Odisha Judicial Service (Mains) 2023: Law of Crime and Law of Torts — Solution

Odisha Public Service Commission · 3 hours · 150 marks

Section—A

Q1 **[25 marks]**

Critically examine the maxim actus non facit reum nisi mens sit rea and discuss its exceptions. How far do you agree that the concept of mens rea is adopted in Indian Criminal Jurisprudence?

An act ordinarily attracts criminal punishment only when the accused commits it with the state of mind the offence requires. Mens rea concerns the relationship between the accused's mind and the prohibited conduct, consequence or circumstance. Motive answers a different question. An accused may intend to take another's property dishonestly although his ultimate motive is to help someone.

The Indian Penal Code gives the maxim effect through the ingredients of particular offences. Theft requires dishonesty. Culpable homicide may rest on intention or knowledge. Where the legislature punishes rashness or negligence, the prosecution must establish that form of fault, although it need not prove a desire to injure. Evidence of what the accused said, knew and did before and after the event can establish the required state of mind. An accident in the course of a lawful act done lawfully with proper care illustrates a different situation.

The maxim also guides construction of statutes. In Sherras v. De Rutzen, an honest belief that a constable was off duty mattered to a charge of supplying him liquor on duty. The presumption can, however, yield to express language or necessary implication. In State of Maharashtra v. Mayer Hans George, the majority treated the foreign-exchange restriction on bringing gold into India as enforceable without proving knowledge of the published restriction. The nature of the regulated activity, statutory language and whether requiring proof of knowledge would defeat enforcement all mattered.

It follows that silence about intention does not alone create strict liability. Equally, demanding proof of a guilty purpose in every regulatory prosecution would rewrite some statutes. The court should first identify each element of the precise offence, then determine what fault, if any, attaches to it.

Q2 **[25 marks]**

It is often said that "there is a very thin but fine distinction between the offences of 'culpable homicide amounting to murder' and 'culpable homicide not amounting to murder' because the difference is merely of question of different degree of probability of death ensuing". Examine the correctness of the above statement with the help of legal provisions and decided cases.

All murder is culpable homicide, but culpable homicide becomes murder only when a clause of section 300 IPC applies and no exception reduces the offence. Probability of death explains several distinctions. It cannot by itself classify every killing.

First establish causation and one of the three states of mind in section 299. The accused may have intended death, intended bodily injury likely to cause death, or known that the act was likely to cause death. Next apply section 300. Intention to cause death ordinarily satisfies its first clause. The second covers an intended injury which the offender knows is likely to kill this particular victim. A condition known to the offender may make the same injury much more dangerous to this victim than to an ordinary person.

Under the third clause, the prosecution must prove the actual injury, its nature, an intention to inflict that particular injury, and its objective sufficiency to cause death in the ordinary course of nature. Virsa Singh v. State of Punjab explains why a separate intention to kill is unnecessary. Under the fourth clause the accused must know that the act is so imminently dangerous that in all probability it will cause death or injury likely to cause death, and must incur that risk without excuse.

Finally examine the exceptions, including grave and sudden provocation, excess in private defence, excess by a public servant acting in good faith, sudden fight, and valid consent of a person over eighteen to suffer death or its risk, each subject to its conditions. A qualifying sudden fight can reduce even an intentional killing. State of A.P. v. Rayavarapu Punnayya treats culpable homicide as the wider category. Section 304 distinguishes the intention and knowledge-only branches for punishment. [BNS sections 100, 101 and 105.]

Q3 **[25 marks]**

What do you understand by 'criminal attempt'? What are various theories to distinguish between 'preparation' and 'attempt'? Explain with the help of decided cases.

An attempt begins when a person who intends a particular offence goes beyond arranging the means and undertakes an act sufficiently close to executing that offence. The completed result need not occur. Section 511 IPC supplies a general punishment for attempts to commit imprisonable offences under the Code when no express punishment for the attempt exists. [BNS section 62.]

Buying a bag for an intended theft can remain equivocal preparation. Putting a hand into another's pocket to take its contents dishonestly is an attempt even if the pocket is empty. The statutory illustration separates an external obstacle from any absence of criminal purpose. Conversely, proof of a strongly expressed intention without a sufficient outward act does not establish attempt.

The proximity test asks how closely what was done was connected with executing the offence. A rigid last-act test sets the boundary too late. The unequivocality test asks whether the conduct in context speaks clearly of the criminal purpose. An isolated act with several ordinary explanations may acquire significance when placed in a sequence. The opportunity-to-withdraw test asks whether the accused was still arranging matters and had not begun execution. A theoretical ability to stop cannot erase an attempt already made.

