

Offences Against Property

- Basic element – Dishonestly
- Intention of causing
 - Wrongful gain to one person
 - Wrongful loss to another person

- X owes money to Y. Unable to pay the debt by X even after the due date, Y forcibly takes possession of X's cow against X's will to pressure X into paying the debt. Which of the following statements MOST accurately describes the legal implications of Y's actions?
- Y has legal authority to seize X's property to recover the debt
- X has lost all legal rights over the cow due to the unpaid debt
- Y is guilty of theft for taking X's property without consent
- Y's actions constitute a civil dispute and do not involve any criminal offence

Theft (Sec 303 BNS)

- *Dishonestly* taking any *moveable property* out of the possession of any person *without* the *consent* of that person, or moving that property in order to such taking, is known as theft.
- s. 303 - 3Y/ F/ Both

Punishment:

- Section 303(2) of the BNS, 2023 addresses the punishment for theft, balancing deterrence and rehabilitation by providing that the punishment for theft includes imprisonment for up to **three years**, a fine, or both. However, for a **second conviction of theft, the section prescribes a punishment of up to five years with a mandatory minimum of one year.** If the value of the stolen property is less than **5,000 rupees**, and the offender is a first-time offender who restores the stolen property, the punishment is community service.

Essential Ingredients of Theft

- Dishonest intention to take the property
- Property must be moveable
- Property must be taken out of the possession of another person.
- There must be some removal (moving) of the property, in order to accomplish the taking.
- The said taking must be without consent of the person.
- **[Illus 1, 2, 3, 4, 5]**

Illustration- 1

- **A & B** two probationers at LBSNAA decide to go to Tavern for dinner. They are tired and don't wish to walk. They go to the Academy reception and tell the Security there that they have been sent by the Course Coordinator. They take the keys of the gypsy, drive in it to Tavern, have dinner and come back and return the keys to the guard. Are **A & B** guilty of theft?

K. N. Mehra vs The State Of Rajasthan (1957)

- In this case, the defendants, Mehra and Phillips, were cadets undergoing training at the **Indian Air Force Academy in Jodhpur**. On the day of the alleged theft, Phillips was scheduled to leave Jodhpur by train due to his discharge, while Mehra was set to fly a Dakota aircraft as part of his training alongside another cadet, Om Prakash. Instead of following protocol, Mehra and Phillips took off in a Harvard H.T. 822 aircraft before the designated time and without proper authorization or adherence to the necessary formalities for flight. They subsequently landed in Pakistan, approximately 100 miles from the Indo-Pakistan border. Upon arrival, they contacted J.C. Kapoor, a Military Adviser to the Indian High Commissioner in Karachi, informing him that they had lost their way and had to force-land in a field, leaving the aircraft behind. Kapoor facilitated their return to Delhi via an Indian National Airways flight and arranged for the Harvard aircraft to be sent back to Jodhpur. However, upon their return to Delhi, the plane was intercepted in Jodhpur, leading to their arrest. Both Mehra and Phillips were ultimately convicted under Section 379 of the Indian Penal Code for theft.

Caselet

- **Vishan extended a loan of Rs. 2,50,000 to Kashan. When the due date passed, Kashan found himself unable to repay either the principal amount or the accrued interest. In response, Vishan, without Kashan's permission, seized two buffaloes and a cow from Kashan's livestock and tied them up at his house as leverage to compel debt repayment. Discuss the liability of Vishan.**
- Answer & Reasons: Vishan is liable for the offence of theft. Regarding the debt that Kashan owes to Vishan, Vishan can only file a civil suit against Kashan for the repayment of the debt owed to him.

Illustration -2

- The Reader in the Court of the SDM, Mussoorie, maintains all the files relating to the court work of the SDM. The Reader helps one of the litigants in the SDM's court by providing him with the case file. The litigant takes out an important document and replaces it by another. Can the Reader be held liable for theft?

Pyarelal Bhargava v. State (1963):

- In this case, the accused, a government employee, temporarily removed a file from a government office and handed it over to a third party before returning it two days later. The appellant, Pyarelal Bhargava, a Superintendent in the Chief Engineer's Office, was involved in the removal and replacement of documents under the influence of Ram Kumar Ram. The court held that theft does not require the permanent taking of property; even a temporary removal with dishonest intent constitutes theft. Therefore, Bhargava's actions were deemed to amount to theft under the law.

Avtar Singh v. State of Punjab (1965)

- In this case, electricity was deemed to be immovable property. However, **theft of electricity** has been explicitly recognized as a criminal offence under Indian law. According to Section 35 of the Electricity Act, 2003, the punishment for stealing electricity includes imprisonment for a term that may extend up to three years and may also involve a fine.

Illustration-3

- **A** finds a ring lying on the road leading to Happy Valley ground. She picks it up & wears it. Is **A** guilty of theft? (Is property taken out of any one's possession?)

Illustration-4

- **A** goes to the room of **B** in Ganga Hostel. There is a ring lying on the table in the room. **A** picks it up and wears it. Is **A** guilty of theft?

