

## Bar Council Written Exam — All-in-One Pass Book

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## Part 1 — The Last-20-Days Plan

**How this book works.** The written exam is built on choice: Group A (CPC + Specific Relief) answers 2 of 3 ( $15 \times 2 = 30$ ); Groups B (CrPC), C (Penal), D (Evidence), E (Limitation) each answer 1 of 2 (15); Group F (Ethics/Bar Council) answers 1 of 2 (10). Pass is 50/100. So you never need whole statutes — you need enough recurring topics that one of the two offered questions is always yours. Every part of this book is ordered by that logic, distilled from **every past paper ever set (18 sittings, 2005–2025)**, with the 2020–2025 papers weighted heaviest: within each law, study the topics top-to-bottom — the highest-probability material comes first. **The pass arithmetic:** 8–10 on each Group A answer ( $16–20$ ) + 8–10 in each of B–E ( $32–40$ ) + 6–7 in F  $\Rightarrow \sim 54–67$ . With the small groups solid, even a bad Group A day clears 50. Recurrence raises probability, it doesn't guarantee — keep 4–5 topics ready per group.

### The 20-day routine (~6 focused hrs/day: two study blocks + one handwriting hour)

| Day   | Focus                          | Do                                                                                                               |
|-------|--------------------------------|------------------------------------------------------------------------------------------------------------------|
| 1–2   | Limitation                     | Target topics + solve every 2020–2025 date-computation hypo on paper                                             |
| 3–4   | Ethics / Bar Council           | Canons + Tribunal + composition; write the complaint draft once from memory                                      |
| 5–6   | Evidence                       | Estoppel, burden of proof, witnesses; plus the confession skeleton                                               |
| 7–8   | Penal Code                     | Poison ★ and pistol ★ hypo answers cold; §34/§149; the distinction questions                                     |
| 9–10  | CrPC                           | Investigation cluster, §241A, bail; write the bail/Naraji/revision drafts                                        |
| 11–12 | CPC                            | Injunction, rejection of plaint, pleadings; learn the 2026 amendment figures                                     |
| 13–14 | Specific Relief                | Injunctions, specific performance, declaration; one master plaint + three prayer variants                        |
| 15    | <b>Mock 1 — the 2025 paper</b> | Full 4-hour handwritten mock, against the clock — <b>the highest-value day of this plan</b>                      |
| 16    | Review                         | Mark yourself against the model answers; re-study every gap                                                      |
| 17    | <b>Mock 2 — the 2023 paper</b> | Second full mock (the draft-heavy paper)                                                                         |
| 18    | Second line                    | Res judicata · amendment of pleadings · §151 · SR §9 · §299/300 — a one-page skeleton each, section numbers only |
| 19–20 | Revision only                  | The 6 drafts from memory · one section-number sheet per law · the ★ hypos; stop by the last afternoon — sleep    |

★ **Recycled near-verbatim questions — the cheapest marks on the paper:** the poison-conspiracy abetment hypo (2006/2008/2011/2017 — back **word-for-word in 2025**) · the pistol/knife-into-enraged-hands instigation (2025  $\approx$  2023) · the co-owner-abroad estoppel · the ill-plaintiff dismissal → condonation of delay · conviction on a co-accused's confession · the bank legal-adviser auction purchase · the touting clerks. Reading these model answers once = a ready answer in the hall.

### Six draft templates — every 2020–2025 drafting prompt falls inside them

- **Plaint (master template):** possession + declaration of title; swap the prayer for cancellation (forged hiba/kabala) or specific performance (bainapatra)
- **Temporary injunction application (O39) + written objection** (asked 2023)
- **Rejection of plaint application** (O7 R11)
- **Bail application** (+ reduction of an excessive bail bond)
- **Naraji petition** (2023) and **revision petition** (2025) — one skeleton
- **Complaint to the Bar Council** (2025, 2022, 2021)

Format marks are free: correct cause title with the section → numbered paragraphs → prayer → verification. **A correct skeleton with average facts beats perfect facts in the wrong format.** All templates are in Part 3.

### Every answer

- **Issue** — what the question really asks, in one line
- **Act & section** — in every answer; the cheapest credibility there is
- **Rule** — the provision's elements in your own words
- **Application** — apply to the facts by name (X, Y, Z); recent papers reward application, not recitation
- **Conclusion** — a crisp answer to what was asked

Split two-part questions by the printed marks (10+5 → 2:1). Answer (b) even if (a) went badly — parts are marked independently.

### 240 minutes

- **0–10:** read the whole paper; tick your question in each group. Theory + familiar hypo > an unrehearsed draft; a rehearsed draft > everything
- **10–100:** Group A — two answers, 45 min each, while fresh
- **100–220:** Groups B–E — a hard 30-min cap each, strongest first
- **220–238:** Group F — 18 min; never skip it
- **Last:** check all 7 answers exist

**Seven average answers pass; five brilliant ones fail.** If an answer overruns, close it with a one-line conclusion and move.

⚠ **State the current law — not old-guide figures.** The 2026 amendments: CPC O17 adjournments now max **4**, §35A compensatory costs up to **Tk 50,000**; CrPC §32 fine ceilings raised. And in Bangladesh, limitation for specific performance is **1 year** (First Schedule, Art 113) — never the Indian books' 3 years.

**Deprioritise** (historically common, effectively absent since 2009): §145 proceedings · §526 transfer · the police diary · restitution · §10 stay — know the skeleton, don't write practice answers.

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## Part 2 — Law by Law: the Provisions, then the Model Answers

Each law opens with the verbatim text of its key provisions — read the statute first, then the model answers built on it (topics run in pass-priority order; years beside a title = the sittings that asked it).

### E · 15 Limitation Act, 1908

#### The bare act — key provisions Act IX of 1908

##### §3 · Dismissal of suits, etc., instituted, etc., after period of limitation

3. Subject to the provisions contained in sections 4 to 25

(inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

##### §4 · Where Court is closed when period expires

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

##### §5 · Extension of period in certain cases

5. Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation - The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court Division in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

##### §6 · Legal disability

6. (1) Where a person entitled to institute a suit or proceeding or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or proceeding or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefore in the third column of the first schedule or in section 48 of the Code of Civil Procedure, 1908. period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed. person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed. affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations minority. He attains majority four years after such accrues. He may institute his suit at any time within the years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accrues, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

##### §12 · Exclusion of time in legal proceedings

12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded. reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded. application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

##### §18 · Effect of fraud

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

## §26 · Acquisition of right to easements

26. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years, and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years, the right to such access and use of light or air, way, water- course, use of water, or other easement shall be absolute and indefeasible. Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested. under sub-section (1) belongs to the Government, that sub- section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

Explanation - Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

### Illustrations

(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890 to 1st January, 1910. The plaintiff is entitled to judgment. and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

## §28 · Extinguishment of right to property

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. SAVINGS AND REPEALS

### ★ Section 5, Condonation of delay ("sufficient cause") 2025, 2023, 2017, 2015, 2012, 2011...

#### AS ASKED IN THE EXAM

In what kinds of proceedings does §5 apply, and is the court bound to allow a §5 application? On the peremptory-hearing date the plaintiff fell ill, the suit was dismissed for default, and three months later he seeks restoration, what grounds for condonation would you urge, and does laches/negligence defeat the application?

**The rule (§5).** An *appeal* or an *application* for revision, review, leave to appeal, or any other application to which §5 is made applicable by any enactment, may be admitted after the prescribed period if the appellant/applicant satisfies the court that he had **sufficient cause** for not acting within time.

#### Scope, what §5 covers and what it does not.

- §5 applies to **appeals and applications only**, *not to suits*. A suit filed out of time is simply dismissed under §3; there is no condonation of a time-barred suit.
- "Sufficient cause" is not defined; it is judged on the facts. The Explanation states that being **misled by an order, practice or judgment of the High Court Division** in computing the period may be sufficient cause.

**Is the court bound?** No. §5 confers a **discretion**, not a right. Even where some cause is shown, the court may refuse condonation; conversely the discretion must be exercised judicially, not arbitrarily. The applicant must explain the delay for **each day** of the period.

#### Applying the hypothetical (illness → dismissal for default → restoration sought ~3 months later).

- Sudden, genuine illness on the peremptory date is a classic "sufficient cause", the default was not deliberate or due to want of bona fides.
- Grounds to urge: (i) the illness was sudden and prevented appearance; (ii) the plaintiff acted bona fide and had no intention to abandon the suit; (iii) supporting proof (medical evidence) of the incapacity; (iv) no prejudice to the defendant that costs cannot cure.
- **Procedure:** the application to set aside the dismissal-for-default is under the CPC (Order IX); the *delay* in making that restoration application is what §5 condones.

**Does laches/negligence defeat it?** Yes. The court will **not** condone delay caused by the applicant's own **gross laches, inaction or negligence**, and **humanitarian considerations alone cannot cover inordinate delay** flowing from negligence. So if the three-month delay is itself unexplained or the result of carelessness, condonation should be refused; if every part of the delay is satisfactorily explained by the illness and its aftermath, the court may condone. **Conclusion:** condonable on bona fide illness, properly evidenced and fully explained; defeated if the delay reflects the applicant's own negligence.

### Section 6, Legal disability; and Section 18, effect of fraud 2025, 2021, 2020, 2017, 2015, 2014...

#### AS ASKED IN THE EXAM

What is legal disability, and how does it affect the prescribed period? Discuss the effect of fraud on limitation.

