prescribed by state government. shall

It will contain following details

1. Nature of information
2. Name of the parties
3. Name of person acquainted with case
4. Offence which appears to have been committed?
5. If ~~case~~ so, by whom
6. Whether accused has been arrested
7. Whether released on bond or sureties
8. Whether he has been forwarded in custody under sec 170
9. Medical report of a woman.



According to sec-173(3) In case superior officer of police has been appointed under sec-158 and state government by order directs, then report shall be submitted through that officer. While orders of Magistrate are pending, such an officer may also direct officer in charge of police to make further investigation if required.

5
10
X When the transfer of prop of owner w/c he is not the owner

(c) Doctrine of election with illustration. Section 35 of Transfer of Property Act discusses the doctrine of election. It states that when a person / transferor in same transaction confers benefit on owner of property and to transferee, the owner is put to election either to accept benefit of transfer or refuse it.

Its essentials are - that transfer should be in same transaction

- Benefit & burden must come from same transaction.
- benefit is directly given to owner

For example, ashwini proposes to transfer property of Rohan ^{to} ~~and~~ Divyansh and gives 10,000 to ~~husband~~ wife of Rohan. This is not case of direct benefit to Rohan thus Rohan has no duty to elect.

As stated benefit and transfer must be inseparable and interdependent



Remarks:-



- ① Answer not in Answer format rather on notes format.
- ② Don't copy things from Internet.
The Answer on Internal & External aid was exact copy.
- ③ Missed out on lot of Questions.
- ④ Next time copies won't be evaluated if they are not in Answer format.
- ⑤ Always mention the section no. on top & not at last.





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Q.9) An important case in relation to Test identification parade is:

- a) Ramnath v. State of T.N.
- b) Ram Lochan v. State of Bengal
- c) Queen-Empress v. Abdullah
- d) All of the above

Ans: A

Explanation:

Test Identification Parade is to test the veracity of the witness on the question of capability to identify an unknown person whom the witness may have seen only once,

Johny Singh Vs State

AIR 1978 SC 1201

- Test Identification Parade (TIP) was **an Investigative tool as opposed to substantive evidence**. The failure to hold a TIP would not render the evidence of identification in Court as inadmissible.



Ramnath Vs State of Tamil Nadu

Air 1978 SC 1201

- It was held that identification of the accused by the witnesses in the court, when no Test Identification Parade has been held before, will be useless evidence.

Read more about the case:

<https://indiankanoon.org/doc/160245265/>

Ram Lochan Vs State of West Bengal

AIR 1963 SCC 1074

- It was held that superimposed photograph of the deceased over the skeleton of human body was admissible to prove that the skeleton was that of deceased.

Queen Vs Abdullah

1885 ILR 7 ALL 385

- It was held that "a Dying declaration may be made by signs when the injured person is unable to speak".

Did you Know?

- Test identification parade is provided under Section 9 of The Indian Evidence Act 1872 read with Section 54A of Criminal Procedure Code 1973.



Victim girls identify the accused who groped them in TIP

<https://ahmedabadmirror.indiatimes.com/ahmedabad/coverstory/yes-he-is-the-pervert/articleshow/69615286.cms>

Reference: The Law of Evidence by M. Monir; 9th Ed., 2013 Page No. 60

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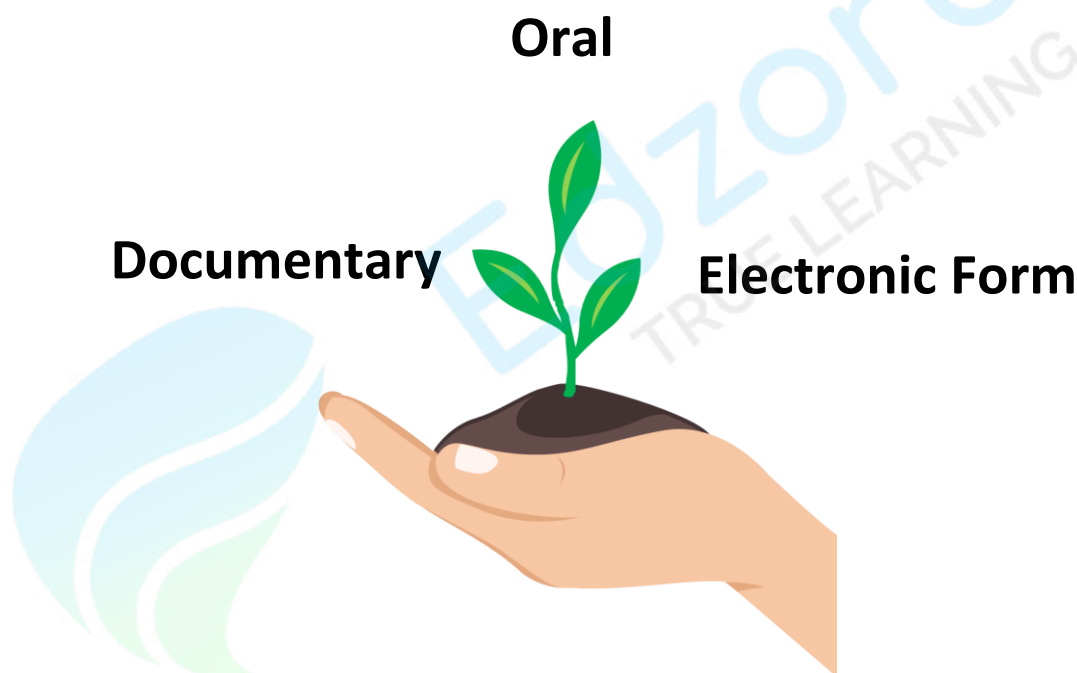
Q.10) Admissions by agents are:

- a) Always admissible in civil proceedings.
- b) Admissible in civil proceedings only if the agent has the authority to make admissions.
- c) Not admissible in criminal proceedings.
- d) Both (b) and (c).

Ans: D

Explanation:

Section 17 of Evidence Act defines Admission. Provision for admission are applicable to both civil and criminal proceedings. Admission



Section 17: Admission Defined:

"An admission is a statement, oral or documentary or electronic form which suggests any inference as to any fact in issue or relevant fact."

- The electronic form of admission has been made relevant after the **Act of 2000**.



In divorce proceeding between husband and wife, the admission by wife, though in electronic form, is relevant and admissible.

- **Value of Admission**

Thiru John Vs Returning Officer

AIR 1977 SC 1724

- Admissions as defined in **sections 17 and 20** and fulfilling the requirements of **section 21** are substantive evidence, propio vigore.
- An admission is the best evidence against the party making it and, though not conclusive, shifts the onus to the maker.

Ram Bharorse Sharma Vs Mahant Ram Swaroop

(2001) 9 SCC 471

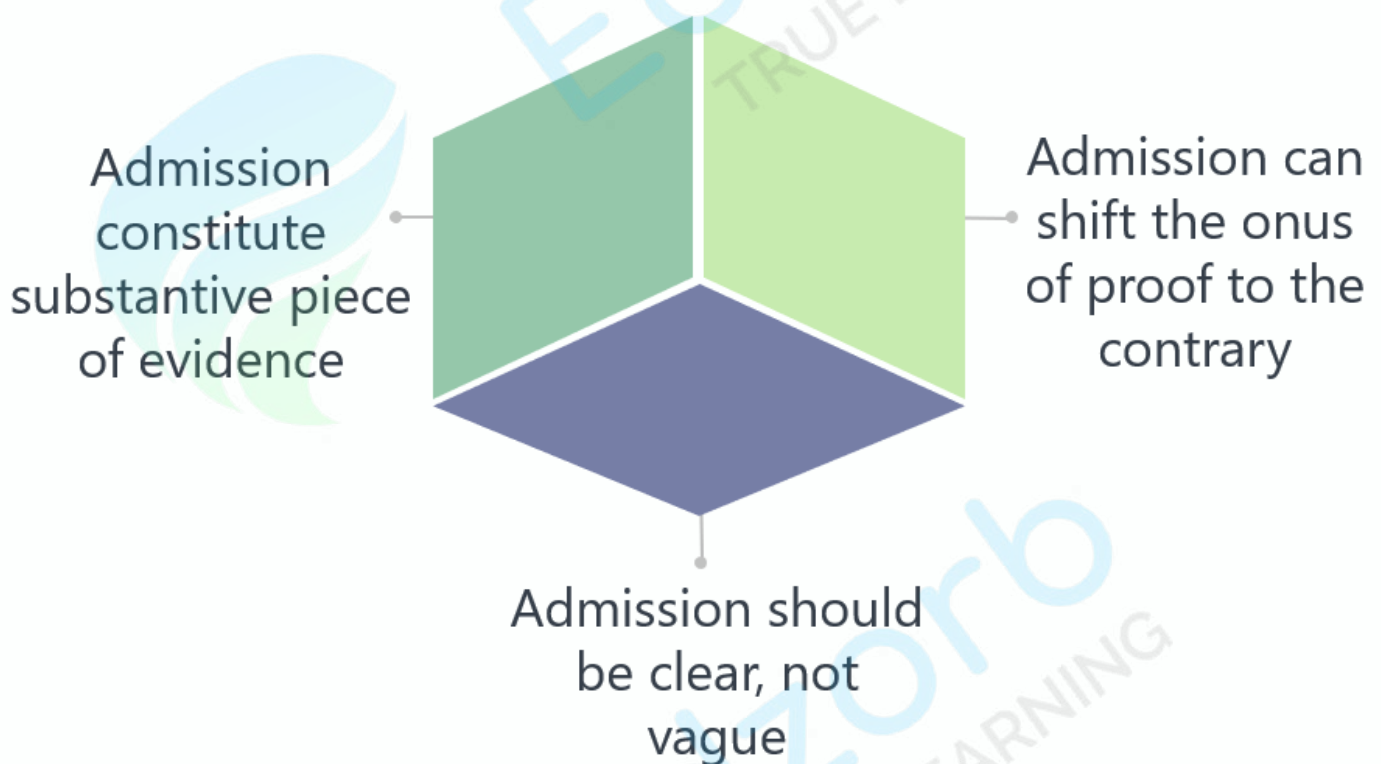
- A statement which is of the nature of an admission on a mixed question of fact and law **cannot be treated as an admission under Section 17,**
 - Because only an admission of fact binds the maker and not an admission on question of law.
-
- **Admission as to mixed question of fact and law:**

Landmark case:

Ajodhya Prasad Bhargava Vs Bhawani Prasad Bhargava

AIR 1957 All 1

- I. In this case, **three effects of admissions** were enumerated:



II. Judicial admission and Extra Judicial admission:

- Unlike Judicial admission, extra judicial one is **not fully but partly binding** on the parties.
- However, they are binding in the cases where they **operate as or are having the effect of estoppel**.