Illustration-5

- **Z** going on Bharat Darshan, entrusts his laptop to **A** the caretaker of the hostel, till **Z** shall return. In **Z**'s absence **A** goes and sells the laptop in the market. Is **A** guilty of theft?

Illustrations 5A/5B

X keeps a bag on the luggage stand(train).Z removes it without the knowledge of X. Is it theft?

Extortion {English law – Blackmail}

Sec 308 BNS

Intentionally putting any person in fear of any injury to that person, or any other, and thereby *dishonestly inducing* the person so put in fear, to deliver to any person, any property or valuable security or anything signed or sealed which may be converted into valuable security.

S. 384 – 3Y/F/both

Essential ingredients of Extortion

- **Intentionally putting any person in the fear of injury.**
- to himself or to some other person.
- **Dishonestly inducing**, the person put in the fear of injury **to deliver**
 - any property or valuable security
 - to any person

Note :-Either presence of the offender is not there or fear of instant violence or immediate delivery

Illustration- 6

- A sub-inspector of police arrests a person **X** and wrongfully confines him in the police lockup and demands money from him. He threatens him that unless he pays up, he will not be released. **X** arranges the money and pays the sub-inspector. The sub-inspector is guilty of extortion.

Caselet :

- **A pressures Z to pay Rs. 2,00,000 by threatening to release defamatory videos and information about Z to the public. Succumbing to this threat, Z complies and provides A with the demanded funds. Discuss A's liability.**
- Answer & Reasons: A has committed extortion. You might wonder if this appears to be a case of blackmail. You are right; this is blackmail. However, since blackmail is not a distinct offence under BNS and is covered by extortion, legally speaking, this is extortion.

Caselet :

- **A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A, a promissory note binding Z to pay certain money to A. Z signs and delivers the note. Has A committed extortion?**
- Answer & Reasons: A has committed extortion as all the essential elements of extortion as mentioned above are present and thus constitutes extortion.

Illustration -7

- **A notorious criminal writes to Z “if you do not send me Rs. 5,00,000 I shall see that your only son is killed by my gang”. Z does not pay up the amount demanded & reports to the police. Is the criminal liable for extortion?**
- **Would the position be different if A had delivered the amount demanded, in consequence of the threat?**

Distinction between Extortion & Theft

- The offence of extortion differs from the offence of theft in that while in theft, property is removed or taken away without the consent of the person in possession thereof whereas in extortion there is a delivery of property with consent induced by fear. Delivery of property as distinct from taking away property is of the essence of the matter in extortion.

Distinction between Extortion and Theft

1. In theft, only movable property may be the subject-matter of the offences while in extortion the property is not limited only to movable one.
2. In theft, the property is taken by the offender while in extortion the property is delivered to the offender.
3. Where there is no delivery of property but the person put in fear offers no resistance to the carrying away of property, the offence is not extortion but robbery (by theft)

	Theft	Extortion
i)	Possession is obtained without consent	1. Possession is obtained by intentionally putting a person in fear and thereby getting consent.
ii)	Restricted to moveable property alone.	2. Any property can be the subject of extortion.
iii)	The element of force or compulsion is absent.	3. The element of force or compulsion is always present.

Difference

THEFT

- Without consent (Property changes)
- Movable property
- *Taken*
- No force

EXTORTION

- Wrongfully obtaining – consent
- Any
- *Delivered*
- Fear of injury

CRIMINAL INTIMIDATION

- **CRIMINAL INTIMIDATION**

- Section 351 of the BNS defines criminal intimidation. This offence occurs when a person threatens another with any injury to their person, reputation, or property, or to the person or reputation of anyone they are interested in, with the intent to cause alarm or to compel that person to do any act which they are not legally bound to do, or to omit any act which they are legally entitled to do. For example, threatening to harm someone if they do not withdraw a legal case constitutes criminal intimidation under this section.

CRIMINAL INTIMIDATION

- The threat can be of injury, wrongful loss, or harm to reputation. Importantly, the section covers both direct and indirect threats, including those made through electronic means. The key elements of this offence are the act of threatening and the specific intent behind it. Criminal intimidation is considered a serious offence as it infringes upon an individual's right to live without fear and can significantly impact their decision-making and actions. This section plays a crucial role in addressing various forms of threats and coercion in Indian society, from personal disputes to larger issues like witness intimidation in legal proceedings. This offence is non-cognizable, bailable and compoundable

Caselet 1:

- **Priya, a young software engineer, was formerly in a relationship with her colleague Suresh. During their relationship, Suresh captured intimate images of them. Subsequently, Priya married Rajesh. Now, Suresh threatens to expose these private pictures unless Priya agrees to have sexual intercourse with him. Under this pressure, Priya consents, and they engage in sexual activity. Discuss the liability of Suresh.**

Example 1:

- **A local strongman threatens to vandalize a shopkeeper's store if they do not withdraw a police complaint against their son for theft. This constitutes criminal intimidation as the threat is intended to coerce the shopkeeper into withdrawing a legal case.**

Punishment for Extortion

- 2y imp or fine or both
- If threat be to cause death or grievous hurt=7y imp or fine or both
- If threat be to cause destruction of any property by fire=7y imp or fine or both
- If threat be to cause an offence punishable with death or LI=7y imp or fine or both
- If threat be to cause unchastity to a woman=7y imp or fine or both
- If someone threatens to make a woman engage in sexual behaviour that would compromise her chastity (for example, by forcing or compelling her into sexual relations or immoral sexual conduct).
- In other words, the threat is specifically about causing sexual dishonour or loss of chastity to the woman.