**Legal disability (§6).** Where a person entitled to sue, to apply for execution, or to make an application is, *at the time from which limitation runs*, a **minor, insane or an idiot**, he may bring the suit/application within the **same period after the disability ceases** as he



would otherwise have had. Not every difficulty is a "legal disability": only minority, insanity and idiocy qualify ("all disabilities are not legal disability").

Key features:

- Time runs from **cessation** of the disability, not from accrual of the right.
- **§6(2)**: if the person is under two disabilities at once, or a second disability supervenes before the first ceases, the period runs from after **both** have ceased.
- **§6(3)**: if the disability continues until death, the **legal representative** gets the same period after the death.
- **§8 cap**: §6/§7 never extend the period more than **three years** from cessation of the disability or the death of the person affected (and do not apply to pre-emption suits).
- **§9**: once time has begun to run, no *subsequent* disability stops it, the disability must exist *when the right accrues*.

*Illustration (statutory)*: a right to sue accrues to A during minority; he attains majority four years later; he may still sue within the ordinary period reckoned from majority.

*Worked example (cf. 2023 hypothetical)*: a minor's land is sold without authority in 2012; he attains majority in 2018. A suit to recover possession runs the **12-year** period (Art. 144 / §28) reckoned from when possession became adverse, but §6 lets him sue within the ordinary period from cessation of minority, subject to the §8 three-year cap on the *extension*. Practically he is well within time in 2023.

**Effect of fraud (§18)**. Where a person has been **kept from knowledge of his right or title by fraud**, or a necessary document was **fraudulently concealed**, the period for a suit/application, against the person guilty of (or accessory to) the fraud, or anyone claiming through him otherwise than in good faith and for value, is **computed from when the fraud first became known** to the person injured (or, for a concealed document, when he first had the means of producing it). Fraud thus **postpones the start** of limitation to the date of discovery, denying the wrongdoer the benefit of his own concealment.

#### Computation of the period, exclusions, copies, court closed; date hypotheticals 2025, 2023, 2022, 2020

##### AS ASKED IN THE EXAM

How is the period computed (exclusion of the first day, time for obtaining copies, court closed on the last day)? Then: compute the last date on the given holiday/death facts.

##### Computation rules.

- **§12(1)**: in computing any period, the **day from which the period runs is excluded**.
- **§12(2)–(4)**: for appeals/leave-to-appeal/review, also exclude the **day judgment was pronounced** and the **time requisite for obtaining the certified copy** of the decree/order appealed from; where a decree is appealed, also exclude time for the copy of the judgment it is founded on; for setting aside an award, exclude the copy of the award.
- **§4**: where the prescribed period **expires on a day the Court is closed**, the suit/appeal/application may be filed on the day the **Court re-opens**. (A court is "closed" on holidays/vacation; a judge merely being on leave while the court is *open* is not §4 closure.)

**Worked hypothetical A, recover-possession deed (cf. 2022)**. Fraudulent deed executed 15/03/2015, registered 19/03/2015; X first learned of it on **18/03/2016**; applied for certified copy **18/04/2016**, obtained it **22/05/2016**; suit is for **cancellation of the instrument**.

- Cancellation of an instrument = **Art. 91**, period **three years** from when the facts entitling cancellation **first become known**. Knowledge here = 18/03/2016 (§18 fraud postpones to discovery and agrees with Art. 91's "knowledge" trigger).
- §12(1) excludes the first day (18/03/2016), so the three years run to **18/03/2019**.
- **Caveat**: time for obtaining a copy is excluded under §12 only for **appeals/review/setting-aside-award**, *not for an original suit*. For a suit for cancellation, the copy-time (18/04–22/05/2016) is **not** deducted. **Last date ≈ 18/03/2019**.

**Worked hypothetical B, holiday/death (2020 facts)**. Last date to file = **14/10/2020**. 13/10 and 14/10 = weekly holidays; 15/10 the court was **open** but the judge was on leave (and the plaintiff's father died); 16/10 = special government holiday; 12/10 and 17/10 = working days.

- The prescribed period expires on **14/10/2020**, a day the court is **closed** (holiday). Under §4, filing is carried to the day the court **re-opens**.
- The court **re-opens on 15/10/2020**, it was *open* that day. A judge being on leave does **not** make the court "closed" for §4, and a relative's death is **not** a §4 ground (it might support a §5 condonation application, but §5 does not apply to a *suit*).
- Therefore filing must be done on **15/10/2020**. (16/10 is irrelevant, the court had already re-opened on the 15th.)
- **Last date = 15/10/2020**.

**On the §5 sub-question in B**: §5 does **not** assist, because §5 applies to appeals/applications, **not to suits**; a suit must use §4, which only carries forward days the court is *closed*.

#### Adverse possession, extinguishment of the right to property 2025, 2022, 2020

##### AS ASKED IN THE EXAM

Explain title by adverse possession and how a person's right to property can be extinguished under the Act.

**The 12-year rule (Art. 144).** A suit for possession of immoveable property not otherwise specially provided for must be brought within **twelve years**, reckoned **from when the defendant's possession becomes adverse** to the plaintiff. Possession is "adverse" when it is open, continuous, hostile to the true owner's title, and to his knowledge, mere permissive occupation does not count.

**Extinguishment of right (§28).** This is what gives adverse possession its bite. §28 provides that **at the determination of the period limited for a suit for possession, the owner's right to the property is itself extinguished**. So the Act here does *not* merely bar the remedy, it **destroys the right**. Once the 12 years run out:

- the true owner can no longer recover possession; and
- a corresponding title is perfected in the adverse possessor.

This is the **exception** to the general maxim that limitation bars the remedy but not the right.

**How the two provisions work together.**

- Art. 144 fixes the **period (12 years)** and its **starting point** (when possession turns adverse).
- §28 supplies the **consequence** (extinguishment of the dispossessed owner's title at the end of that period).

*Illustration:* A is dispossessed of his land by B in 2008; B holds it openly and as of right against A. A sues in 2021, more than 12 years later. The suit is barred under Art. 144, and by §28 A's right to the land is extinguished and stands transferred, in effect, to B.

**Distinguish:** do not confuse Art. 144 (general adverse possession, 12 years) with **Art. 3**, the Specific Relief Act §9 possessory suit, which is only **6 months** from dispossession and decides possession alone, leaving title untouched.

**Conclusion:** adverse possession for the statutory 12 years (Art. 144), coupled with §28, extinguishes the true owner's right and confers title on the possessor.

### **Acquisition of easements (§26), limitation creating rights without deeds** 2025, 2021

#### **AS ASKED IN THE EXAM**

"In some instances, the Limitation Act, 1908 creates ownership, rights and title without deeds." Describe with reference to the concerned sections. When does the right to an easement become absolute?

**Exam structure (33 minutes):** 1) what an easement is → 2) the §26 + §28 "rights without deeds" frame → 3) the §26 rule (20 yrs / 60 vs Government) → 4) the qualities (peaceable, as of right, without interruption; ends within 2 yrs of suit) → 5) §27 → 6) the Easements Act note. *Must state:* permissive enjoyment never ripens; the operative provision today is Easements Act §15 (same rule).

**The Act as creator of rights.** The Limitation Act ordinarily only **bars the remedy**; but in two places it goes further and operates on the **right itself**, creating or destroying substantive rights without any deed:

1. **§26, acquisition of easements by prescription** (a right *created* by long enjoyment); and
2. **§28, extinguishment of the right to property:** when the period limited for a suit for possession expires, the person's right to the property is **itself extinguished**, the corollary being that the possessor's title, by **adverse possession**, becomes unassailable. Together, §26 and §28 are the instances where lapse of time confers ownership, rights and title with no instrument of transfer at all.

**Acquisition of easements, §26.** Where,

- the access and use of **light or air** to and for any building, or
- any **way**, or **watercourse**, or the **use of any water**, or
- any **other easement**

has been **peaceably enjoyed**, as an easement, **as of right, without interruption**, for **twenty years**, the right becomes **absolute and indefeasible**. Where the servient property belongs to the **Government**, the period is **sixty years**, not twenty.

**The qualities of the enjoyment.** Each word carries weight:

- **Peaceably**, not by force or violence (*nec vi*);
- **As of right**, not by stealth and not by the owner's permission or licence (*nec clam, nec precario*): enjoyment under a licence, however long, founds no prescription;
- **Without interruption**, an "interruption" means an **actual discontinuance** of the enjoyment by an obstruction, and only counts where the claimant has **submitted to or acquiesced in** the obstruction for **one year** after having notice of it and of its author; a shorter or resisted obstruction does not break the running of prescription;
- **Twenty years (sixty against the Government)**, and the statutory period must be one **ending within two years next before the institution of the suit** in which the claim is contested. Prescription is thus proved *in* a suit: the claimant must show enjoyment for the full period reaching down to (within two years of) the suit itself.

**Exclusion in favour of the reversioner, §27.** Where the **servient** land was held under a **life-interest or a term of years exceeding three years**, the time of the tenant's holding is **excluded** from the twenty-year computation if the **reversioner resists** the claim **within three years** of the determination of that interest, protecting an owner who had no power to resist the enjoyment while his land was in a tenant's hands.



**Application (the 2025 framing).** Asked how the Act "creates ownership, rights and title without deeds," the answer joins the two limbs: by **§26**, twenty years' peaceable, as-of-right, uninterrupted enjoyment makes an easement **absolute and indefeasible**, a right of way or light acquired without any grant; by **§28**, the true owner who allows the possession suit's period (adverse possession) to expire loses **the right itself**, leaving the adverse possessor with a title good against the world, ownership passed without any deed.

