

## Law Paper-1 WBCS

### Model Answers & Guidelines

**Q 1(a) Offences :** - Offence means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may under Section 20 of the Cattle trespass Act 1871. Sec 2 of the Cr. P.C. 1973.

**Q1(b) Complaint – Sec 2(d)** – Compliant means any allegation made orally or in writing to a magistrate, with a view to his taking action under this code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

**Q1(c) Investigation Sec (2h)** – Investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer, or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

**Q(d) Metropolitan Area Sec (2k)** – means the area declared, or deemed to be declared, under Section 8, to be a metropolitan area.

**Q 1(e) Public Prosecutor** – Sec (2u) means any person appointed under section 24 and includes any person acting under the directions as a public prosecutor.

#### Q2(a) Cheating

Ans. Sec – 415 of the IPC define cheating A person is said to cheat when he by deceiving another person fraudulently or dishonestly induces the person so deceived, to deliver any property to him or consent that he shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was no so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property.

#### Q2(b) Wrongful gain and Wrongful Loss

Ans. Sec- 23 of the IPC define wrongful gain and wrongful loss. The word wrongful is not defined in the code.

Wrongful gain implies :-

- (a) Gain of some property.
- (b) The property to which a person was not legally entitled.
- (c) Gain must be by unlawful means,

Wrongful loss implies :-

- a. loss of some property
- b. the property to which the person losing was legally entitled and,
- c. loss must have been caused by unlawful means.

### **Q2(C) Counterfeit**

Ans. Sec 28 as the IPC define Counterfeit

The ingredients as Counterfeit are :-

- (1) Causing one thing to resemble another thing sufficient to cause deception.
- (2) Intending by means of such resemblance to practice deception
- (3) Knowing it to be likely that deception will thereby be played.

The resemblance as one thing with another must be such as was sufficient to cause deception. In the absence of such resemblance there cannot be said to be counterfeit.

### **Q2(d) Valuable Security**

Ans. Sec 30 of the IPC define Valuable Security.

The ingredients are :

- (1) Valuable Security in a document
- (2) It is a document whereby any legal right is created, extended, transferred, restricted, extinguished or released.
- (3) It is a document whereby any person acknowledges that he lies under legal liability or has not certain legal right.
- (4) Valuable Security applies to original document and not to copy.

### **Q 2(e) Man and Woman**

Ans. Sec 10 IPC

A Male or Female of whatever age is a man or woman respectively under this section. A girls of 6 years is a woman for the purposes section 354 IPC.

### **Q3(a) Relevant Fact and Fact in Issue**

Ans : Reference Secs. 3 and 5 of the I.E. Act 1872. The relevant Facts are those which are in the eye of law so connected with the Facts in issue that they render the latter probable or improbable (Sec 6 to 55). This is legal relevance which must be distinguished from logical relevancy.

Relevant Fact mean the Facts which are necessary to proof or disproof a fact in issue. It is called evidentiary Fact. All Facts connected with the Fact in issue are relevant. It may be proved by secondary evidence while Fact in issue mean points of dispute or subject of investigation. It also include fact affirmed by one party and denied by other and cannot be proved by secondary evidence.

### **Q3(b) May presume and shall Presume**

Ans. Ref Sec- 4 of the I.E. Act 1872

Presumption is an inference of Fact drawn form other know or proved Facts.

“May Presume” means presumptions of Facts are permissive in the sense that the Court has discretion to draw or not to draw any inference, while “Shall Presume” mean that there being presumptions of law are always obligatory. Such presumptions are either rebuttable or irrebuttable.

Rebuttable presumptions of law are indicated by the expression “Shall Presume” and it holds good until and unless there are contrary evidence. E.g. the court shall presume the correctness and genuineness of every Government publication.