Extortion and Criminal Intimidation: Key Differences

- **Outcome of the Threat:**
- Extortion: The threat must actually achieve its intended result.
- Criminal Intimidation: The threat doesn't need to succeed to be considered a crime.
- **Property Transfer:**
- Extortion: The victim must hand over property to the accused for the crime to be complete.
- Criminal Intimidation: No property transfer is necessary for the crime to occur.
- In essence, extortion requires both a threat and a successful outcome, including the transfer of property. Criminal intimidation, on the other hand, is considered complete once a threat is made, regardless of its success or any property exchange. This distinction highlights the different focus of these two crimes: extortion on the actual gain, and criminal intimidation on the act of threatening itself.

Robbery

- Sec 309 - Robbery = theft or extortion
 - Robbery is a special and **aggravated form of theft or extortion**
 - All elements of **either the theft or extortion** must be present in robbery

10Y + fine/Between – sunset to sunrise – 14 Years

Robbery

- Analysis—
- ***Robbery = Theft + violence or fear of instant violence or***
- ***Robbery = Extortion + presence of the offender + fear of instant violence + immediate delivery.***

USE OF VIOLENCE = BEFORE OR AFTER

- In the case of extortion amounting to robbery, **the entire danger must have preceded the act of delivery**. In the case of theft amounting to robbery, it is immaterial whether the use of violence was before or after the delivery of the property.

When Theft becomes Robbery

- Theft is robbery if *in order to*
 - commit theft or
 - in committing theft or
 - in carrying away or attempting to carry away property obtained by theft
- the offender, *for that end*, voluntarily causes or attempts to cause, to any person
 - death
 - hurt or
 - wrongful restraint or
 - fear of instant death or hurt or wrongful restraint
- **Robbery = Theft + violence or fear of instant violence**

Illus 8,9

Illustration - 8

- A holds down Z and fraudulently takes Z's money and jewels from his clothes, without Z's consent. Here A has committed *theft* and in order to commit the theft has caused *wrongful restraint* to Z. A has therefore committed *robbery*.

Illustration - 9

- **A** steals a handbag from a house and while carrying it away, he sees the owner **B** coming back. **B** chases him and in the ensuing fight **A** stabs **B** with a knife and injures him. Is **A** liable for robbery(by theft)?

When Extortion becomes Robbery

- If the offender at the time of committing extortion
 - is in the *presence of the person put in fear* and
 - commits the extortion by putting the person in fear of *instant death, instant hurt or instant wrongful restraint*
 - to that person or to some other person
 - by so putting in fear, *induces* the person so put in fear, *then and there to deliver up* the thing extorted.
- Robbery = Extortion + presence of the offender + fear of instant violence + immediate delivery.
- **Illus 10/11**

Illustration - 10

- **A** meets **Z** on the road, shows a pistol and demands **Z's** purse. **Z** in consequence surrenders his purse. Here **A** has *extorted* the purse from **Z** by putting him in the fear of *instant hurt* and being at the time of committing the extortion, *in his presence*. **A** has therefore committed robbery. (Mugging-Mugger threatens)

Illustration - 11

- **A kidnaps Z's child. He calls up Z saying "your child is in the hands of my gang and will be put to death unless you send us ten lakh rupees". Z delivers the money to A. Is this extortion or robbery?**
- **Would the position be different if the offender is in the presence of Z and the child is shown live on a video as well as money is given to the offender**

Mugging

- Mugging is a prevalent crime in Western countries, involving physical force or violence to steal money or other valuables from a victim. It often involves face-to-face confrontation, typically using weapons like guns or knives. The victim is coerced into handing over their possessions out of fear for their safety, making mugging a form of robbery. Thus, mugging constitutes the offence of robbery in India.

Before BNS= Snatching/S.304

X has a bag in his lap. Y snatches away the bag from X. Is this a case of theft?

Snatching nose stud/ear ring=robbery

Dacoity

Sec 310

- Dacoity is robbery
 - when committed or
 - attempted to be committed
 - or aided- by five or more persons conjointly
- Preparation of Dacoity is also punishable(S.310(4))

[Illus 12]

Illustration -12

- **The house of a person is raided by a gang of dacoits, one of whom stands outside on guard while the other 6 enter the house and break open the locks. The neighbours alert the police and on hearing the siren of the police jeep the robbers run away.**
 - **What offence if any have they committed?**
 - **Would the person who stood outside also be liable?**

Caselet :

- **Six individuals—X, Y, Z, P, Q, and R—all residing in Warangal, formulate a plan to rob A's residence in Hyderabad. To execute their scheme, they rent rooms at a local lodge in Hyderabad and acquire house-breaking tools. However, their plot is foiled when law enforcement apprehends them before they can carry out the robbery. Evaluate the criminal liability of X, Y, Z, P, Q, and R in this scenario.**
- Answer & Reasons: X, Y, Z, P, Q & R are liable for preparation to commit dacoity under section 310 (4) as preparation to commit dacoity constitutes an offence.