**Current legal position, the Easements Act note.** A careful answer adds one refinement: by **§29 of the Limitation Act itself**, §§26–27 (and the "easement" definition) **do not apply in territories to which the Easements Act, 1882 extends**, and by its **§1A** that Act now extends to the **whole of Bangladesh**, its §3 directing that references to Limitation Act §§26–27 be read as references to **Easements Act §§15–16**. Section 15 of the Easements Act contains **essentially the same prescription rule** (twenty years; sixty against the Government). So the *operative* provision today is Easements Act §15, while §26's principles remain fully exam-relevant, the syllabus and the questions ask them through the Limitation Act, and the content of the rule is the same.

**Conclusion.** Under §26, an easement of light, air, way or water enjoyed peaceably, as of right and without interruption for **twenty years** (sixty against the Government), the period ending within two years before the suit, becomes **absolute and indefeasible**, subject to the one-year acquiescence rule for interruptions and the reversioner's protection in §27, and noting that the operative provision in Bangladesh today is the identically-framed **§15 of the Easements Act, 1882** (Limitation Act §29 read with Easements Act §1A, 3). Read with §28, these are the provisions by which limitation law does not merely bar remedies but **creates and extinguishes substantive rights without deeds**.

**Special laws, why §5 / the Act may not apply** 2025, 2012, 2009, 2006

#### AS ASKED IN THE EXAM

Why are the Limitation Act's provisions (and §5) not applicable where a special law such as the Special Powers Act 1974 or the Artha Rin Adalat Ain 2003 fixes its own limitation? Is there any remedy within those laws?

**The governing provision (§29(2)).** Where a **special law** prescribes a period of limitation **different** from the First Schedule, then:

- **§3** still applies (the special period is treated as if it were in the Schedule, so a proceeding filed out of that special time is dismissed); but
- of the Act's machinery, only **§4, §§9–18 and §22 apply**, and **only so far as the special law does not expressly exclude them**; and
- **the remaining provisions of the Act do not apply**.

**Why §5 is excluded.** §5 is **not** within the list (§4, §§9–18, §22) saved by §29(2)(a). So **§5 does not apply to proceedings governed by a special law's own limitation**, the special law is a self-contained code on time, and the general condonation power cannot be imported into it unless that special law itself adopts §5.

#### Application.

- **Special Powers Act 1974** and **Artha Rin Adalat Ain 2003** each lay down their own periods (e.g. for appeals/applications under those Acts). Because they are special laws prescribing their own limitation, a litigant **cannot fall back on §5 of the Limitation Act** to condone delay under them.
- The Act's role is residual: §3 bars the out-of-time proceeding; the saved sections (§4, §§9–18, §22) may help on computation/fraud/closed-court points only to the extent the special law has not excluded them.

**Remedy within the special laws.** The remedy, if any, lies **inside the special statute itself**, i.e. whether *that* Act contains its own condonation/extension clause or its own appeal-and-relief mechanism. If the special law provides for condonation, relief is sought under that clause; if it is silent and self-contained, the period is rigid and no §5 relief is available. **Conclusion:** §29(2) makes the special-law period controlling; §5 is unavailable; look to the special law for any in-built extension or remedy.

**Acknowledgement in writing, fresh period; advocate's acknowledgement** 2021

#### AS ASKED IN THE EXAM

What is the effect of an acknowledgement in writing on the period of limitation? Is a written acknowledgement made by the advocate on the client's behalf valid?

**The rule (§19).** Where, **before the prescribed period expires**, an **acknowledgement of liability** in respect of any property or right is **made in writing and signed** by the party against whom the right is claimed (or by some person through whom he derives title or liability), a **fresh period of limitation is computed from the date the acknowledgement was signed**. The acknowledgement does not create a new cause of action; it **resets the clock** on the existing one.

#### Essential conditions.

- It must be **in writing and signed** (oral acknowledgement is insufficient).
- It must be made **before** the original period expires, an acknowledgement after limitation has already run cannot revive a dead claim.
- It must amount to an acknowledgement of a **subsisting liability/jural relationship** (an admission that the right/liability exists).

**Explanations to §19.**

- **Expl. I:** the acknowledgement is sufficient even if it omits the exact nature of the property, says the time for payment has not come, is coupled with a refusal to pay, or is addressed to someone other than the person entitled.
- **Expl. II:** "signed" means signed **personally or by an agent duly authorised** in that behalf.
- **Expl. III:** an application to execute a decree is an application in respect of a right.

**Effect of an undated writing (§19(2)):** oral evidence may prove the **date** it was signed (though not, subject to the Evidence Act, its contents).

**Is an advocate's acknowledgement valid?** It is valid **only if the advocate was duly authorised** to acknowledge the liability on the client's behalf (Expl. II, "agent duly authorised in this behalf"). The advocate's general engagement to conduct a case does **not** automatically carry authority to make admissions that fix a fresh limitation period; specific or implied authority to acknowledge the liability is required. So:

- Acknowledgement by an advocate with authority → **valid**, fresh period runs from signing.
- Acknowledgement by an advocate without such authority → **not binding** on the client.

**Conclusion:** a timely, signed, written acknowledgement of a subsisting liability starts a fresh period under §19; an advocate's written acknowledgement binds the client only where the advocate was duly authorised to make it.

### Section 3, "The suit is barred by limitation" 2017, 2012, 2009, 2007

#### AS ASKED IN THE EXAM

What do you understand by "the suit is barred by limitation"?

**Meaning.** A suit is "barred by limitation" when it is instituted **after the period prescribed for it in the First Schedule has expired**. The effect is on the **remedy, not the right**: the Act bars the remedy in court but does not by itself destroy the underlying right (subject to §28, which separately *extinguishes* the right to property after the possession period expires).

**The mandatory rule (§3).** Subject to §§4–25, **every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, even though limitation has not been set up as a defence**. Two consequences follow:

- Dismissal is **mandatory**, not discretionary.
- The court must take the point **suo motu**: even if the defendant does not plead limitation, the court is bound to dismiss a time-barred suit. Limitation cannot be waived into existence by silence.

**When is a suit "instituted"?** Per the Explanation to §3, ordinarily when the **plaint is presented to the proper officer**; for a pauper, when the application for leave to sue as a pauper is made; for a claim against a company in winding-up, when the claim is first sent to the official liquidator. This fixes the date against which the Schedule period is measured.

**Illustration:** if the Schedule allows three years and the plaint is presented in the fourth year, the court must dismiss it on the limitation ground regardless of the merits and regardless of whether the defendant raises the bar.

**Conclusion:** "barred by limitation" = the claim is out of time under the First Schedule; §3 obliges the court to dismiss it of its own motion, the bar going to the remedy rather than the right.

### F - 10 Professional Ethics & Bar Council

#### The Canons of Professional Conduct and Etiquette, duties to the Court, the client, fellow Advocates and the public

2025, 2020, 2010, 2009, 2008, 2007...

#### AS ASKED IN THE EXAM

What do you mean by the Canons of Professional Conduct and Etiquette? Enumerate the duties of an Advocate to the Court, to his client, to fellow Advocates and to the public.

The Canons are the code of professional conduct and etiquette in force for advocates, adopted by the Bar Council under **Article 44(g)** of the 1972 Order. They are arranged in **four chapters**, with the canon numbering restarting in each chapter, so a citation must name the chapter (e.g. "Chapter II, Canon 5"). Their purpose is to uphold the dignity of the profession and to fix the advocate's duties to court, client, colleagues and the public.

**Duty to the Court (Chapter III).** An advocate must:

- maintain a respectful attitude to the court and support judges against unjust criticism (Canon 1);
- not misquote testimony, an opponent's argument, a document or the law, nor cite overruled or repealed authority without disclosure (Canon 3);
- not privately argue the merits of a pending case with the judge, and avoid marked attention or unusual hospitality to a judge (Canon 4);
- (as a public prosecutor) seek not to convict but to see justice done (Canon 5).

**Duty to the client (Chapter II).** An advocate must:

- not acquire an interest adverse to a client in the subject matter (Canon 1);
- not represent conflicting interests (Canon 4);
- disclose any relation with the adverse party and any interest in the subject matter before accepting employment (Canon 3);
- keep the client's property separate and promptly report receipt of it (Canon 6);
- charge a fair fee, the profession being a branch of the administration of justice and not a money-making trade (Canon 10); and
- give entire devotion to the client's interest within, but not outside, the bounds of the law (Canon 12).

**Duty to fellow Advocates (Chapter I).** Uphold the dignity of the profession (Canon 1); not solicit work by advertisement (Canon 2); not let clients' ill-feeling affect collegial conduct (Canon 7); juniors respectful to seniors and seniors helpful to juniors (Canon 10).

**Duty to the public (Chapter IV).** Not accept a brief out of spite or to harass or delay (Canon 1); not minister to a client's malevolence (Canon 2); disclose representation when appearing before a public officer or board (Canon 6); and, as a general rule, not carry on any other business or profession (Canon 8).

### The Tribunal, its constitution, functions and the punishments it can impose 2025, 2012, 2010, 2009, 2006

#### AS ASKED IN THE EXAM

Discuss the constitution and functions of the Tribunal under the Bar Council Order and Rules 1972. What punishments can it impose on an advocate for professional misconduct?

**Constitution (Article 33).** Where a complaint of misconduct is not summarily rejected, the Bar Council refers it to a **Tribunal**. Each Tribunal consists of **three persons**: two elected by the Council from amongst its own members, and one co-opted by the Council from amongst the advocates on the roll. The **senior-most advocate among the members is its Chairman**, and the **Attorney-General shall be a member of any Tribunal**.