In State of Maharashtra v. Mohd. Yakub, moving silver to a secluded creek and beginning to unload it where a vessel was expected supported an attempt to export it. The officers did not have to wait until the silver crossed the frontier. The court assessed proximity in relation to the proved intention and circumstances. On a problem, identify the intended offence, the last act actually proved, the explanation consistent with innocence if any, and what remained to complete the offence.

Q4 **[25 marks]**

A Delhi bound train met with an accident near Tatanagar railway station in which several passengers died. X died in that accident. While X's dead body was lying on the side of railway track, Y with dishonest intention removed three gold rings, a wrist watch and money bag from that dead body. Has Y committed theft? Discuss the liability of Y with justification.

Y is liable for dishonest misappropriation of property possessed by a deceased person under section 404 IPC. On the stated facts he has not committed theft under section 378. The distinction turns on who possessed the articles at the moment Y moved them. [BNS sections 315 and 303(1).]

The rings, wrist watch and money bag are movable property. Y's dishonest purpose and his movement of the articles are clear. Theft additionally requires a taking out of the possession of some person without that person's consent. X was already dead. No relative, railway officer, police officer or other custodian is said to have taken possession between X's death and Y's intervention. The articles did not cease to be property simply because no living person had yet taken custody.

Section 404 deals with that interval. The prosecution must show that X possessed the articles when he died, that Y knew this, that no person legally entitled had since possessed them, and that Y dishonestly appropriated them or converted them to his own use. Removing the belongings directly from X's body with the stated dishonest intention supplies evidence of those elements. Taking them into safekeeping for immediate delivery to the authorities would raise a different issue about dishonesty.

The ordinary maximum under section 404 is three years' imprisonment and the offender is also liable to fine. The higher maximum of seven years concerns a clerk or servant employed by the deceased at death. Nothing identifies Y as either. If an entitled custodian had already collected the property, a subsequent dishonest taking from that custodian would instead require examination as theft.

Q5 **[25 marks]**

Explain the principles of 'group liability' in criminal law. Discuss whether several persons engaged in the commission of a criminal act may be guilty of different offences by means of that act. Refer to decided cases.

Joint responsibility requires proof of the link which the law specifies between the accused and the criminal act. Similar intentions independently formed, presence in a crowd and association with an offender are each insufficient by themselves.

Section 34 IPC attributes a criminal act done by several persons in furtherance of their common intention to each participant as if he had done it alone. The common intention may be inferred from concerted conduct and may form on the spot. The prosecution must nevertheless establish both the shared purpose and participation. The person keeping watch as part of the agreed operation may contribute as effectively as the person who delivers the injury. Barendra Kumar Ghosh v. King Emperor illustrates why inability to identify the person who fired the fatal shot need not defeat joint responsibility.

A different route is membership of an unlawful assembly of at least five persons. Section 149 applies to an offence committed by a member in prosecution of its common object or one the members knew was likely in pursuit of that object. Establish the object, membership at the material time, and the

connection of the offence with the object. Section 37 separately deals with intentional cooperation through one of several acts constituting an offence.

Section 38 preserves individual differences in guilt. In its illustration A kills under provocation sufficient to reduce murder to culpable homicide. B, acting out of his own ill will and without that provocation, intentionally assists in the killing. The same death supports different verdicts. Common action does not transmit one participant's personal defence or mental state to another. [BNS sections 3(5), 3(8), 3(9), 189 and 190.]

Q6 **[25 marks]**

"Only involuntary act of intoxication is a defence." Critically examine this statement in the light of relevant statutory provisions and decided cases.

Involuntary intoxication can excuse conduct if it produced the incapacity specified in section 85 IPC when the accused acted. Voluntary intoxication ordinarily supplies no excuse, but its degree may still be relevant when a particular intention must be proved. [BNS sections 23 and 24.]

For the complete defence, the intoxicant must have been administered without the person's knowledge or against his will. The accused must consequently have been incapable of knowing the nature of the act, or that what he was doing was wrong or contrary to law. These requirements are cumulative. Secretly adding an intoxicant to a drink establishes its involuntary origin. Unless the requisite incapacity followed at the material time, it does not establish the defence. Mere excitement, lowered restraint, or subsequent inability to recall everything is insufficient.

Section 86 deals separately with offences requiring particular knowledge or intent. A voluntarily intoxicated person is treated as having the knowledge he would have possessed when sober. The statute imputes knowledge. The court must still infer an intention which the offence requires from the circumstances, including the degree of intoxication, choice of conduct, ability to respond and behaviour surrounding the event.