Saktu v. State of U.P. (1973):

- The Supreme Court of India's ruling in this case marks a significant evolution in the interpretation and application of dacoity laws in India. This landmark decision addresses a crucial aspect of prosecuting dacoity cases, where the traditional definition requires the involvement of five or more individuals. The Court's judgment establishes that once it is conclusively proven that more than five persons participated in a dacoity, the inability to convict all participants **due to evidentiary constraints does not preclude the conviction of the identified accused, even if their number falls below five.**

SNATCHING (S.304)

- Snatching as a distinct offence was introduced by BNS, 2023. Earlier, there used to be some confusion as to whether snatching constituted theft or robbery, but now the introduction of snatching as a distinct offence clarifies the law. Theft is snatching if, to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property. This offence is cognizable, non-bailable and non-compoundable

Sec 314-Criminal misappropriation

- A person commits criminal misappropriation if he
 - dishonestly misappropriates or converts to his own use
 - any movable property
- Others property (movable)
- Possession- innocently
- Subsequent change in intention
- 2Y/F/both

Criminal misappropriation(CMP)

- Criminal Misappropriation takes place not when one has innocently come into the possession of a thing, but when a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, he keeps it, after which the retaining becomes wrongful or fraudulent.
- The accused acquires the possession innocently, but its retention becomes wrongful and fraudulent either from any subsequent change of intention or from knowledge of some new fact with which the party was not previously acquainted . The offence is completed by a mental act. **[Illus 13, 14, 15]**

Illustration -13

- **A** goes into the room of **Y** in Kaveri hostel. He finds a T-shirt lying on the chair, which he believes is his. So he takes the T-shirt and keeps it.
 - Is **A** guilty of criminal misappropriation?
- Later **A** discovers that his own t-shirt was actually with the washerman. However, he retains **Y's** t-shirt. Is he now guilty of criminal misappropriation?

Illustration -14

- **Z** finds a cheque payable to the bearer. He can form no conjecture about the person who has lost the cheque but the name of the person who has drawn the cheque appears. **Z** appropriates the cheque. Is he guilty of criminal misappropriation?

Illustration -15

- **A & B** are about to travel by the same train from Delhi. **A** has a ticket for Bhopal and **B** has a ticket for Bangalore. **B** hands over his ticket to **A** for checking the same. **A** under the pretence of returning it, substitutes the ticket.
 - Is **A** guilty of any offence- theft or criminal misappropriation?

State of Orissa v. Bishnu Charan Muduli (1985):

- In this case, the Supreme Court ruled that a Head Constable, who forcefully took possession of items recovered by a boatman from the body of a drowned person, and kept them dishonestly, was guilty of criminal misappropriation under Section 404 of the Indian Penal Code. Section 315 of the BNS replaced Section 404 of the IPC. The court found that the officer, by dishonestly retaining the **deceased's property**, committed an offence, even though the items were initially recovered by someone else.

	Theft	Criminal Misappropriation
i)	The property is taken out of the possession of another person, and the offence is complete as soon as the property is moved	The property often comes into possession innocently
ii)	The taking of the thing is wrongful from the very beginning.	The taking of the thing is lawful. It is the subsequent change of mind that makes the lawful taking into an unlawful act in criminal misappropriation.
iii)	Mere moving itself is an offence.	Mere moving does not result in an offence. It is the subsequent intention to convert to his own use or retain the property that constitutes the offence.

Differences – s. 303 (T) & s. 314 (M-CMP)

- T- Dishonest intention to take property
- M- possession obtained innocently
- T- Offence takes place when there is some removal (moving)
- M- offence - actual misappropriation/ conversion
- *T- Property must be taken out of the possession of another person*
- *M- offender has possession lawfully(or innocently)*
- T- initial taking wrongful
- M- initial taking (may be) innocent but subsequent change of intention is there

Sec 316 Criminal Breach of Trust

- The offence is committed if
 - accused was entrusted with the property or dominion over it
 - Accused misappropriates it or converts it to his own use or uses it or disposes it off
 - in violation of any direction of law or contract
- 3Y/F/both
- The difference between CMP & CBT is that in respect of CBT, the accused is entrusted with property or with dominion or control over the property.
- [Illus 16, 17]

Example :

- **Consider a scenario involving two siblings: an illiterate sister (A) and her brother (B). A asks B to pawn her gold chain, expecting to receive 1,00,000 rupees. B, taking advantage of his sister's inability to read, actually pawns the chain for 1,80,000 rupees. However, he only hands over 1,00,000 rupees to A, secretly keeping the additional 80,000 rupees for himself. This situation illustrates a breach of trust, where B exploits his sister's illiteracy and reliance on him to misappropriate funds.**

Illustration -16

- The servant of a liquor contractor has been **entrusted** by his master with liquor to sell the same and render accounts to the master. The servant adulterates the liquor with water and sell it and appropriates to himself, the profit earned on the increased quantity. Is the servant liable for an offence?/**WHISKY**

Illustration -17

- The Sarpanch of a village is entrusted with the job of distributing old age pension in the village. He withdraws the amount, credited to his account by the government, for disbursement amongst the pensioners. However, in the meantime, there is urgent need of money in his business. He uses the money withdrawn for disbursement of pensions & subsequently after 15 days, recoups the amount and distributes the pensions. What offence if any, has the Sarpanch committed?