**Functions and procedure (Article 34; Rules, Chapter IV).** The Tribunal follows the prescribed procedure, fixes a date for hearing, and gives notice to the advocate concerned and to the Attorney-General, affording both an opportunity to lead evidence and be heard. Before the Tribunal, the case is conducted by the **Attorney-General** (or an advocate on his behalf), who has the prior right to conduct it (Rule 44). On completion of the enquiry the Tribunal may:

- dismiss the complaint;
- where the reference was made on the Bar Council's own motion, direct that the proceedings be filed; or
- impose one of the penalties under Article 32(1).

It may also, where it finds a complaint false and vexatious, impose **deterrent costs not exceeding Tk 500** on the complainant, payable to the advocate (Article 34(6)).

**Punishments (Articles 32(1) and 34).** An advocate found guilty of professional or other misconduct may be:

1. **reprimanded**;
2. **suspended** from practice (the order specifying the period, during which he is debarred from practising anywhere in Bangladesh); or
3. **removed** from practice (his name struck off the roll and his certificate recalled).

A record of a reprimand or suspension is entered against the advocate's name on the roll (Article 34(9)). **Appeal (Article 36):** a person aggrieved may appeal to the High Court Division within **ninety days**; the appeal is heard by a Division Bench whose order is final.

### ★ The Bangladesh Bar Council, composition, functions, the Enrolment Committee, and how it differs from a Bar Association 2017, 2012, 2010, 2009, 2006

#### AS ASKED IN THE EXAM

What is the Bangladesh Bar Council? Discuss its composition and functions, the role of the Enrolment Committee, and how it is distinguishable from a District / Advocates' Bar Association.

The Bangladesh Bar Council is the statutory regulatory body of the legal profession, constituted under the **Bangladesh Legal Practitioners and Bar Council Order 1972 (P.O. No. 46 of 1972)**. By **Article 3** it is a body corporate with perpetual succession and a common seal, which may hold property, contract, and sue or be sued.

**Composition (Article 5).** The Bar Council consists of **fifteen members**:

- the Attorney-General for Bangladesh, as a member *ex officio*;
- seven members elected by the advocates on the roll (general seats); and
- seven members elected by advocates who are members of the Local Bar Associations grouped into seven groups.

The **Attorney-General is Chairman ex officio (Article 6)**, and a Vice-Chairman is elected by the members from amongst themselves. The term of the Council is **three years (Article 4)**.

**Functions (Article 10).** The Bar Council, among other things: admits and removes advocates and holds the admission examinations; prepares and maintains the roll; lays down standards of professional conduct; entertains and tries cases of misconduct and imposes

punishment; safeguards the rights and privileges of advocates; manages the Council's funds; provides for elections; and promotes legal education (in consultation with the universities).

**Enrolment Committee (Articles 11A and 30).** Every application for admission as an advocate is referred to the Enrolment Committee, which may grant it, or return it to the Bar Council with recorded reasons (Article 30). It is chaired by a Judge of the Appellate Division nominated by the Chief Justice.

**Distinguished from a District / Advocates' Bar Association.** The Bar Council is a single, national, statutory regulator with disciplinary and roll-keeping authority over the whole profession. A Bar Association is a local body of practising advocates at a particular court station; it is merely *recognised* by the Bar Council under **Article 39**, has no power to enrol advocates or punish for professional misconduct, and exists for the welfare and collective interest of its local members.

### **Touting / improper solicitation, clerks posted to find clients, with fee-sharing** 2017, 2011, 2008

#### **AS ASKED IN THE EXAM**

An advocate engages clerks deputed to the railway station, bus stand and police station to find clients and shares his fees with them for procuring cases. What offence has he committed under the Canons, and what is the consequence?

This is the classic case of **touting and improper solicitation of professional employment**, and it is professional misconduct.

**Rule.** Under the Canons, **Chapter I, Canon 2**, an advocate shall not solicit professional employment by advertisement or by any other means. **Chapter I, Canon 3** goes further: an advocate shall not employ any other means to solicit or obtain professional employment, nor remunerate any person for soliciting or obtaining it for him, nor share with an unlicensed person any compensation arising out of professional employment, nor accept employment offered as a result of an unlicensed person's activity.

**Application.** By stationing clerks at the railway station, bus stand and police station expressly to procure cases, the advocate is using "other means" to solicit employment in breach of Canon 2. By **paying those clerks a share of his fees** for procuring the cases, he commits the distinct and graver breach under Canon 3, remunerating soliciting agents and sharing professional compensation with unlicensed persons. (Compare Chapter I, Canon 8: division of fees is proper only with another advocate, on a division of work.) The dignity of the profession (Chapter I, Canon 1) is also offended.

**Consequence.** The conduct amounts to professional misconduct under **Article 32**. A petition of complaint, with clear charges and a fee of **Tk 1,000 (Rule 41A)**, may be filed with the **Secretary of the Bar Council**. If the complaint is not summarily rejected, the case is referred to a **Tribunal under Article 33**. If found guilty, the advocate is liable to one of the three penalties under Article 32(1): **reprimand, suspension, or removal from practice**, with an appeal to the High Court within ninety days under Article 36.

### **The bank legal-adviser scenario, buying the auctioned property in his own name** 2012, 2008, 2006, 2005

#### **AS ASKED IN THE EXAM**

A bank's legal adviser obtained a decree for the bank; when the property was auctioned in execution of that decree, he purchased it in his own name. Is this professional misconduct?

Yes, this is professional misconduct, and the directly applicable provision is **Chapter II, Canon 5** of the Canons.

**Rule (Chapter II, Canon 5).** An advocate shall not, himself or *benami*, purchase property at a probate, foreclosure or judicial sale, or in any auction or proceeding in which the advocate appears; nor shall he accept the property in respect of which he was engaged, in lieu of his remuneration or as a reward.

**Application.** The advocate was the legal adviser of the bank and conducted the money suit in which the decree was passed in the bank's favour. The auction of the property was held **in execution of that very decree**, a judicial sale in a proceeding in which he had appeared for the decree-holder. By purchasing that property in his own name (here, by registered kabala), he did exactly what Canon 5 forbids. The fact that the bank requested or persuaded him to buy does not save him, because the prohibition is absolute and is owed to the integrity of the profession, not merely to the client; nor does taking the property in the names of his children, since the Canon expressly reaches a *benami* purchase. The conduct may also offend **Chapter II, Canon 1** (acquiring an interest adverse to the client / in the subject matter of the case).

**Conclusion.** The advocate has committed professional misconduct under **Chapter II, Canon 5**. He is liable to proceedings under **Article 32** and, on a finding of guilt by a Tribunal, to reprimand, suspension or removal under Article 32(1).

### **Conflict of interest, accepting a brief while connected to the opposing party, without disclosure** 2023, 2011

#### **AS ASKED IN THE EXAM**

An advocate accepts a brief from the plaintiff without disclosing that the defendant is his wife's brother (or: after acting as a company's retainer, he later represents the rival directors). Has he breached the Canons?

Yes. Non-disclosure of a relation or interest connecting the advocate to the opposing party is a breach of the Canons governing the duty to the client.

**Rule (Chapter II, Canon 3).** An advocate shall not accept professional employment without **first disclosing his relation, if any, with the adverse party, and his interest, if any, in the subject matter** of the employment. The duty is one of *prior disclosure*: the advocate must

put the client on notice so that the client may decide whether to retain him. Connected provisions reinforce this: **Chapter II, Canon 4** (an advocate shall not represent conflicting interests) and **Chapter II, Canon 2** (he shall not accept employment adverse to a present or former client on a matter in which he obtained confidential information from that client).

**Application, the relationship scenario.** When the advocate accepts the plaintiff's brief knowing that the defendant is his wife's brother, he is connected by relationship to the adverse party. Canon 3 obliged him to disclose that relation *before* accepting the brief. By accepting it without disclosure, he has breached Chapter II, Canon 3; the proper course was either to disclose the connection and let the client decide, or to decline the brief.

**Application, the former-retainer scenario.** Where an advocate, having been a company's retainer and having learned confidential information about a director, later acts for the rival directors against the company's interest, the breach falls under **Chapter II, Canon 2** (and Canon 4): he may not accept employment adverse to a former client on a matter as to which he obtained confidential information, even after the retainer ends.

**Conclusion.** The failure to disclose the connection to the opposing party, and acting despite a conflict, is professional misconduct under the Canons of Chapter II, attracting proceedings under Article 32.

### Advocates' fees, statutory fees and the Canons on fixing fees 2022

#### AS ASKED IN THE EXAM

What fees are payable to the Bar Council by an advocate? What are the considerations in determining an advocate's fee for his services, as per the Canons of Professional Conduct and Etiquette?

**Exam structure (33 minutes for 10 marks, aim ~20):** 1) the three Article 22 fee heads + the Bar Council fund (Article 13) → 2) the six-month default sanction → 3) Canon 10 principles → 4) the six considerations (know at least four cold) → 5) two fee-related prohibitions. *Must state:* "a branch of the administration of justice, not a money-making trade"; state taka figures only from a current notification.

**I. Fees payable to the Bar Council.** Under **Article 22** of the Order, the Bar Council may prescribe three classes of fee: (a) the **enrolment fee**, (b) the fee for **permission to practise in the High Court Division**, and (c) an **annual fee**. These fees, with grants and donations, form part of the **Bar Council fund** (Article 13). The mechanics sit in the Rules: the enrolment application is filed with the prescribed fee receipt alongside proof of age and qualification, character testimonials and an affidavit (Rule 59, with a late-filing fee under Rule 59A); the annual fee is payable in advance by the year's end with a short grace period and a monthly late fee thereafter (Rules 68–69). **The taka amounts themselves are fixed by the Rules and revised by the Bar Council from time to time, state a figure in the exam only from the current gazette/notification, and otherwise name the fee heads.** The sanction for default is statutory (**Article 22 proviso**): an advocate whose annual fee remains unpaid **beyond six months** is show-caused and his **name struck off the roll**, restorable only on payment with penalty.

