

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Law of Crimes  
Semester-III (Batch: 2014-19)

Mid Semester Test: August-2015

Date: 20<sup>th</sup> August, 2015

Duration: 2 hours

Max. Marks: 30

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

**Part-A**

**Marks**

**Answer all the Questions**

- Q.1 The duration of the right of private defence of property against theft continues: (a) till the offender has effected his retreat with the property; or (b) the assistance of the public authorities is obtained; or (3) the property has been recovered. (2+2+3=07)

Section 105 of the Indian Penal Code does not say what becomes of the right if any of the contingencies is satisfied but the property remains unrecovered. But regard being had to the fact that the primary object of the right is to enable the owner to recover his property, the right would appear to exist till the purpose for which the right exists has been attained. In other words, the three clauses determine the owner's right of recapture which it is for the owner to resort to at his discretion.

The Law Commissioners in the original draft of this clause objected to the phrase "*till the offender has effected his retreat with the property*". It was also later on pointed out that if the clause remained, the right of private defence against theft would cease after the thief has left the house, which could not be the intention of the framers of the bill. But in spite of this criticism, the clause objected to by the Law Commissioners find a place in the enactment. The primary object of the right is the recovery of the property and so when the property has been recovered, the right would come to an end.

- (a) Explain in case the property has not been recovered, what is to be done?
  - (b) What is the meaning of the clause, "till the offender has effected his retreat with the property"? Does this clause mean that the right comes to an end when the offender escapes?
  - (c) In the third portion of the clause it is said that the right continues till the property has been recovered. Should the thief be benefited by the doubtful language of the clause? Explain what is contemplated by the Section 105 of the Penal Code?
- Q.2 Conspiracies are punished because: The number and the impact give weight and cause danger and this is more specially the case in a conspiracy ... *the gist of the offence of conspiracy then lies*, not in the doing of the act or effecting the purpose for which the (3+2+2=07)

conspiracy is formed, nor in the attempting to do them, nor in inciting others to do them, but *in the forming of the scheme or agreement between the parties*. The external or overt act of the crime is concert by which mutual consent to a common purpose is exchanged. In an indictment, it suffices if the combination exists and is unlawful, because it is the combination itself which is mischievous and which gives the public an interest to interfere by indictment.

The Amending Act of 1913 introduced a law which punishes a person even before the stage of preparation which should not be punished. This law has thus created an anomaly.

Take, for instance, the case of five persons agreeing to commit a theft.

- (a) If they assemble with that common object and are caught. What would be their liability? What if they have proceeded to the stage of preparation to commit theft? Whether they could be punished for the attempt to commit that offence?
- (b) If they were caught when they had just entered into the agreement. Whether they are punishable as conspirators and would be exposed to more severe punishment than that for becoming a member of unlawful assembly?
- (c) Again, it is not the policy of law to create offences that cannot ordinarily be proved. An individual attempting to commit an offence is given a *locus paenitentiae*, while a conspirator has none. Why?

- Q.3 There is a presumption of innocence in favour of the accused as a general rule, and it is the duty of the prosecution to prove the guilt of the accused; to put it in other words, the accused is presumed to be innocent until his guilt is established by the prosecution. But when an accused relies upon the General Exceptions in the Indian Penal Code or any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, Section 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. (2+2+3=07)

The relevant provisions of law are:

*The Indian Penal Code, 1860*

**Section 80. Accident in doing a lawful act.-** *Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.*

*The Indian Evidence Act, 1872*

**Section 103. Burden of proof as to particular fact.-** *The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*

**Section 105.- Burden of proving that case of accused comes within exceptions.-** *When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.*

- (a) With the help of an illustration based on the fact situation in the case of K.M. Nanavati bring out the meaning of the said provision.
- (b) The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under Section 105 of the Evidence Act is

- more imaginary than real. Indeed, there is no conflict at all. Why?
- (c) The General burden of proof is upon the prosecution; and if, on the basis of the evidence adduced by the prosecution or by the accused, there is a reasonable doubt whether the accused committed the offence, he is entitled to the benefit of doubt. Discuss with an illustration where the prosecution has not made out the case and the prisoner is entitled to an acquittal.

### Part-B

#### Answer any [2] Questions

- Q.4 The general principle in respect of criminal liability is that a person is responsible for what he himself has done and he cannot be held liable for an act which he has not committed but has been committed by someone else. This principle is not absolute or unqualified. There are several exceptions to this rule. (1.5+3 =4.5)
- (a) State and explain the exception to this rule, where the offence is committed in furtherance of common intention?
- (b) Distinguish between common intention and criminal conspiracy.
- Q.5 Criminal law reflects those fundamental social values expressing the way people live and interact with each other in the society. It uses the 'stick' of punishment as a means of reinforcing those values and securing compliance therewith. In this way criminal law seeks to protect not only the individual, but also the very structure and fabric of society from undesirable, nefarious and notorious activities and behaviour of such individuals and organizations who try to disrupt and disturb public peace, tranquility and harmony in the society. (1.5+3 =4.5)
- (a) What is the object of punishment?
- (b) What consideration must be taken into account by the Court while awarding punishment? State and explain the provision for the imposition of imprisonment till the rising of the Court in the Code of Criminal Procedure?
- Q.6 The law of sedition in India has assumed controversial importance largely because of change in body politic, and especially because of constitutional provision of freedom of speech and expression guaranteed as a fundamental right under Article 19(1)(a) of the Constitution. The law of sedition is contained in sections 124 A, and 153 A of the Indian Penal Code and in other statutes. However, the general statement of law is similar in all the provisions and can be well understood from looking at the provisions given in section 124 A of the Penal Code. (1.5+3 =4.5)
- (a) State the different types and essential ingredients of sedition.
- (b) Discuss the constitutional validity of Section 124 A of the Penal Code with the help of relevant case laws.

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