Distinction between CMP and CBT

- In criminal breach of trust there is conversion of property held by a person in a fiduciary capacity i.e the property is entrusted to him. In case of criminal misappropriation the possession of property which is appropriated may come in any way.
- (2) In criminal breach of trust, there is some kind of contractual relationship between the parties either express or implied, but in criminal misappropriation there is no such relationship.
- **CMP=moveable/CBT= either moveable or immovable**
- **CMP = No express entrustment/CBT=express entrustment**

THEFT	CRIMINAL BREACH OF TRUST
<p>In theft, property is moved from the possession of another man with a dishonest intention</p>	<p>In criminal breach of trust the offender is lawfully entrusted with the property and he dishonestly misappropriates it.</p> <p>The property initially comes to the possession of the offender lawfully and the offence is committed when the trust is betrayed.</p>
<p>In theft, the offender comes in possession of the property without the consent of the person in possession</p>	<p>In criminal breach of trust possession is derived with the consent of the owner.</p>

CRIMINAL BREACH OF TRUST	CRIMINAL MISAPPROPRIATION
AS TO CONTRACTUAL RELATIONSHIP - In criminal breach of trust, there is contractual relationship between the parties	In criminal misappropriation, there is no contractual relationship between the parties
AS TO THE MODE OF CONVERSION - Criminal breach of trust only applies to conversion of property held by a person in a fiduciary capacity.	Criminal misappropriation applies to conversion of property coming into possession of the offender anyhow.
AS TO THE MODE OF ACQUIRING PROPERTY - In the case of criminal breach of trust, the offender is lawfully entrusted with the property and he holds it subject to some duty or obligation to apply it according to trust, but he dishonestly misappropriates it or willfully allows any other person so to do, instead of discharging the trust attached to it.	In criminal misappropriation, the property comes into the possession of the offender casually or otherwise, and he afterwards misappropriates it.

Mischief (Ss. 324 to 328)

- Mischief is defined as intentionally causing damage to property, **leading to loss or harm to the public or individuals**. The BNS provides detailed provisions for different forms of mischief, with corresponding punishments based on the extent and nature of the damage caused. The sections cover various scenarios, including damage to property, animals, water supply, and public infrastructure, aiming to protect property rights and maintain public order. Understanding these provisions is crucial for individuals and entities to safeguard their property and seek redress in case of damage.

Examples

- **Example 1: A deliberately destroys a valuable security owned by Z, intending to inflict financial harm. This act constitutes mischief.**
- **Example 2: A intentionally disposes of Z's ring by throwing it into a river, aiming to cause Z financial loss. This action qualifies as mischief.**
- **Example 3: A knowingly allows cattle to enter Z's field, fully aware that this will likely damage Z's crops. This deliberate act is considered mischief.**

Gopi Naik v. Somnath (1977):

- This case offers a significant interpretation of the offence of mischief under Indian criminal law. In this incident, the accused severed the complainant's water pipe connection, an act that might seem minor at first glance. However, the court's ruling established a broader understanding of property damage and its implications. By holding the accused guilty of mischief, the court emphasized that **diminishing the value or utility of property**, even indirectly, constitutes a punishable offence. The judgment recognized that interfering with essential services like water supply significantly impacts the property's value and functionality.

Distinction between Theft & Mischief:

- While both offences harm another's property, the key difference lies in the offender's intent: whether to **gain property** or **merely cause harm**.
- Mischief can be committed against both movable and immovable property, while **theft applies only to movable property**.

Cheating (318& 319)1 yr/Delivery 7y

- Cheating is a criminal offence under the BNS and encompasses various fraudulent activities aimed at deceiving others for wrongful gains or causing losses. Sections 318 & 319 deal with various types of cheating, imposing penalties that can range from fines to imprisonment for up to seven years. This offence is cognizable, non-bailable and non-compoundable
- Section 318(1) defines cheating as inducing someone to believe something untrue, leading them to part with property or do something they wouldn't have done otherwise, causing harm to the deceived person. Section 318 (4) covers a more severe form of cheating involving dishonestly inducing the victim to deliver property or valuable security, with punishment including imprisonment and fines. This provision has taken the place of Section 420 of the IPC.