**II. Fees for professional services, Chapter II, Canon 10.** The Canons treat fee-fixing as an ethical act. The governing propositions:

- Advocates should avoid charges which **overestimate** their advice and services **as well as those which undervalue them**;
- A client's **ability to pay cannot justify a charge in excess of the value of the service**, though his poverty may justify a lesser charge, **or even none at all**;
- The reasonable requests of a **brother advocate** deserve special and kindly consideration, and the **widows and orphans of an advocate** should be assisted **free of charge**;
- Above all, **the profession is a branch of the administration of justice and not a money-making trade**.

**The six considerations in determining the amount of the fee (Canon 10):**

1. the **time and labour** required, the **novelty and difficulty** of the questions involved, and the **skill** requisite properly to conduct the case;
2. whether acceptance will **preclude the advocate's appearance for others** in cases likely to arise out of the transaction, or involve the **loss of other business**;
3. the **customary charges of the Bar** for similar services;
4. the **amount involved** in the controversy and the **benefits resulting to the client** from the services;
5. the **contingency or the certainty** of the compensation; and
6. the **character of the employment**, casual, or for an established and constant client.

No single factor is controlling; they are guides to the **real value of the service**.

**III. The fee-related prohibitions (misconduct territory):**

- **Division of fees** is proper only **with another advocate**, based on a division of service or responsibility expressed in an agreement (**Ch I, Canon 8**); sharing fees with, or aiding, an **unlicensed person**, including the tout and the clerk, is forbidden (**Ch I, Canon 3**);
- An advocate shall not **buy property at a sale in a proceeding in which he appears, nor take such property as his fee** (**Ch II, Canon 5**);
- A client's money must never be **commingled** with the advocate's own, and its receipt must be **promptly reported** (**Ch II, Canon 6**), withholding or "borrowing" from decretal money recovered for the client is misconduct;



- **Controversies with clients over compensation** are to be avoided so far as compatible with self-respect; suits against clients for fees only to prevent injustice or fraud (**Ch II, Canon 11**).

**Conclusion.** The advocate pays the Bar Council the three prescribed classes of fee, enrolment, High Court Division permission, and annual (Article 22, amounts as currently prescribed under the Rules), on pain of being struck off for six months' default of the annual fee. In charging clients, Canon 10 requires a fee that neither overvalues nor undervalues the service, fixed by the six factors, time and difficulty, preclusion of other work, customary charges, the amount and benefit involved, certainty of payment, and whether the client is casual or regular, always remembering that advocacy is a branch of the administration of justice, not a trade; and the Canons close the abusive routes: no fee-sharing outside the Bar, no purchasing the suit property as fee, no commingling of the client's money.

### Evaluating the Bar Council, role, achievements and reform 2025, 2020, 2015, 2014

#### AS ASKED IN THE EXAM

How would you evaluate the role of the Bangladesh Bar Council in upholding the professional efficiency and discipline of lawyers?  
How far has it succeeded, and what reforms would you recommend?

**Exam structure (33 minutes for 10 marks, aim ~20):** 1) the Article 10 mandate (name ≥ 4 functions) → 2) two concrete successes → 3) two evidence-safe improvement areas → 4) two concrete recommendations → 5) a balanced closing verdict. *Must state:* at least four Article 10 functions; keep criticisms as "needs to be faster/more regular", never unproven statistics.

*(This is an evaluative essay, the examiner rewards a structured argument: the statutory mandate first, then achievements, then shortfalls, then concrete recommendations. Keep the statutory anchors precise; the evaluation itself may be the candidate's own, honestly argued.)*

**The mandate, Article 10.** The Bangladesh Legal Practitioners and Bar Council Order, 1972 charges the Bar Council with, among its enumerated functions: **admitting persons as advocates and removing them from the roll**, holding the **admission examinations**; **preparing and maintaining the roll**; **laying down the standards of professional conduct and etiquette**; **entertaining and determining cases of misconduct** against advocates and ordering punishment; **safeguarding the rights, privileges and interests of advocates**; **managing its funds**; **providing for the election of its members**; and **promoting legal education** and laying down standards of such education in consultation with the universities. The evaluation is therefore of performance against these heads: *entry, conduct, discipline, welfare and education*.

#### Where the Bar Council has succeeded:

- **Regulated entry.** A uniform, nationwide gateway to the profession, citizenship, age, a recognised law degree and the prescribed examination (Article 27), administered through the Enrolment Committee, has made admission to the Bar a matter of demonstrated qualification rather than mere degree-holding, and the separate High Court Division permission examination polices the step up to the higher tier.
- **A written standard of conduct.** The **Canons of Professional Conduct and Etiquette**, four chapters covering conduct towards other advocates, clients, the Court and the public, give the profession an enforceable, teachable code rather than unwritten custom.
- **A disciplinary machinery of its own.** Tribunals constituted by the Bar Council (Article 32 and following) try complaints of misconduct, with punishments up to removal from the roll, and an appeal lies onwards, professional self-regulation with teeth, replacing ad hoc court discipline.
- **An institutional voice.** The Council safeguards advocates' rights and interests, maintains benevolent funds for members' welfare, and represents the profession as a body before the state.

#### Where improvement is needed (argued, not asserted, keep the language evidence-safe):

- **Discipline.** Disciplinary proceedings need to be **faster and more visible**; lighter misconduct, touting through clerks, solicitation, fee abuses, remains a visible problem in court premises despite the Canons and the clerk-registration rules, which points to enforcement, not the absence of norms.
- **The examination cycle.** Enrolment examinations have not always been held with predictable regularity, leaving cohorts of law graduates waiting, a strain on the very "efficiency" the Council exists to uphold.
- **Legal education.** The Article 10 function of promoting legal education and setting standards in consultation with the universities remains the least developed limb: the Council examines at the point of entry but exerts limited influence over the quality of instruction before it.
- **Continuing professional development.** The Bar Council has launched a **CPD programme** for advocates, a genuine step; its **reach, regularity and whether it should become systematic or mandatory** remain areas for improvement.

#### Recommendations (marks lie in being concrete):

1. A **fixed annual calendar** for the enrolment examination, published in advance;
2. **Time-bound disciplinary proceedings** with more Tribunals sitting concurrently, and published outcomes to make discipline visible;
3. **Proactive enforcement** against touting and solicitation (regular inspection under the clerk-registration rules) instead of complaint-dependence;
4. **Expanding and regularising the CPD programme**, towards a structured requirement for the early years at the Bar, run with the Bar Associations;



5. Making real the **legal-education function**, a standing curriculum liaison with the universities under Article 10.

**Conclusion.** Measured against Article 10, the Bar Council has succeeded in the *architecture* of professional regulation, a qualified entry system, a written code, a disciplinary forum, and an institutional voice for advocates. The fair evaluation is that implementation needs to catch up with that architecture: disciplinary work should be faster and more visible, examinations regular and predictable, and the CPD and legal-education functions more systematic. The reforms above go to implementation, not to the framework itself.

## **C · 15 Penal Code, 1860**

### **The bare act — key provisions** Act XLV of 1860

#### **§34 · Acts done by several persons in furtherance of common intention**

34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

#### **§96 · Things done in private defence**

96. Nothing is an offence which is done in the exercise of the right of private defence.

#### **§99 · Acts against which there is no right private defence Extent to which the right may be exercised**

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.-A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.-A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

#### **§100 · When the right of private defence of the body extends to causing death**

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

Firstly.-Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.-Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.-An assault with the intention of committing rape; Fourthly.-An assault with the intention of gratifying unnatural lust; Fifthly.-An assault with the intention of kidnapping or abducting; Sixthly.-An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

#### **§107 · Abetment of a thing**

107. A person abets the doing of a thing, who-

Firstly.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

## §108 - Abettor

108. A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.-The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.-To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.-It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby, causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.-The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.-It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration A consents with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

## §109 - Punishment of abetment if the act abetted is committed in consequence and where no express provision is made f

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. made for its

Explanation.-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

### **§141 · Unlawful assembly**

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is-

First.-To overawe by criminal force, or show of criminal force, Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or

Second.-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or Fourth.-By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

### **§146 · Rioting**

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

### **§149 · Every member of unlawful assembly guilty of offence committed in prosecution of common object**

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

### **§191 · Giving false evidence**

191. Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.-A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.-A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations

(a) A, in support of a just claim which B has against Z for one thousand taka falsely swears on a trial that he heard Z admit the justice of B's claim, A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, Knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement of document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

### **§192 · Fabricating false evidence**

192. Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate the evidence."

Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his Shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

### §299 · Culpable homicide

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

#### Illustrations

- (a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.
- (b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.
- (c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or cause death by doing an act that he knew was likely to cause death.

Explanation 1.-A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.-Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.-The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

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### **§300 · Murder When culpable homicide is not murder**

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or —

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or — Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or cause the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

Firstly.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a by stander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the powers given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers



death or takes the risk of death with his own consent.

Illustration A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

### **§304 · Punishment for culpable homicide not amounting to murder**

304. Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment] for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

### **§378 · Theft**

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.-A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.-A moving effected by the same act which effects the severance may be a theft.