Basdev v. State of PEPSU applied that distinction to a fatal shooting by a man who had been drinking. The evidence permitted a finding of the necessary intention despite his drinking. Consequently the statement in the question is sound as a description of the intoxication exception, but too broad as a rule about evidence. Rejecting a complete defence never relieves the prosecution of proving the particular offence charged.

Section—B

Q7 **[25 marks]**

"Act of God is an accident due to a natural cause, directly and exclusively without human intervention." In light of this statement, discuss what is 'act of God' and to what extent it provides protection of defendant and differentiate 'act of God' from 'inevitable accident'.

An act of God is an extraordinary operation of natural forces that causes the loss independently of human intervention and could not reasonably have been anticipated or guarded against. Inevitable accident is wider. It describes an accident that reasonable

care in the circumstances could not prevent, whether or not a human act formed part of the sequence.

The defendant must identify the event and explain why the available precautions would have been insufficient. A heavy seasonal downpour in a place which regularly floods ordinarily calls for precautions. Damage caused partly by neglected drainage cannot be excused merely by describing the rain as natural. By contrast, in Nichols v. Marsland extraordinary rainfall caused artificial lakes to overflow and wash away bridges. The event was exceptional and negligence in maintaining the lakes had not been established. The defence was allowed.

Stanley v. Powell illustrates inevitable accident involving human conduct. During a shooting party a shot glanced off a tree and injured another participant. The court found accidental injury without negligence. The intervention of a person did not prevent this conclusion. The central inquiry was whether the accident could have been prevented by reasonable care.

The applicable basis of liability matters. An act of God is a recognised exception to the strict rule governing escapes under Rylands v. Fletcher. The general proposition that a person used reasonable care does not itself answer a strict-liability claim. The Indian rule for enterprises engaged in hazardous or inherently dangerous activities excludes the Rylands exceptions. Identify the cause of the injury and the legal duty governing the defendant before treating either expression as a complete answer.

Q8 **[25 marks]**

Discuss the rule ubi remedium ibi jus as the origin of the law of torts. Explain in this regard, the basic dominance and subsequent abolition of the forms of action in the development of the law of torts.

Ubi remedium ibi jus means that the availability of a remedy indicated the recognition of a right. It describes an historical feature of the common law. The claimant's first practical problem was to obtain a writ appropriate to the facts. A grievance that did not fit an available form could fail before a court determined its merits.

The form governed what the claimant had to allege, what facts had to be proved, and what relief could follow. Trespass principally addressed direct interferences with person, land or goods. The action on the case allowed a claimant to state special circumstances explaining why indirect or consequential injury was wrongful. A direct invasion of land could found an action without proof of measurable loss. In a negligence action the claimant generally needed to show damage resulting from a breach of duty. The historical routes help explain why those distinctions survive.

As the separate forms of action ceased to govern pleading, the practical question shifted to whether the facts established an enforceable duty and its breach. Abolition freed a claimant from choosing the correct historical writ. It did not abolish the substantive ingredients which courts had developed through those writs.

The complementary maxim ubi jus ibi remedium starts from an existing right. In Ashby v. White a qualified voter wrongfully prevented from voting could recover despite his preferred candidate winning. Conversely, the Gloucester Grammar School case illustrates economic loss from lawful competition without infringement of a right. Read together, the examples explain why modern tort law can recognise new applications of legal duties while still refusing compensation for loss which involves no legal wrong.

Q9 **[25 marks]**

What are the tests for determining remoteness of damages? Why is the 'foreseeability test' considered more rational? Explain with the help of case-laws.

Remoteness limits the consequences for which a defendant must answer after breach and factual causation have been established. A consequence can in fact flow from negligence yet fall outside the scope of liability. Two historically important approaches examine directness and reasonable foresight.

In Re Polemis a plank negligently dropped into a ship's hold caused a spark and a destructive fire. Some damage from dropping the plank was foreseeable. The court treated the fire as a direct consequence and imposed liability despite its unexpected character. This test asks whether the consequence flowed without an independent intervening cause. It can expose the defendant to a substantially different kind of harm from the danger which made the conduct careless.

The Wagon Mound rejected directness as the governing test in negligence. Oil escaped into a harbour and subsequently ignited, damaging a wharf. On the findings in that case, fire from the oil on the water was not reasonably foreseeable. Foreseeable fouling and direct causal connection did not establish liability for the fire damage. The inquiry concerns the kind of harm reasonably foreseeable when the defendant acted. It need not extend to the precise sequence or exact amount of loss.