Examples

- **Example 1: A falsely claims to be a civil servant, intentionally deceiving Z to obtain goods on credit without intending to pay. This constitutes cheating.**
- **Example 2: A places a counterfeit mark on an item, deliberately misleading Z to believe it's made by a renowned manufacturer. A then dishonestly induces Z to purchase the item. This is cheating.**
- **Example 3: A presents a false sample, intentionally deceiving Z into believing the actual article matches it. A then dishonestly persuades Z to buy the item. This is cheating.**
- **Example 4: A pledges fake diamonds, knowingly deceiving Z to secure a loan. This is cheating.**

Examples

- **Example 5: A intentionally misleads Z to believe A has fulfilled their contractual obligations when they haven't, dishonestly inducing Z to pay. This is cheating.**
- **Example 6: A intentionally deceives Z about plans to deliver indigo plant, dishonestly obtaining an advance payment. This is cheating. However, if A, at the time of obtaining the money, intends to deliver the indigo plant but later decides not to deliver and does not deliver it, he does not cheat but is liable only to a civil action for breach of contract.**
- **Example 7: A purchases a motorcycle from Z, presenting a cheque for Rs. 1,65,000 as payment. However, A is fully aware that their bank account contains only Rs. 3,500. Predictably, when Z attempts to cash the cheque, it is returned due to insufficient funds. This constitutes cheating.**

Sexual intercourse by employing deceitful means, etc. (S.69):

- Section 69, a new provision, addresses sexual intercourse obtained through deceitful means or false promises of marriage. It outlines the punishment for individuals who engage in sexual intercourse with a woman by deceitful means or by making a promise to marry without any intention of fulfilling it. The punishment includes **IMPRISONMENT FOR UP TO TEN YEARS** and a fine. Section 69 also provides an explanation of "deceitful means," which encompasses *inducement for employment or promotion*, false promise of marriage by suppressing identity, or other forms of deception.

HEROISM

- Somebody steals the wallet of the heroine. Hero chases the thief, takes the wallet gives it to the heroine and then when the thief tries to run away catches (arrest)the thief and thrashes the thief. Taking the wallet is OK but what about catching (arresting)as well as thrashing, is there justification?
- Hero notices some goons(2) thrashing one old person (Heroine's father), Hero thrashes the goons. Is Hero Justified in doing that?
- **Commensurate with the injury with which he is threatened**

Private Defence

- Covered under Sec 34 to 44
- Nothing is an offence which is done in exercise of the right of private defence (Sec 34)
- The right is available to defend (Sec 35) –
 - own body and body of another person, against any offence affecting human body
 - property, whether movable or immovable, of himself or any other person against theft, mischief, robbery, criminal trespass and attempts to commit these offences
- The right is defensive and not retributive or punitive, i.e. **the injury inflicted by the person exercising the right, should be commensurate with the injury with which he is threatened** (Sec 37)

Illustration

A is attacked by a mob, who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob. Young children have also mingled with the mob. He fires in self-defence and one of the children is killed.

Q. Has he exceeded his right of private defence and caused death?

Private Defence-Body

- Right of private defence of body extends to causing death in the following cases (Sec 38):
- **Assault, which reasonably causes apprehension of**
 - death
 - grievous hurt
 - rape
 - gratifying unnatural lust
 - kidnapping or abduction
 - wrongful confinement where the persons apprehends that he will not have recourse to public authorities for release
 - **throwing or attempting to throw acid which causes reasonable apprehension of grievous hurt**

- **Illustration** =A communal riot breaks out between Sindhi refugees and local Muslims in a locality and spreads to **A's** locality. People start closing their shops. The mob approaches **A's** locality and breaks into a portion of **A's** brother's shop and loots it. The crowd starts beating the doors of **A's** shop with lathis. **A** fires a couple of shots and kills one and injures three persons of the mob.
- Q. In your opinion, would **A** be entitled to the benefit of the right of private defence?
- Q. Has **A** exceeded his right of private defence and caused more harm than is necessary?

Private Defence of Property

- Right of private defence of property *extends to causing death in the following cases* (Sec 41):
 - robbery
 - house-breaking by night
 - mischief by fire
 - theft, mischief or house trespass where there is reasonable apprehension of death or grievous hurt

- **Illustration** =A communal riot breaks out between Sindhi refugees and local Muslims in a locality and spreads to **A's** locality. People start closing their shops. The mob approaches **A's** locality and breaks into a portion of **A's** brother's shop and loots it. The crowd starts beating the doors of **A's** shop with lathis. **A** fires a couple of shots and kills one and injures three persons of the mob.
- Q. In your opinion, would **A** be entitled to the benefit of the right of private defence?
- Q. Has **A** exceeded his right of private defence and caused more harm than is necessary?

Private Defence not available - when?

Section 37

- No right of private defence is available against an act which is not itself an offence under the Code
- No right of private defence is available against acts done by or on the directions of a public servant acting in good faith
- No right of private defence where there is right to have recourse to the protection of public authorities

PRESUMPTIONS

- Presumptions of fact = May Presume
- Presumptions of Law:-
 - (a) Rebuttable presumptions of law = Shall Presume
 - (b) Irrebuttable presumptions of law = Conclusive proof

May
Presume

- Discretion to presume or not to presume
- Discretion to presume in favour of this party or that party

Shall Presume/
Conclusive Proof

- Obligated to presume
- No discretion but to presume in the way directed by law

**May
Presume/Shall
Presume**

Rebuttable=
Disprovable
(Presumption
drawn can be
disproved)