Explanation 3.-A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.-A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.-The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweler, to be regulated. Z carries it to his shop. A, not owing to the jeweler any debt for which the jeweler might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly. the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly. possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

### §383 - Extortion

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in [fear to give donation or subscription of any kind or to deliver] to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

#### Illustrations

- (a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- (b) 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. A has committed extortion.
- (c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B and bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.
- (d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

### §390 - Robbery When theft is robbery When extortion is robbery

390. In all robbery there is either theft or extortion. Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.-The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

#### Illustrations

- (a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.
- (b) A meets Z on the high-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 fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.
- (c) A meets Z and Z's child on the high-road. A takes the child, and threatens to fling it down a precipice, unless Z deliver his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.
- (d) A obtains property from Z by saying-"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand taka". This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

### §391 - Dacoity

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

### §405 - Criminal breach of trust

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

#### Illustrations

- (a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.
- (b) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.
- (c) A, residing in Dhaka, is agent for Z, residing at [Chittagong]. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of taka to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust. faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.
- (e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.
- (f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

## §415 · Cheating

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person 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 were not 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, is said to "cheat".

Explanation.-A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean, to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article, A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds articles which he knows are not diamonds intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receive the purchase or mortgage money from Z, A cheats.

## §420 · Cheating and dishonestly inducing deliver of property Of Fraudulent Deeds and Dispositions of Property

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. delivery of Of Fraudulent Deeds and Dispositions of Property

### Abetment (§§107–116) and the poison conspiracy 2025, 2017, 2011, 2009, 2008, 2007...

#### AS ASKED IN THE EXAM

What do you mean by abetment of an offence? Is it a separate punishable offence and what is the punishment? A, B and C conspire to poison Z. A gives money to B to procure poison; B procures it and delivers it to C; C, in the absence of A and B, administers it and Z dies. Explain the liability of A, B and C.

**Definition, §107.** A person abets the doing of a thing in **three ways**:

1. by **instigation**, instigating any person to do it;
2. by **conspiracy**, engaging in a conspiracy for the doing of it, *and an act or illegal omission takes place in pursuance of that conspiracy*;
3. by **intentional aiding**, intentionally aiding, by any act or illegal omission, the doing of it.

**Abettor, §108.** One who abets the commission of an offence. By the Explanation, it is **not necessary that the offence be actually committed**, nor the effect caused, abetment is complete on instigation.

**Is it a separate punishable offence?** Yes. Abetment is itself an offence and is independently punishable. Under **§109**, if the act abetted is committed in consequence and no express provision is made elsewhere, the abettor is punished with **the punishment provided for the offence itself** (i.e. the same as the principal). Where the act is *not* committed, the lesser scales in §§115–116 apply. Under **§114**, an abettor *present* when the offence is committed is deemed to have committed it.

#### Application to the facts (A, B and C):

All three entered a **conspiracy to poison Z**, a criminal object. An act *was* done in pursuance (B procured and delivered the poison; C administered it), so this is abetment by conspiracy under §107 (clause 2), and indeed criminal conspiracy under §120A.

- **C** physically administered the poison and caused death. C is the **principal offender**, guilty of **murder under §302** (the act was done with intention to cause death, §300, clause 1).
- **A** funded the venture and **B** procured and supplied the poison. Both abetted Z's murder by conspiracy and by intentional aiding (§107). The murder was committed *in consequence* of the conspiracy. Under **§109**, A and B are each liable to be punished with **the**

**punishment for murder (§302/§109)**, that is, the same punishment as C, even though they were absent when the poison was administered. Their absence does not save them, because §109 (unlike §114) does not require presence; abetment by conspiracy fixes liability so long as an act follows in pursuance.

**Conclusion:** C is guilty of murder (§302); A and B are each guilty of abetment of murder and liable to the punishment for murder under §302 read with §109.

### Giving false evidence vs fabricating false evidence (§§191–196) 2025

#### AS ASKED IN THE EXAM

Distinguish between 'giving false evidence' and 'fabricating false evidence' under the Penal Code, 1860.

**Exam structure (33 minutes):** 1) §191 definition → 2) §192 definition → 3) the distinction (the core, actor / act / intent / materiality / timing) → 4) §193 punishment (7 yrs judicial / 3 yrs otherwise) → 5) one aggravated form (§§194–196). *Must state:* §192 needs NO oath; the erroneous opinion must touch a MATERIAL point.

**Giving false evidence, §191.** A person gives false evidence (perjury) when, being **legally bound by an oath, or by an express provision of law, to state the truth**, or being bound by law to make a declaration upon any subject, he **makes a statement which is false**, and which he **knows or believes to be false, or does not believe to be true**. The statement may be verbal or otherwise, and includes statements of what the deponent believes as well as what he knows.

**Fabricating false evidence, §192.** A person fabricates false evidence when he **causes any circumstance to exist**, or makes any **false entry** in a book or record, or makes any **document containing a false statement, intending** that such circumstance, entry or document may **appear in evidence in a judicial proceeding** (or a proceeding before a public servant or arbitrator), and so appearing may cause a person who is to form an opinion upon the evidence to entertain an **erroneous opinion** touching a point **material** to the result of the proceeding.

**The distinction:**

|                | Giving false evidence (§191)                                                    | Fabricating false evidence (§192)                                                                                                             |
|----------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Actor          | One <b>legally bound</b> by oath or law to state the truth                      | <b>Anyone</b> , no oath or legal obligation needed                                                                                            |
| Act            | Making a <b>false statement</b>                                                 | <b>Creating</b> a false circumstance, entry or document                                                                                       |
| Mental element | Knowledge/belief of falsity of the statement; no design as to the effect needed | A precise <b>triple intent</b> , that the fabricated matter appear in evidence, mislead the opinion-former, and touch a <b>material point</b> |
| When committed | In the course of deposing/declaring, typically in an ongoing proceeding         | May be committed <b>before any proceeding exists</b> , in anticipation of it                                                                  |
| Materiality    | The false statement need not be material                                        | The erroneous opinion must concern a point <b>material</b> to the result                                                                      |

**Common punishment, §193.** Both offences carry the same scale: committed **in any stage of a judicial proceeding**, imprisonment of **either description** up to **seven years** and fine; committed **in any other case**, imprisonment of either description up to **three years** and fine. (By the Explanations, a Court-martial trial is a judicial proceeding, and an investigation directed by law preliminary to a court proceeding is a *stage* of one.)

**Aggravated forms.** The Code escalates by the gravity of the proceeding contaminated:

- **§194**, giving or fabricating false evidence **intending to procure conviction of a capital offence**: imprisonment for life or rigorous imprisonment up to **ten years** and fine; and if an **innocent person is convicted and executed** in consequence, the offender may be punished with **death** or the punishment above.
- **§195**, the same intent as to an offence punishable with **imprisonment for life or imprisonment of seven years or upwards**: the offender is punished **as the person convicted of that offence would be liable to be punished**.
- **§196**, whoever corruptly **uses or attempts to use as true evidence which he knows to be false** or fabricated is punished **as if he gave or fabricated** that evidence.

**Conclusion.** Giving false evidence is the *lie told* by one bound to speak the truth; fabricating false evidence is the *false thing manufactured*, by anyone, to appear in evidence and mislead on a material point. Both share the §193 scale (seven years in judicial proceedings; three years otherwise), with §§194–196 escalating where the fabrication targets convictions of grave offences or false evidence is knowingly used.

### ★ Common intention (§34) vs common object (§149) 2023, 2020, 2017, 2014, 2011...

#### AS ASKED IN THE EXAM

Distinguish between "common intention" and "common object" with illustration, citing the relevant provisions. Discuss the role of each in making a person liable for an offence not directly committed by him.

Both §34 and §149 are rules of **constructive (vicarious) liability**, they fix a person with responsibility for a criminal act he did not physically commit. Neither creates a substantive offence by itself; each must be read with the section defining the actual offence (e.g. §302 read with §34).

**Common intention, §34.** Where a criminal act is done by several persons *in furtherance of the common intention of all*, each is liable as if he had done the act alone. Ingredients:

- a criminal act done by several persons;
- a **pre-arranged plan / prior meeting of minds** (the common intention);
- the act done **in furtherance** of that shared intention;
- **participation** of the accused in the act.

The Bangladesh question paper itself stresses (2020) that "unless common intention *and* participation are both present, §34 cannot be applied."

*Illustration:* A and B agree to kill C. A holds C while B stabs him. A is liable for murder under §302/§34 though he struck no blow.

**Common object, §149.** Every member of an **unlawful assembly** (defined in §141, five or more persons with a common object under one of the five specified heads) is guilty of any offence committed by any member *in prosecution of the common object*, or which the members knew to be *likely* to be committed in prosecution of that object.

**Key distinctions:**

|                   | §34, common intention         | §149, common object                                        |
|-------------------|-------------------------------|------------------------------------------------------------|
| Number of persons | two or more                   | <b>five or more</b> (unlawful assembly, §141)              |
| Mental element    | prior meeting of minds        | shared common object                                       |
| Participation     | active participation required | mere <b>membership</b> of the assembly suffices            |
| Scope             | the act done                  | acts in prosecution of object <i>or known to be likely</i> |

*Illustration (§149):* Five villagers form an unlawful assembly to dispossess X of his land by force; in prosecuting that object one of them kills X. Every member is guilty of murder under §302/§149, even those who only carried lathis, because the killing was a likely consequence of the common object.

**Conclusion:** §34 turns on a shared *intention* + participation among as few as two persons; §149 turns on *membership* of a five-plus unlawful assembly sharing a common *object*. Both make a man answerable for what another's hand did.