Section 18: Admission –

Statement of following will be regarded as admission:

I. PARTY TO THE PROCEEDING:



II. AGENT TO PARTY, when acting under authority of principal.



This is an admission by the agent.

III. Statements made by party **SUING OR SUED IN A REPRESENTATIVE CHARACTER:**

The admission by such party is admissible only when it is made when the party held such character.

You know our ancestral property that we have is mortgaged from last 10 yrs.

The statement of the man will be relevant against his son too who will inherit the ancestral property from him.

IV. Statement made by person having **PROPRIETARY OR PECUNIARY INTEREST**:

When the person has the pecuniary or proprietary interest in the subject matter, the admission by such person is relevant.



Admission by A in relation to the house will be relevant against B and vice-versa.

V. Person **DERIVING INTEREST FROM ANOTHER**:

A person who derives interest from another, any admission made by the person from whom he derives an interest is relevant against the latter person, if made during Continuance of such interest.

Persons with derivative interest are of three kinds:

- **By privity in law.**

Relationship between the executor or administrator of a will and the legatees & heirs;



- **By privity in blood.**

Relationship between a person and his descendants and ascendants; and

- By **privity in estate**, that is relationship established by a contract or deed.

Transferor and transferee of property.



Sital Prasad Vs State

AIR 1953 All 101

- **Fact:** A person made a general statement that he used to keep food grains left by businessman.
- **Held:** It was a general statement and it do not satisfy the necessary conditions to prove offence and the fact that it was kept by him for sale, thus he can't be

Admissions by co-plaintiff and co-defendants:

Kashmira Singh Vs State of MP

AIR 1952 SC 159

- **DEFENDANTS:** A defendant's admission does not bind his co-defendants as, then, the plaintiff would defeat the case of all defendant through mouth of one.
- **PLAINTIFFS:** Since they all share some common interest, the admission of one plaintiff is bound on co-

Raj Kumar Vs Official Receiver M/s Chiranji Lal Ram

Chand AIR 1996 SC 941

Admissions by

- an **agent is admissible** as the principle is bound by the acts of the agent done in the course of business and within the scope of his authority;
- a **pleader in the conduct of a suit on his client's behalf** is
- binding on the client;
- one **co-owner against that of other co-owners** can be relied upon.

Food for Thought!

Admission is provided under Order XII of CPC and who may be agent is dealt in Chapter 10 of the ICA.



Can Whatsapp screenshots be accepted as evidence?:

<https://www.livelaw.in/whatsapp-forward-without-original-cant-treated-document-evidence-act-delhi-hc/>


















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which means



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The Harvard Gazette: <https://news.harvard.edu/gazette/story/2017/05/visual-images-often-intrude-on-verbal-thinking-study-says>



Q.11) Match List I with (Name of Cases) List II (Name of the Torts) and select the correct answer using the codes given below the lists:

List I	List II
a. Donoghue v, Stevenson	1. Defamation
b. Cassidy v. Daily Mirror Newspaper Limited	2. Joint Tortfeasors
c. Merryweather v. Nixon	3. Manufacture's Liability
d. Bird v. Jones	4. False Imprisonment

Codes:

- a) a-2; b-3; c-4; d-1
- b) a-2; b-3; c-1; d-4
- c) a-3; b-1; c-2; d-4
- d) a-3; b-2; c-1; d-4

Ans: C

Explanation

Essentials of Negligence

Duty of care

No intention to hurt

Breach of duty of care

Injury to the other person

Negligence

Duty of Care is a legal obligation which is imposed on an individual requiring adherence to a **standard of reasonable care** while performing any acts.

It is legal duty not a mere moral, social or religious duty.

Negligent accident



Specific Legal right infringed can be sued in the court for the same.

Duty of care



Moral right infringed cannot be sued in the court for the same.



Disrespecting elders



Donaghue Vs Stevenson [1932] UKHL 100

Held: It was held that a duty of care only existed in specific circumstances – such as between two contractually obliged parties, or where a manufacturer was producing inherently dangerous products.

Ginger beer case



Cassidy Vs Daily Mirror Newspapers Ltd

[1929] 2 KB 331

- Claimant was wife of well-known ex-general of the Mexican Army
- The newspaper wrote an article with a photo of husband with another woman labeled as Miss X implying them as engaged.
- Cassidy argued that publication caused damage to her and it was morally wrong. Trial judge seen it as **defamatory**,

Defamation - Injury to the reputation of a person.