**Conclusive
Proof**

Irrebuttable=
Cannot be
disproved

S.108. Abetment of suicide

- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.
- Ex:Prathyusha

S.117 Presumption as to abetment of suicide

1. The case must be of suicide, not murder.
2. Suicide must have occurred within 7 years from the date of the marriage
3. The question in issue must be whether suicide was abetted by husband or his relatives.
4. The evidence must have been adduced to show that her husband or the relatives of her husband had subjected her to cruelty.
5. The law presumes that her husband and his relatives abetted her to commit suicide.
6. It is a may presumption

Distinction between Ss. 117 & 118, BSA

- Section 117, BSA is read with Section 86 of the BNS. Whereas, section 118 is read with section 80 of the BNS
- Under section 117, the presumption is May presumption. Whereas, under section 118, the presumption is shall presumption
- Under Section 117 of the BSA and Section 85 of the BNS, the woman is subjected to cruelty and lastly she is compelled to commit suicide herself while under Section 118 of the BSA and Section 80 of the BNS it raises an adverse presumption against the accused that he had caused the dowry death **(killed her)** in question.
- Under section 118, dowry element is not necessary.

Lie-Detector Test / Narco-Analysis/ Brain-Mapping

- The use of advanced investigative techniques such as lie detector tests, narco-analysis, and brain mapping represents a complex intersection of science, ethics, and law in the realm of criminal investigations. These methods, while potentially offering insights into an individual's knowledge or involvement in a crime, occupy a contentious position in the Indian legal system. Crucially, the results obtained from these tests are not admissible as evidence in Indian courts, reflecting concerns about their reliability and the potential infringement on an individual's rights against self-incrimination. This legal stance underscores the principle that evidence must be obtained through means that respect both the rights of the accused and the integrity of the judicial process. Furthermore, the Indian legal framework mandates that these tests cannot be conducted without the explicit consent of the accused or suspect, emphasizing the importance of voluntary participation and personal autonomy.

ESTOPPEL & PROMISSORY ESTOPPEL

- Section 121 of the BNS embodies the principle of Estoppel, derived from the French term 'Estoup' meaning 'shut the mouth'. The principle of estoppel prevents a person from taking up an inconsistent position from what they have previously pleaded or asserted. It is based on the principle that "Justice prevails over truth". Estoppel serves to prevent individuals from asserting contradictory positions. The rule of estoppel is not applicable to criminal cases.
- **Caselet 1: A, in the presence of P, X, Y, and Z, states that a gold chain which is in his possession belongs to him and that he is willing to sell it for 5 lakh rupees. That gold chain actually belongs to P, but P, though present at the scene, kept quiet when A offered the gold chain for sale. Z purchases the gold chain from A. Now P brings a legal action against A and Z, praying the Court to set aside the sale. Will P succeed?**

Exceptions to the Doctrine of Estoppel:

- **No Estoppel Against a Minor:**
- **No Estoppel on a Point of Law:**
- **No Estoppel Against Statute/Sovereign Acts:** Estoppel, as a legal doctrine, cannot be invoked to override or circumvent statutory provisions or sovereign acts. Laws, regulations, and official government actions are immune from the application of estoppel. This fundamental principle ensures that the doctrine is not misused to contravene established laws and rules, as legal statutes and regulations take precedence over individual representations or actions, regardless of their nature or the circumstances in which they were made.

Competency of a Witness

- Can a child aged 6 years be a competent witness?
- Can an accused be a competent witness?
- Can a relative/rival/enemy of a party be a competent witness?
- Can the spouse (wife/husband) of the party be a competent witness?

Matrimonial Communications (Sec.128)

- According to Section 128 communications between husband and wife are strictly protected from disclosure. According to this provision a spouse cannot be compelled to disclose the information given by the other spouse and is also not permitted to disclose any communication between them except with the permission of the other spouse.

Legal Rules as to Matrimonial Communications :1

1. The communication must have been made during the continuance of the marriage: Any communication made either prior to the marriage or after the termination of marriage is not protected from disclosure.

Legal Rules as to Matrimonial Communications

:2

2. Only communications are protected from disclosure but not the acts or conduct :
This privilege is restricted only to communications between husband and wife but is not extended to acts or conduct of the husband or wife. Suppose the husband commits a murder in the presence of his wife, the wife can give evidence of what she has seen.

Legal Rules as to Matrimonial Communications

:3

3. The privilege does not end after the termination of marriage
:When a communication is made by one spouse to the other during the continuance of marriage, the privilege continues even after the dissolution of marriage.

Legal Rules as to Matrimonial Communications

:4

4. The privilege operates only against the husband or wife but not against third persons:

A third person or a stranger is not prevented to give evidence of such communication. Suppose the husband makes a disclosure to his wife which is overheard by a neighbour, the neighbour can give evidence about such communication.

Circumstances in which
disclosure of matrimonial
communication is
permissible :

1. Matrimonial communications can be given in evidence with the express consent of the spouse who made the communication.
2. In suits or criminal proceedings between the husband and wife matrimonial communications can be given in evidence.

Professional Communications

- (S. 132) This privilege is confined to legal advisors and does not apply to other professionals like Doctors, Chartered Accountants etc., In other words, communications between a legal advisor and his client only are privileged. The reason for this rule is unless the client makes a free and frank disclosure of all facts, it is not possible for a lawyer to defend the case of a client in an effective manner. A client would make a free and frank disclosure only when there is a guarantee to him that what all he passes on to the lawyer would not be disclosed.