#### Unlawful assembly vs rioting 2025, 2021, 2014, 2010, 2009, 2006

##### AS ASKED IN THE EXAM

When is an assembly deemed an unlawful assembly? What is the distinction between unlawful assembly and rioting?

**Unlawful assembly, §141.** An assembly of **five or more persons** is unlawful if the **common object** of the persons composing it is one of **five** specified objects:

1. to **overawe by criminal force** the Government, Parliament, or any public servant in the exercise of lawful power;
2. to **resist the execution** of any law or legal process;
3. to commit **mischievous, criminal trespass, or any other offence**;
4. to take or obtain possession of property, or deprive a person of an incorporeal right, or **enforce a right or supposed right, by criminal force**;
5. to **compel a person, by criminal force**, to do what he is not legally bound to do, or to omit what he is legally entitled to do.

Two essentials: **(a) five or more persons; (b) a common object falling under one of the five heads.** Mere membership, knowing the facts, makes a person a member (§142), punishable under §143.

**Rioting, §146.** Whenever **force or violence is used** by an unlawful assembly, or by any member of it, **in prosecution of the common object** of that assembly, every member is guilty of rioting. **Punishment, §147** (up to two years, or fine, or both); if armed with a deadly weapon, **§148** (up to three years).

**The distinction:**

| Unlawful assembly (§141)                                   | Rioting (§146)                                                 |
|------------------------------------------------------------|----------------------------------------------------------------|
| Mere <b>gathering</b> of 5+ with an unlawful common object | Unlawful assembly + <b>actual use of force or violence</b>     |
| No force need be used                                      | <b>Force/violence</b> used in prosecution of the common object |
| Punishable under §143                                      | Punishable under §147 (or §148 if armed)                       |



In short, **rioting is an aggravated unlawful assembly**, the moment any member of an unlawful assembly uses force or violence in prosecution of the common object, the offence rises from unlawful assembly to rioting, and every member becomes guilty of rioting.

*Illustration:* Six men gather, armed with lathis, with the common object of forcibly dispossessing X of his land, that is an unlawful assembly (§141). When they actually beat X and his men to drive them off, force is used in prosecution of the common object, and all six are guilty of rioting (§146/§148). Any death caused in prosecution of that object is fixed on every member by §149.

### General Exceptions; "bound by law" / "justified by law" 2023, 2022

#### AS ASKED IN THE EXAM

Describe the "General Exceptions" in the Penal Code. Under what circumstances can an act done in good faith by a person believing himself "bound by law" or "justified by law" be a sufficient defence to a criminal charge?

**Overview of Chapter IV (General Exceptions, §§76–106).** Chapter IV sets out the circumstances in which an act that would otherwise be an offence is **not an offence**, i.e. the general defences available throughout the Code. By §6, every definition in the Code is read **subject to** these Exceptions. The burden of bringing the case within an Exception lies on the accused. The principal heads are:

- **§76**, act done by a person *bound*, or by mistake of fact *believing himself bound*, by law;
- **§77–§78**, judicial acts and acts in pursuance of a court's judgment/order;
- **§79**, act done by a person *justified*, or by mistake of fact *believing himself justified*, by law;
- **§80**, accident in doing a lawful act;
- **§81**, necessity (act done to prevent other harm);
- **§82–§83**, acts of a child under nine (absolute) and a child between nine and twelve of immature understanding;
- **§84**, unsoundness of mind;
- **§85–§86**, involuntary intoxication;
- **§87–§92**, acts done by consent / for another's benefit;
- **§94**, act done under threat of instant death (duress), *except* murder and capital offences against the State;
- **§95**, trivial acts (de minimis);
- **§96–§106**, the right of private defence.

**"Bound by law", §76.** Nothing is an offence which is done by a person who is, or who **by reason of a mistake of fact (not of law), in good faith, believes himself to be, bound by law** to do it. *Example:* a soldier who, in good faith and believing himself bound by the command of a superior officer he is obliged to obey, fires on a mob, commits no offence.

**"Justified by law", §79.** Nothing is an offence which is done by a person who is **justified by law**, or who **by reason of a mistake of fact (not of law), in good faith, believes himself justified by law**, in doing it. *Example:* A, seeing Z commit what appears to be murder, seizes Z to hand him to the police; A is justified by law even if it later transpires Z acted in self-defence, provided A acted in good faith.

#### The essential conditions / limits of the defence:

1. the belief must rest on a **mistake of fact, not a mistake of law**, ignorance of the law is no excuse;
2. the act must be done in **good faith**, and §52 requires *due care and attention*; an act done without due care and attention is not in good faith;
3. the person must genuinely believe himself *bound* (§76) or *justified* (§79) by law.

**Conclusion:** Where these conditions are satisfied, §76 / §79 furnish a **complete defence**, the act is "not an offence." The distinction is fine: §76 covers one who believes the law **commands** the act; §79 covers one who believes the law **permits or authorises** it. Both fail if the mistake is one of law, or if good faith (with due care) is absent.

### Culpable homicide (§299) vs murder (§300) 2020, 2015, 2012, 2009, 2008...

#### AS ASKED IN THE EXAM

"Every murder is culpable homicide but every culpable homicide is not murder" / "culpable homicide is the genus, murder the species." Discuss the essential differences between §299 and §300 with examples.

**The genus–species relationship.** Culpable homicide (§299) is the **genus**; murder (§300) is the aggravated **species**. Every murder is a culpable homicide, but a culpable homicide becomes murder only when the higher degree of intention/knowledge in §300 is present and no Exception applies.

**Culpable homicide, §299.** Causing death by an act done with one of **three mental states**:

1. **intention** of causing death;
2. **intention** of causing such bodily injury as is *likely* to cause death;
3. **knowledge** that the act is *likely* to cause death.

**Murder, §300.** Culpable homicide is murder if it falls within any of the **four clauses**:



1. the act is done with the **intention of causing death**;
2. with the intention of causing such bodily injury as the offender **knows** to be likely to cause the death of *that particular* person;
3. with the intention of causing bodily injury **sufficient in the ordinary course of nature** to cause death;
4. the act is so **imminently dangerous** that it must in all probability cause death (or such injury as is likely to cause death), done without any excuse for incurring that risk.

**The distinction in essence.** §300 raises the threshold: where §299 speaks of injury *likely* to cause death, §300 clause (3) requires injury *sufficient in the ordinary course of nature* to cause death; where §299 speaks of *knowledge of likelihood*, §300 clause (4) requires an act *so imminently dangerous it must in all probability* cause death. The degree of probability and certainty is the dividing line.

**The five Exceptions to §300** (which reduce murder to culpable homicide not amounting to murder):

1. grave and sudden provocation (must be grave **and** sudden, not self-induced, not from a lawful act or lawful exercise of private defence);
2. exceeding the right of private defence in good faith;
3. a public servant exceeding his lawful power in good faith;
4. sudden fight in the heat of passion without premeditation;
5. consent, death of a person above eighteen who consents.

**Punishment.** Murder, **§302** (death, or imprisonment for life, + fine). Culpable homicide not amounting to murder, **§304** (intention limb: imprisonment for life or up to ten years + fine; knowledge limb: up to ten years, or fine, or both).

*Example:* A stabs B in the chest intending to kill, murder (§300 cl. 1). A, gravely and suddenly provoked by B's insult, strikes B who dies, the act would be murder but falls within Exception 1, so it is culpable homicide not amounting to murder (§304).

### Theft, extortion, robbery and dacoity 2022, 2011, 2010, 2009, 2008...

#### AS ASKED IN THE EXAM

Define theft, extortion, robbery and dacoity. Distinguish theft from extortion, and robbery from dacoity, with examples.

**Theft, §378.** Whoever, intending to take **dishonestly** any **moveable** property out of the possession of another **without consent**, moves that property in order to such taking. Only moveable property can be stolen; a thing attached to the earth becomes capable of theft once severed. The moving out of possession is the *actus reus*; dishonest intent (§24) is the *mens rea*. **Punishment, §379** (up to three years, or fine, or both).

**Extortion, §383.** Whoever **intentionally puts a person in fear of injury** and thereby **dishonestly induces** him to deliver property or a valuable security. **Punishment, §384** (up to three years, or fine, or both).

**Robbery, §390.** In all robbery there is **either theft or extortion**.

- *Theft becomes robbery* when, in committing it, the offender **voluntarily causes or attempts to cause death, hurt or wrongful restraint, or fear of instant** death/hurt/restraint, in order to commit the theft or carry off the property.
- *Extortion becomes robbery* when committed in the **presence** of the person put in fear, by putting him in fear of **instant** death/hurt/restraint, and so inducing delivery then and there.

**Punishment, §392** (rigorous imprisonment up to ten years + fine).

**Dacoity, §391.** When **five or more persons** conjointly commit or attempt to commit a robbery (the count includes those present and aiding). **Punishment, §395** (imprisonment for life, or rigorous up to ten years, + fine).

**Theft vs extortion:**

| Theft (§378)                          | Extortion (§383)                             |
|---------------------------------------|----------------------------------------------|
| Property <i>taken</i> without consent | Property <i>delivered</i> by the victim      |
| No element of fear                    | Delivery obtained by <b>fear of injury</b>   |
| Only <b>moveable</b> property         | Property <i>or</i> valuable security (wider) |

**Robbery vs dacoity:** The substance of the offence is the same; the **distinguishing element is number**. Robbery committed by **fewer than five** persons is robbery (§390/§392); when **five or more** persons conjointly commit or attempt it, the very same act becomes **dacoity** (§391/§395) and is more severely punished.