Joint-Tortfeasors is a tort is committed by several persons; all the persons involved in it become joint tortfeasor. All persons will be responsible for the same tort and will be deemed to be joint wrongdoers in the eyes of law.

Bird Vs Jones

(1845) 7 Q8 742

- The Plaintiff sued the Defendants for the offence of committing false imprisonment;
- The court held that, the Plaintiff was **free to leave the enclosure** and find any different route, hence no false imprisonment.

Merryweather Vs Nixon

17998 T.R. 186

- Merry and Nixon conjointly destroyed the machinery which belonged to R, R brought an action against both and obtained a claim
- The whole amount was levied on Merry, who again sought contribution from Nixon for half of the amount by filing a suit against him;
- The court laid down that **M could not recover.**
- '**False Imprisonment** is an act of the defendant which causes the unlawful confinement of the plaintiff.

Reference: Law of Tort, PSA Pillai; 9th Ed., 2009, Page No. 155, 434

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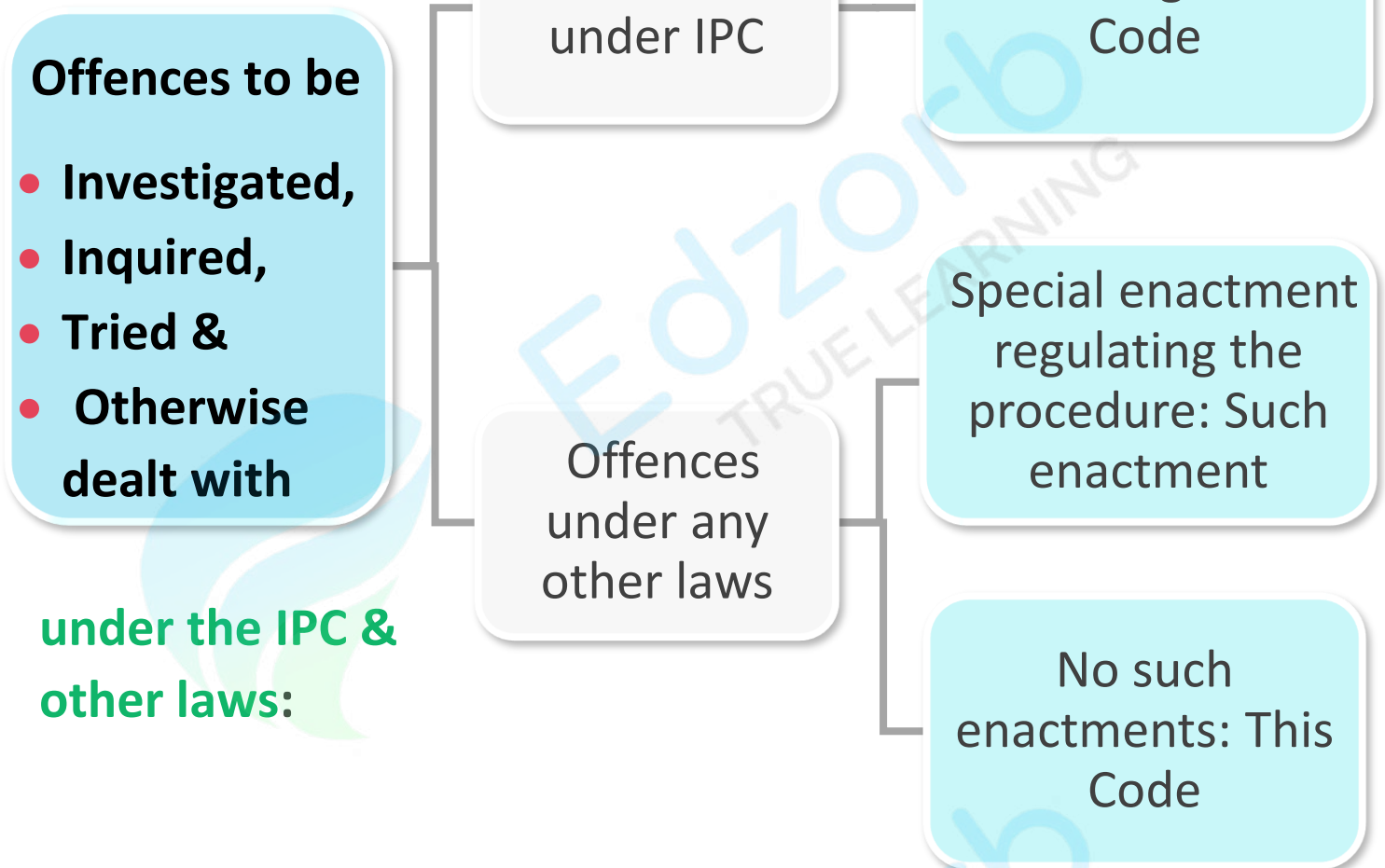
Q.12) If a person who is a citizen of India commits any offence out of India, he

- a) Cannot be prosecuted in India, as the act was not committed in India
- b) Can be prosecuted in the country where the offence was committed
- c) Can be prosecuted in India in any place in which he may be found.
- d) Cannot be prosecuted neither in India, nor in the country, where the crime was committed

Ans: C

Explanation

CrPC: Section 4:
Trial of offences



Pankajbhai Nagjibhai Patel Vs State of Gujarat

(2001) 2 SCC 595

Section 4(2): When the special statute does not prescribe procedure CrPC is applicable.