The foresight test relates legal responsibility to the risks against which a reasonable person should have taken precautions. It also avoids treating every unusual consequence as an independent cause simply to limit damages. Its difficulty is choosing the appropriate level of description: "some damage" may be too general, while insisting on advance prediction of every detail is too narrow. Identify the relevant danger, the actual kind of injury, and the connection between them.

Q10 **[25 marks]**

Discuss Rylands vs Fletcher rule and state its exceptions. How far absolute liability principle is different from strict liability rule? Explain and refer to landmark decisions.

Rylands v. Fletcher imposes liability for damage caused by the escape of a dangerous accumulation from the defendant's land in the course of a non-natural use. The defendant had arranged for a reservoir to be constructed. Water escaped through old mine workings and flooded the claimant's mine. Proof of personal carelessness in the construction was unnecessary.

The claimant should identify what was brought onto or accumulated on the land, its propensity to cause harm if it escaped, the special use made of the land, an escape beyond the defendant's occupation or control, and resulting damage. Ordinary domestic use and an injury wholly within the premises present different questions. The mere fact that something caused serious damage does not establish every element.

Recognised exceptions include the claimant's own default, consent or common benefit, an unforeseeable act of an independent stranger, an act of God and statutory authority within its proper scope. For example, shared provision of water may imply consent to its ordinary presence. Consent to its presence does not authorise a neighbour to maintain the installation negligently.

M.C. Mehta v. Union of India, arising from the escape of oleum gas, formulated a distinct rule for enterprises conducting hazardous or inherently dangerous operations. Their duty to the community is

absolute and non-delegable. When an accident in such an operation causes injury, the enterprise must compensate those harmed even if it took reasonable care. The Rylands exceptions do not apply, and the court linked the measure of compensation to the enterprise's magnitude and capacity for deterrence. The basis here is the risk of the industrial activity and its connection to the harm. A claimant still has to establish that connection.

Q11 **[25 marks]**

What are the essential elements of 'negligence'? Explain with the help of decided relevant cases.

Negligence as an independent tort requires a duty of care owed to the claimant, failure to exercise the care the circumstances reasonably require, and injury caused by that failure which falls within the defendant's legal responsibility. A careless act in the abstract does not complete the tort.

Duty identifies who is entitled to care in relation to which risk. In Donoghue v. Stevenson a consumer attributed illness to contamination in an opaque bottle. The manufacturer could reasonably contemplate consumption without an opportunity for intermediate examination. The House of Lords recognised a duty to the ultimate consumer despite the absence of a direct sale between them. The decision addressed whether the claim could proceed on those allegations.

Breach compares the defendant's conduct with what a reasonably careful person performing that activity would have done at the time. Consider the likelihood of injury, its potential seriousness and the practicality of precautions. A potentially dangerous defect known before an article is supplied calls for a different response from one that no reasonable check could reveal. The occurrence of injury itself does not always establish breach.

Finally, connect the inadequate care with the particular injury. If the harm would have occurred even with the proper precaution, the omission does not establish factual causation for that harm. If it did make a difference, apply reasonable foreseeability to the type of injury, as illustrated by The Wagon Mound. The claimant should identify the loss for which compensation is sought. These distinct inquiries explain why a defendant may owe a duty and breach it yet escape liability for a particular claimed consequence.

Q12 **[25 marks]**

"Qui facit per alium facit per se." Explain this maxim with the help of decided cases.

The maxim means that a person who acts through another acts himself. In tort it helps explain why a principal may answer for an agent's wrong within the scope of the agency, and an employer for an employee's tort in the course of employment. The injured claimant may sue the wrongdoer, the person vicariously liable, or both, subject to a single recovery for the loss.

First establish the underlying tort and the relevant employment or agency relationship. Then identify what the employee was engaged to do and how the wrongful conduct related to that work. An authorised act performed in a forbidden or negligent way can remain within the course of employment. A personal undertaking outside the employee's work ordinarily falls outside it. Merely providing an opportunity for a wrong is insufficient.

In Limpus v. London General Omnibus Co., a driver obstructed a rival despite express instructions against such conduct. The company remained liable because this was a wrongful way of carrying on the driving for which he was employed. A prohibition directed to the manner of driving did not remove driving from the scope of his work.

Lloyd v. Grace, Smith & Co. illustrates the application to fraud. A managing clerk obtained a client's property through documents she signed in the course of a conveyancing consultation. The firm answered for fraud committed within the apparent scope of the clerk's entrusted business although he benefited personally. The maxim therefore directs attention to delegated work and its connection with the wrong. It does not make a principal the guarantor of everything an agent does in private life.

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