### **Q3(c) Common Intention and Common Object**

Ans. Common Intention suggest the principle of Joint liability. Sec 34 of the Indian Penal Code deals with this principle. The primary requirements are :

- (i) When he himself
- (ii) When he shares in the commission of it.
- (iii) When he with a view to the commission of Crime, sets some third agency to work that is, he makes some third party his own agent for committing the crime.
- (iv) When he helps the offender, after commission of the crime, in screening him from Justice.

Common Object has two parts

- (1) An offence committed by a member of the unlawful assembly in prosecution of the Common object of that assembly
- (2) An offence which the members of that assembly knew to be likely to be committed in prosecution of the common object.

### **Q3d Primary and Secondary Evidence**

Ans. The expression Primary evidence is defined in section 62 of the I.E. Act. It means the document itself produced for the inspection of the Court and it is the best evidence. It is always admissible. Notice to produce document is not necessary. Contents of the document may be proved by primary evidence.

The expression Secondary evidence is defined in Section 63 of the I.E. Act. It means the evidence which can be given in the absence of best evidence. It presupposes the existence of better evidence. It is permissible when the original is lost or misplaced and beyond the reach of the party. Notice to produce the document is necessary if the original document is in the custody of the opposite party. Contents of the document cannot be proved by secondary evidence unless there are some lawful explanation or excuse for non production of the original document.

### **Q3(e) Dowry Death**

Ans. Section 304 B introduced by the amendment of the I.P.C in 1986 defining dowry death. The expression dowry death require the following :-

- (1) Death must be caused by burns or bodily injury or it must occur otherwise than in normal circumstances.
- (2) Death must occur within seven years of marriage.
- (3) It must be shown that soon before her death the women subjected to cruelty or harassment by her husband or any relative of her husband.
- (4) Such cruelty or harassment must be for or in connection with any demand for dowry.
- (5) Here the dowry shall have the meaning as assigned to it Under Section 2 of the Dowry Provision Act, 1961.

The other important point of the Section, which can be said to be a departure from the normal feature of the code is that a minimum not less than 7(seven) years imprisonment is prescribed but this may extend to imprisonment for life.

#### **Q4. Distinguish between simple and grievous hurt?**

Ans – The expression Hurt is defined Under Section 319 of the I.P.C. It means causing of pain, decease or infirmity by any person to another. Such pain may not be caused by direct physical contact between the accused and the victim. Hurt must have been caused by some voluntary act of the accused. Causing of nervous shock and mental shock by some voluntary act of the offender is covered by the section. The punishment for simple hurt is prescribed. Under Section 323 of the IPC and is punishable with imprisonment of either description for a term which may extend to one year or with fine which may extend to One Thousand Rupees or with both.

Grievous Hurt :- The Grievous Hurt is defined Under Section 320 of the IPC. It is a more serious kind of Hurt of any kind stated Under Section 320 of the IPC and must also be voluntarily inflicted. The following are the kinds of Hurt only and designated as under :-

Emasculation :- Permanent Privation of the Sight of the either Eyes; Permanent Privation of the hearing of either ear; Privation of any member or Joint ; Destruction of Permanent Impairing of the Powers of any member or Joint; Permanent disfiguration of the Head or Face; Fracture or Dislocation of a Bone or Tooth; Any Hurt which endangers life or which causes the sufferer to be during the period of 20 (twenty) days in severe bodily pain or unable to follow his pursuits; "A" intending or knowing himself to be likely permanently to disfigure 'Z' s' face, given 'Z' a blow which does not permanently disfigure 'Z' s', but which causes 'Z' to suffer severe bodily pain for the period of twenty days. 'A' has voluntarily caused Grievous Hurt.

The punishment for voluntarily causing Grievous Hurt is prescribed under Section 325 IPC which may extend to Seven Years and shall also liable to fine.

Under Section 326 IPC punishment is prescribed with imprisonment for life or with imprisonment of either description for a term which may extend to Ten Years and shall also be liable to fine for voluntarily causing Grievous Hurt by dangerous weapons or means.