Section 4

Extra-territorial offences:

Any citizen of India at any other place



Explanation: A person on any

a) Offence or aircraft committed outside India can be punished under IPC. **located in India**

b) **Computer resource (S. 2(1)(k) Information Technology Act)**

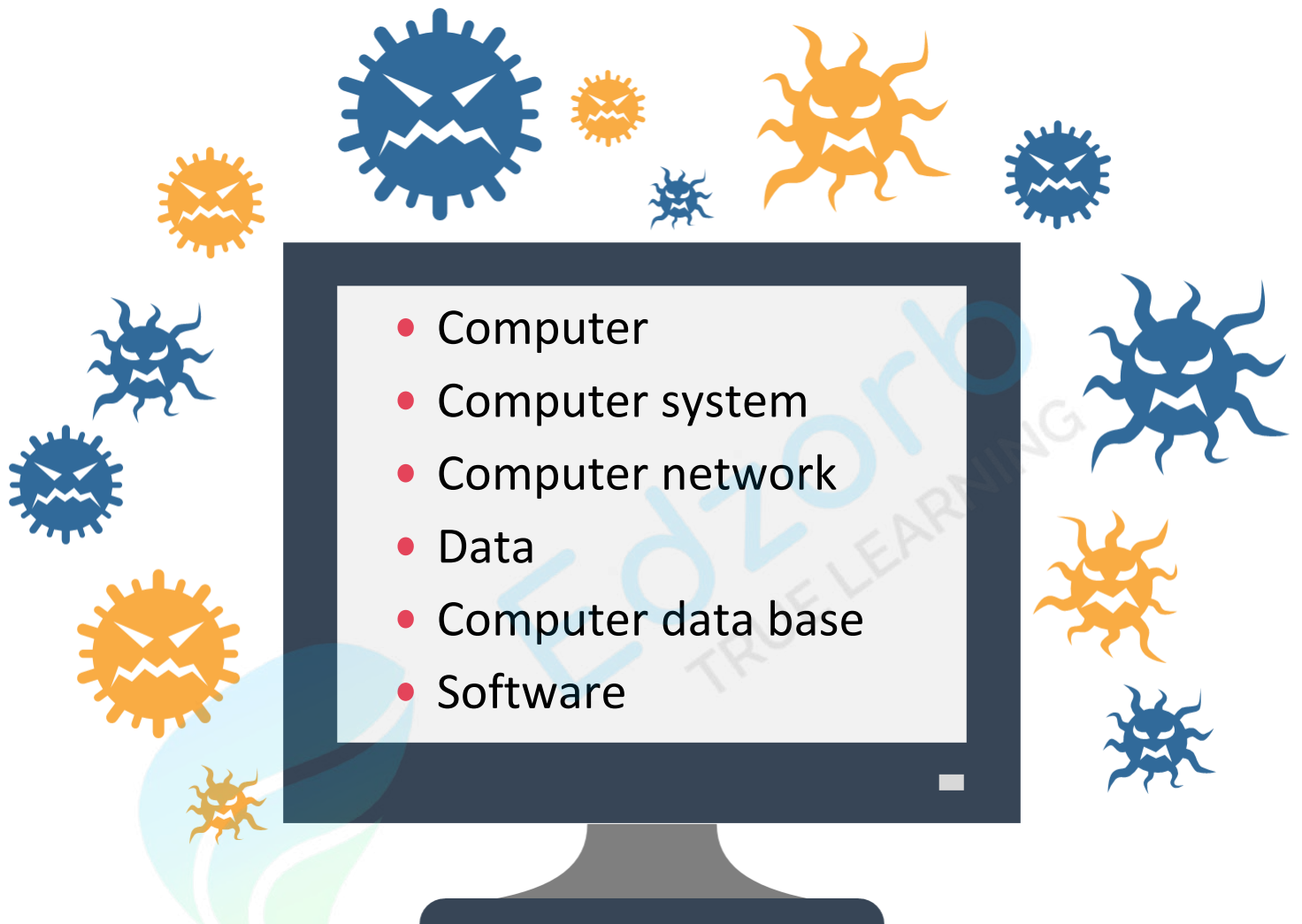


Illustration:

**Robbery of an Indian Citizen
Committed by a person residing
in Country outside Shall be tried
as Per Indian Penal Code**



Nazar Mohammad Vs The State

AIR 1953 PH 227

Foreign citizen committing an offence in India will be held **guilty** under the Indian laws and ignorance of Indian laws is not an excuse although ignorance may be pleaded at the time of mitigation of the sentence

Read more:

<https://www.thehindu.com/news/national/indian-courts-can-try-offences-committed-by-indian-in-foreign-country-rules-bench/article2436963.ece>

Section 188: Offence committed outside India:

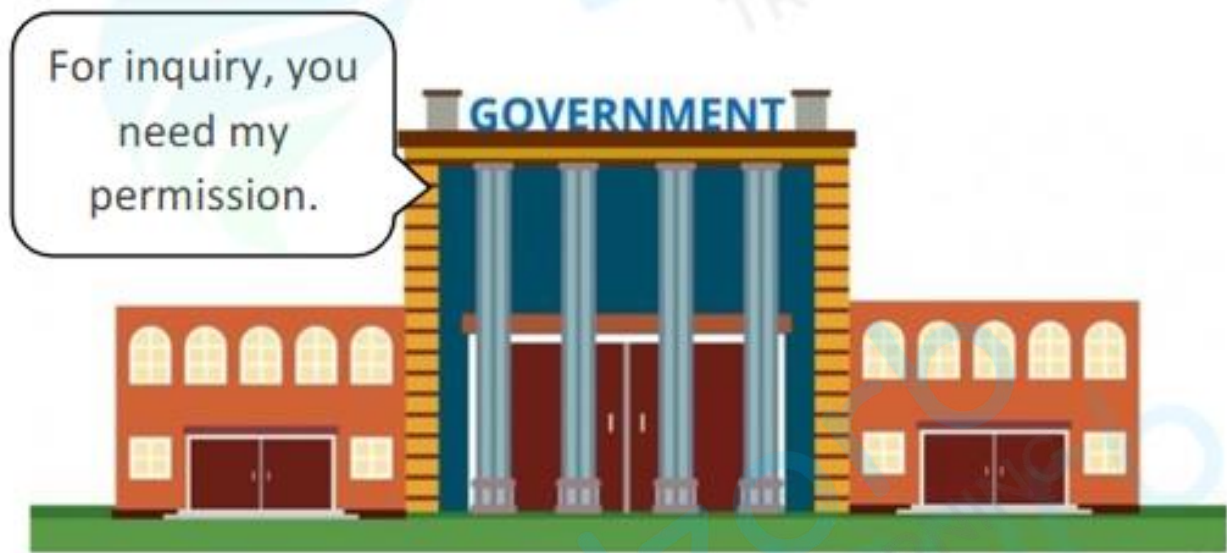
If an offence is committed outside India,

- (a) by a citizen whether on the high seas or anywhere else or
- (b) by a non-citizen on a ship or aircraft registered in India, the offence can still be tried in India provided the conditions mentioned in said Section are satisfied.



Provided that:

- Notwithstanding anything in any of the preceding sections of this Chapter,
- No such offence shall be inquired into or tried in India except with the **previous sanction of the Central Government.**



Nerella Chiranjeevi Arun Kumar Vs State of AP SLP (Crl.) 3978/2021

Held:

- Sanction **u/S. 188** is **not a condition precedent** for taking cognizance of an offence and, if need be, it could be obtained before the trial begins.

Central Bank of India Vs Ram Narain AIR 1955 SC 36

Held:

- The circumstance that after committing theft at a place in Pakistan a person becomes domiciled in India and
- Acquires Indian citizenship cannot confer jurisdiction on Indian Courts retrospectively u/s 188 to receive copies of deposition before a judicial officer in the concerned foreign country as evidence in such a case.



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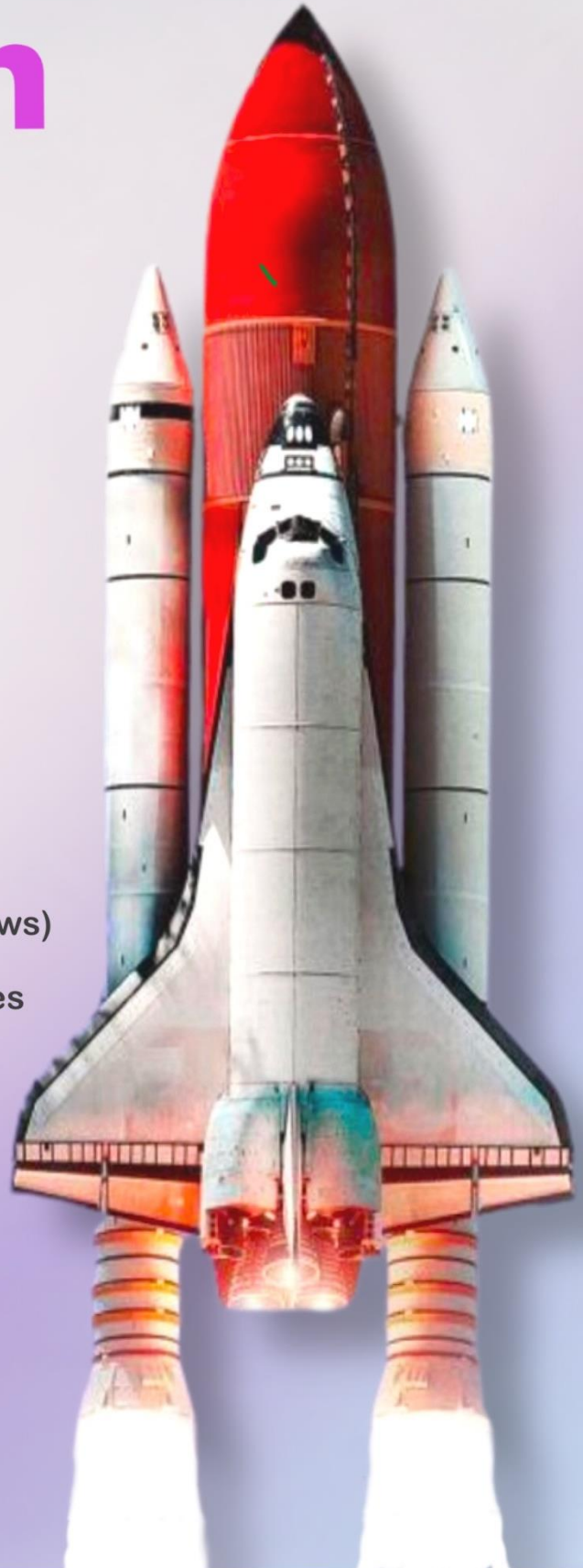
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Q.13) Preparation and attempt are two stages of commission of crime. Preparation is not punishable generally but attempt is. One basic reason as to why preparation is not punishable is that:

- a) There is no nexus between preparation and attempt
- b) There can be chances of change of mind before commission of offence
- c) There is absence of intention
- d) There is absence of attempt

Ans: B

Explanation:

- **Preparation** means to **arrange** the necessary resources for the execution of the intentional criminal act. Intention and preparation alone are not enough to constitute a crime.
- **Preparation is not punishable** because in many cases the prosecution fails to prove that the preparations in the question are for the execution of the particular crime and there are chances of a **change of mind** before the commission of an offence.

CRITERIA	PREPARATION	ATTEMPT
Meaning	<ul style="list-style-type: none"> An Executory Act and comes before an attempt. 	<ul style="list-style-type: none"> An Executory Act and comes before an attempt. and is direct movement towards the Commission after the Preparation is made.
Stage	<ul style="list-style-type: none"> Act of arranging all the necessary means or articles or commodities to do an illegal act. 	<ul style="list-style-type: none"> An act done as per the planning which amounts to offence in all cases
Knowledge	<ul style="list-style-type: none"> Only the person who intends to commit the crime knows fact. 	<ul style="list-style-type: none"> Once the attempt is complete it manifests.
Amounts to an offence	<ul style="list-style-type: none"> Attempt would not be an offence if a person Voluntarily gives up the idea of committing the crime. In this stage 	<ul style="list-style-type: none"> It amounts to an offence i.e., to attempt to do an illegal act.

	it is more chance of commission come.	
Punishment	<ul style="list-style-type: none"> Punishable in few cases such as Preparation to commit dacoity under Section 399 of IPC. 	<ul style="list-style-type: none"> According Section 511 of IPC Attempt is punishable with imprisonment for life or other imprisonment.
Example	<ul style="list-style-type: none"> A purchases Knife to murder B. Mere purchase of knife is a preparation. 	<ul style="list-style-type: none"> A purchases poison and mixes it in the meal of his wife with intention to kill her it is an attempt.

Reference: The Indian Penal Code by Prof. S. N. Misra, 19th Ed, 2013; Page No: 1-7

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Q.14) Section 511 does not apply in case of

- a) Attempt of riot
- b) Attempt of theft
- c) Attempt of murder
- d) Attempt of affray

Ans: C

Explanation

R. Vs Tulsha

(1897) 20 All. 143

- Allahabad High Court held that **Section 511** of the Indian Penal Code does **not apply** to attempts to commit murder which is fully and exclusively provided for by **Section 307** of IPC.
- **Section 307** of IPC mentions "Attempt to murder
Whoever does any act with **intention** or **knowledge**, and under such circumstances that, if he by that act caused death, he would be guilty of **murder**."

Section 511



- If the attempt fails, the crime is not complete
 - But law punishes the person attempting the Act
- S.511** – general provision dealing with attempts to commit offences not made punishable by other specific sections.

- Whoever attempts to commit an offence punishable by this Code with **life imprisonment or imprisonment.**
- Or to cause such an offence to be committed
- And in such attempt, **does any act towards the commission of the offence**



- Shall be punished – **One- half of the longest term** of imprisonment provided for that offence (where no express provision is made by this Code for the punishment of such attempt) + **Fine.**