Documents as well as Advise

An Advocate is prohibited from disclosing not only the communication, but also the *advice given by him to the client as well as the contents of the documents with which he becomes acquainted in the course of his employment.* This privilege exists even after the employment ceases.

NOTE :According to S. 132, this privilege extends to the *interpreters, clerks or servants* of the advocates.

Exceptions

In the following cases an advocate may disclose the information passed to him by his client.

1. In case the client makes a communication in furtherance of an illegal purpose. (For example a client says to a lawyer "I wish to obtain possession of property by the use of a forged deed. I request you to guide me". This communication being made in furtherance of a criminal purpose is not protected from disclosure).
2. In case a lawyer finds any crime or any fraud committed after the employment began.
3. In case the client gives an express consent for the disclosure.

Example

- To **defend a person who has committed forgery** (such communication made by such person to his lawyer to the effect that he committed forgery, is protected from disclosure). If the **lawyer is consulted for fabricating a forged deed**, the communication made by client to his lawyer to the effect that he wants to obtain possession of some properties by use of forged deed, is not protected from disclosure.

A saying on witnesses

- *Those who speak truth do not come to court*
- *Those who come to court do not speak truth*
- Witness=Person supposed to be acquainted with the facts and circumstances of the case.

Trap witness

- While such recovery should be made before witnesses, it is necessary to prove in the court the identify of the money and the fact that it was handled by the corrupt officer. The serial numbers of the currency note tendered are to be noted down before the trap and the witnesses should be able to identify these notes. Additionally the currency notes would be treated with chemical substances like Anthracene or Phenolphthalein.
- Phenolphthalein (powder) turns into pink (caught red-handed)
- In UP Inquest is called Panchnama(PO-Panchnama mandatory/Magistrate-discretionary)

	Accused as Witness	Accused as Accused
1	Oath is administered	Oath is not administered
2	Subject to Witnesses Examinations including Cross-Examination	Not Subject to Witnesses Examinations including Cross-Examination
3	Liable for giving False Evidence if gives False Evidence	Not Liable for giving False Evidence if gives False Evidence

Example 1:

- Consider a case where A, B, C, and D are accused of murdering Sheena. If B provides evidence against himself and the other accused, his testimony can fall into any of these three categories based on his position at the time of giving evidence.
- **Co-accused's Evidence:** When an accused, like B, gives evidence against himself and others during the trial proceedings while still in the capacity of an accused, this constitutes co-accused's evidence.
- **Accomplice's Evidence:** If B chooses to become a witness and testifies against himself and the others in this capacity, his evidence is classified as accomplice's evidence.
- **Approver's Evidence:** If B turns approver and provides evidence against himself and the other accused, his testimony is considered approver's evidence.
- Co-accused= capacity of accused
- Accomplice= capacity of a witness=Defence Witness
- Approver= capacity of a witness=Prosecution Witness

Confession of Co-accused/ Accomplice/Approver implicating himself
and other accused persons

Co-accused—adduces evidence as **accused** inside or outside the court
(value=corroborative)

Accomplice—examined as a **defence witness only inside the court**
(value=corroborative)

Approver -- examined as a **prosecution witness(corr)**

- **Accused as Witness**= (1)administered oath(2)subject to cross examination(3)liable for giving false evidence
- **Accused as Accused**= (1)Not administered oath(2)Not subject to cross examination(3)Not liable for giving false evidence

Order of examination of witnesses

- A witness is first examined-in-chief by the party calling him. He shall then be cross-examined by adverse party, if the adverse party so desires. He may then be re-examined, if the party calling him so desires. (Sec.143 of BSA).
- In every case (governed by CPC), the **examination in chief of a witness shall be on affidavit** and copies thereof shall be supplied to the opposite party by the party who calls him for evidence
- An affidavit is a **declaration of facts, made in writing and sworn before a person having authority to administer oath**

Questions that can be asked in Cross Examination.

- In the course of cross examination, a witness may be asked the following questions:
 1. Any leading question.
 2. Any question to test his truthfulness.
 3. Any question as to his previous written statements.
 4. Any questions to discover who he is and what his position in life is.
 5. Any relevant question which need not be confined to facts stated in the examination in chief.
 6. Any question to shake his credit by injuring his character although his answer might implicate him in a crime.

HOSTILE WITNESS

- The term "hostile witness" is not explicitly defined in the BSA, but it refers to a witness whose demeanor during testimony indicates a reluctance to tell the truth. In legal terms, a hostile witness is one who is allowed by the court to be cross-examined by the party that originally called them. This permission is granted at the court's discretion under Section 157 of the BSA. When such permission is granted, the party that called the witness can pose questions typically reserved for cross-examination, thereby challenging the witness's credibility. The court's discretion in this matter is broad and should be exercised whenever the witness's behavior—such as their demeanor, attitude, or the nature of their responses—suggests that allowing cross-examination is necessary to uncover the truth and ensure justice. Importantly, the court can grant this permission at any stage of the witness's examination, even after the opposing party has completed their cross-examination.