#### **Q5. What do you understand by Confession ? What are the Provisions under the Indian Evidence Act regarding Confession ?**

Ans :- The expression Confession has not been defined in the Evidence Act.

Confession is a statement which either admits the offence or at any rate substantiate all the facts which constitute the offence. The meaning of the term Confession is made clear by the decision of the Hon'ble Supreme Court in "Palvinder – vs- State" A.I.R. 1952. 354 relying upon a previous judgement of the judicial Committee in "Pakala Narayana –vs- R", 66 Indian Appeal 66, observed that the word 'Confessi as used in the Evidence Act cannot be construed as meaning a statement by an accused suggesting an inference that he committed the crime. A confession must either admit, in terms, the offence or at any rate substantially all the facts which constitute the offence.

A Confession before some people of a village does not amount to a Confession. A Confession may consists of several parts, and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, weapon used, the intention, concealment of weapon and the subsequent conduct of the accused. If the Confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it as a non confessional statement. Each part discloses some incriminating fact suggesting the inference that the accused committed the crime though each part taken singly may not amount to a Confession, each of them

being part of the Confessional Statement takes the shape of Confession. Confession and Admission must either be accepted as a whole or rejected as a whole and the Court is not competent to accept only the exculpatory part while rejecting the exculpate part as incredible.

A retracted Confession if proved to be voluntarily made can be acted upon along with other evidence and there is no legal requirement that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. There are three important Rules regarding retracted Confession :-

- (i) A Confession is not to be regarded as involuntary merely because it is retracted later on.
- (ii) As against the maker of the Confession, the retracted Confession may form the basis of a conviction if it is believed to be true and voluntarily made.
- (iii) The Confession of a co-accused cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking an assurance in support of its conclusions deductable from the said evidence.

Extra Judicial Confession are those Confession which are made either to the Police or to any person other than Judges and Magistrates.

Section 24 is the principal provision regarding Confession to make a Confession relevant in the evidence the following requirements need be fulfilled :-

- (i) It must not be caused inducement; threat or promise (Section 24);
- (ii) It must not be made to a Police Officer (Section. 25); subject to the provisions of Section. 27.
- (iii) It must be made in the immediate presence of a Magistrate when the accused is in the custody of Police Officer (Section. 26).
- (iv) It must be made after the impression, caused by any inducement etc., has been fully removed (Section. 28).
- (v) The Confession of an accused is relevant only against himself subject to Section. 30.

**Q. 6. On whom the burden of proof lies in the following cases :-**

(a) Proving death of a person known to have been alive within thirty years.

Ans :- When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirm it.

(b) That a person is alive who has not been heard of for seven years.

Ans :- When the question is whether a man is alive or dead and the burden of proving that he is alive is shifted to other side. Further presumption of death of a person not having been heard for the stipulated period of seven years cannot be a ground to presume that such person had died seven years ago.

(c) As to ownership.

Ans :- When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

(d) As to Landlord and Tenant.

Ans :- When the question is whether are partners, Landlord and Tenant or Principal and Agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationship respectively is on the person who affirms it. In the case of "Vaishakhiram –vs- Sanjib Kumar Bhatiani", (2008) 14 sec 356, the Hon'ble Apex Court held that the burden of proving subletting is on the Landlord but if the landlords proves that the subtenant is an exclusive possession of the suit premises, then the onus is shifted to the tenant to prove that it was not a case of subletting.

Q.7. Discuss briefly the provisions relating to powers of center to control production, supply and distribution of Essential Commodities under Essential Commodities Act.

Ans :- Read Section. 3 of the Essential Commodities Act, 1955.

Q.8. When is a Public Servant said to commit a Criminal mis-conduct.

Ans :- Read Section 13 of the Prevention of Corruption Act, 1988.

Q.9. In which cases court cannot take cognizance of offences committed by a public servant without previous sanction ?

Ans :- Read Section. 19 of the Prevention of Corruption Act, 1988.