Difference between Intention, Preparation & Attempt

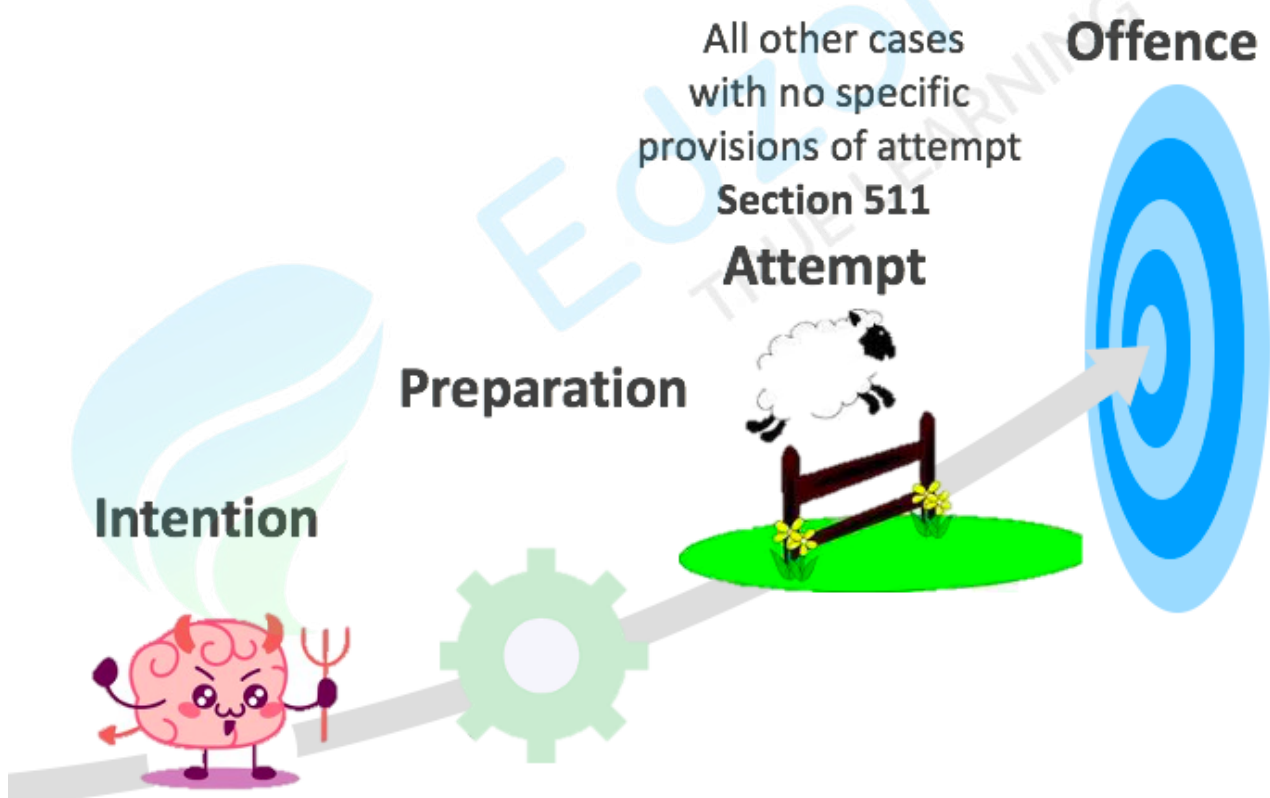
Intention	Preparation	Attempt
• It is the direction of conduct	• It consists in devising or	• It is the direct movement

<ul style="list-style-type: none"> • Towards the object chosen • Upon considering the motives which suggest the choice. 	<p>arranging the means or measures necessary for the commission of the offence</p>	<p>towards the commission after preparations are made.</p>
<ul style="list-style-type: none"> • Mere intention to commit an offence generally. • S. 402 (<u>Assembly to commit dacoity</u>) & S. 12—A (<u>Criminal Conspiracy</u>) 	<ul style="list-style-type: none"> • Preparation – punishable S. 122 (<u>Waging war</u> against the Government of India) and S. 399 (<u>Preparation to commit dacoity</u>) 	<ul style="list-style-type: none"> • Attempt is more than preparation. • Falls short of actual consummation. • Therefore, it is usually half the punishment.

- Acts which are merely preparatory to the commission of a crime, and those which are sufficiently proximate to it to amount to an attempt to commit it:



- **No conviction** for thinking to burn the haystack.
- **No conviction** for buying the matchstick.
- **However**, intention and preparation **can be proved** while establishing guilt.
- **Bending to light the fire**, which this man extinguished on being watched, **will attach guilt of attempt**.



Koppula Venkat Rao Vs State of AP (2004) 3 SCC 602

- The plea relating to applicability of **Section 376** read with **Section 511**.
- An attempt is made punishable, because of the alarm it creates alongside the moral guilt.
- As the injury is not as great as if the act had been committed, **only half the punishment is awarded**.
- **Section 511** clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.
- Court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part.
- Surrounding circumstances many times throw beacon light on that aspect.



Did you Know?

- Preparation as a general rule is not punishable.
- **Locus Poenitentiae:** Idea that it is possible for a person to make preparation to commit a crime and then back out from actual commission.



Reference: Indian Penal Code, 1862 s 511

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*Shri Mahabhar Singh & Ors.
(2017) 11 SCC 195*

A child witness shall not be rejected if found to have been evaluated more carefully and with more care and inspection because a child is susceptible to suggestion and may be easily misled by what others tell him and thus a child witness is an easy prey to tutoring.

The only thing to be kept in mind is to conduct a preliminary examination of the child.

In the preliminary examination the judge would ask the child questions about his school, friends, hobbies, etc. such an examination is to check whether the child is the criterion of a competent witness or not. S.118.

If the judge finds a child capable under the said provisions, then he is a reliable witness.



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