*Example:* A snatches B's bag and, when B resists, knocks him down and runs off with it, theft converted to robbery by instant hurt (§390). If five or more do this conjointly, it is dacoity (§391).

**AS ASKED IN THE EXAM**

Analyse the ingredients of cheating and criminal breach of trust, citing the relevant sections and giving separate examples.  
Distinguish criminal breach of trust from criminal misappropriation.

**Cheating, §415.** Whoever, by **deceiving** a person, **fraudulently or dishonestly induces** the person so deceived (a) to deliver property, or (b) to do or omit anything he would not otherwise do, causing or likely to cause damage or harm. Ingredients: deception + fraudulent/dishonest inducement + delivery of property or an act/omission + resulting (or likely) damage. By the Explanation, dishonest concealment of facts is itself a deception. **Punishment, §417** (up to one year, or fine, or both); the aggravated form, **cheating and dishonestly inducing delivery of property, §420** (up to seven years + fine).

**Criminal breach of trust, §405.** A person **entrusted** with property or with dominion over property **dishonestly misappropriates, converts, uses or disposes of** it in violation of any law or contract governing the trust. Ingredients: entrustment + dishonest misappropriation/conversion/use/disposal in breach of the terms. **Punishment, §406** (up to three years, or fine, or both); aggravated forms for carriers (§407), clerks/servants (§408), and public servants/bankers/agents (§409, up to life).

**Criminal misappropriation, §403.** Dishonestly misappropriating or converting to one's own use any moveable property. **Punishment, §403** (up to two years, or fine, or both).

**The key distinguishing element:**

- **Cheating**, the dishonest/fraudulent intention exists **at the inception**, *before* property passes; the victim parts with property **because he is deceived**.
- **Criminal breach of trust**, the property is **lawfully entrusted** and possession passes honestly; the dishonesty arises **later**, when the trustee misappropriates it. There is no deception at the outset.
- **Criminal misappropriation (§403)**, there is **no entrustment and no deception**; the offender comes by the property innocently or casually (e.g. finds it) and *afterwards* dishonestly keeps or converts it.

So the line between §405 and §403 is **entrustment**: breach of trust presupposes a trust relationship; misappropriation does not.

*Separate examples:*

- *Cheating (§415/§420)*: A, intending from the start never to pay, falsely represents he is solvent and induces B to deliver goods on credit. A cheated B.
- *Criminal breach of trust (§405/§406)*: B hands money to his agent A to deposit in the bank; A instead spends it on himself. The entrustment was honest; the later dishonest use is breach of trust.
- *Criminal misappropriation (§403)*: A finds a purse dropped on the road and, knowing the owner is identifiable, dishonestly keeps it for himself.

**Right of private defence (§§96–106)** 2021, 2012, 2010, 2008, 2006

**AS ASKED IN THE EXAM**

What is the right of private defence? How far does it extend to body and property, and when does it extend to causing death?  
Discuss with illustration.

**The right, §96.** Nothing done in the exercise of the right of private defence is an offence. It is a right of **self-help** recognised where the protection of the State is not immediately available.

**Scope, §97.** Subject to §99, every person has the right to defend:

- his own **body**, and the body of any other person, against any offence affecting the human body;
- his own or another's **property** (moveable or immovable) against theft, robbery, mischief or criminal trespass (or attempts at these).

**Limits, §99.** The right does **not** extend to:

- acts of a **public servant acting in good faith** under colour of office (unless there is reasonable apprehension of death or grievous hurt);
- cases where there is **time to have recourse to the public authorities**;
- and in **no case** may the harm inflicted be **more than is necessary** for the purpose of defence.

**Commencement and continuance.** Defence of body begins on a **reasonable apprehension of danger** and continues as long as that apprehension lasts (§102). Defence of property continues for periods varying by offence (§105), e.g. against theft until the property is recovered or the thief retreats; against robbery while the fear of instant harm continues; against house-breaking by night while the house-trespass continues.

**When private defence extends to causing DEATH:**

*Of the body, §100* (six cases):

1. assault causing reasonable apprehension of **death**;

2. assault causing reasonable apprehension of **grievous hurt**;
3. assault with intent to commit **rape**;
4. assault with intent to gratify **unnatural lust**;
5. assault with intent to **kidnap or abduct**;
6. assault with intent to **wrongfully confine** a person where he cannot have recourse to the authorities.

*Of property, §103* (four cases): **robbery; house-breaking by night; mischief by fire** on a dwelling/custody building/tent/vessel; **theft, mischief or house-trespass** in circumstances reasonably causing apprehension of death or grievous hurt.

Outside these enumerated cases, the right extends only to causing **harm short of death** (§101 for body, §104 for property).

*Illustration:* X is attacked at night by Y with a sharp weapon (chapati) raising a reasonable apprehension of death or grievous hurt. X may fire to save himself, this falls within §100 and is no offence. But once Y is already disabled and the apprehension of danger has ceased, a further shot that kills exceeds what §99 permits (harm more than necessary) and loses the protection of §96 (cf. the 2021 fact pattern). The defender must stop when the danger stops.

### Short notes, stolen property; mischief; making a false document; sedition 2025

#### AS ASKED IN THE EXAM

Write short notes on the following: (a) stolen property; (b) mischief; (c) making a false document; (d) sedition. (The 2025 paper asked "any four" from a list that also offered abetment and cheating by personation.)

**Exam structure (33 minutes):** per note, definition with section → essential ingredients → punishment → one line of illustration/distinction. *Must state:* the FIVE source-offences of stolen property (cheating is NOT one); §464's three clauses; §124A's explanations protecting lawful criticism.

*(Exam technique: for each short note, definition with section, essential ingredients, punishment, one illustration or distinction. Abetment and cheating are covered at full length in Topics 2 and 4.)*

**(a) Stolen property, §410.** Property whose possession has been **transferred by theft, extortion or robbery**, or which has been **criminally misappropriated**, or in respect of which **criminal breach of trust** has been committed, is "stolen property", whether the transfer or misappropriation was committed within or without Bangladesh. But if such property **subsequently comes into the possession of a person legally entitled** to it, it **ceases** to be stolen property. The concept feeds §411: **dishonestly receiving or retaining** stolen property, knowing or having reason to believe it stolen, is punishable with imprisonment up to **three years**, or fine, or both. Note the five source-offences, theft, extortion, robbery, criminal misappropriation, criminal breach of trust, property obtained by *cheating* is not on the list.

**(b) Mischief, §425.** Whoever, with **intent to cause, or knowing he is likely to cause, wrongful loss or damage** to the public or any person, causes the **destruction of any property**, or any such **change** in it (or in its situation) as **destroys or diminishes its value or utility** or affects it injuriously, commits mischief. Ingredients: (i) intent/knowledge of likely wrongful loss or damage; (ii) destruction or injurious change; (iii) property (loss to the *owner* need not be intended, loss to *any* person suffices). Punishment: imprisonment up to **three months**, or fine, or both (**§426**), with aggravated forms scaling by the value and kind of property destroyed.

**(c) Making a false document, §464.** A person makes a false document who,

1. **dishonestly or fraudulently** makes, signs, seals or executes a document (or marks its execution) with the intention of causing it to be believed that it was made by, or by the authority of, a person **by whom or by whose authority he knows it was not made**, or at a **time** at which he knows it was not made;
2. without lawful authority, dishonestly or fraudulently **alters a document in any material part** after it has been made or executed; or
3. dishonestly or fraudulently causes a person to sign, seal, execute or alter a document knowing that that person, **by reason of unsoundness of mind or intoxication, or by reason of deception**, cannot know the contents of the document or the nature of the alteration.

Making a false document is the *actus* at the core of **forgery (§463)**, making a false document with intent to cause damage or injury, support a claim or title, cause a person to part with property, or commit fraud, punishable under **§465** with imprisonment up to **two years**, or fine, or both.

**(d) Sedition, §124A.** Whoever, by **words** (spoken or written), by **signs**, by **visible representation** or otherwise, **brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law**, commits sedition, punishable with **imprisonment for life** (to which fine may be added), or imprisonment up to **three years** (to which fine may be added), or fine. "Disaffection" includes disloyalty and all feelings of enmity. The explanations mark the boundary with legitimate criticism: comments expressing **disapprobation of the measures of the Government** with a view to obtaining their alteration by lawful means, or of its **administrative or other action, without exciting or attempting to excite hatred, contempt or disaffection**, do not constitute the offence.

 **The bare act — key provisions** Act I of 1872**§17 · Admission defined**

17. An admission is a statement, oral or documentary [or contained in digital record], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned. by party to proceeding or his agent;

**§24 · Confession caused by inducement/threat/promise**

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. officer not to be proved

**§25 · Confession to police-officer**

25. No confession made to a police-officer shall be proved as against a person accused of any offence. by accused while in custody of police not to be proved against him

**§26 · Confession in police custody**

26. No confession made by any person whilst he is in the custody of a police- officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.— In this section "Magistrate" does not include the head of a village discharging magisterial functions unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, [1898]. How much information received from accused may be proved

**§27 · Discovery of fact**

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. made after removal of caused by inducement,

**§30 · Confession of co-accused jointly tried**

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other persons as well as against the person who makes such confession.

Explanation.—"Offence", as used in this section, includes the abatement of, or attempt to commit, the offence.

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said- "A and I murdered C". This statement may not be taken into consideration by the Court against A, as B is not being jointly tried. proof, but may be stop

### §32 · Statements of dead/unfindable/incapable persons

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:— When it relates to cause of death; to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. or is made in course of business; business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him. or against interest of maker; person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages. or gives opinion as to public existence of any public right or custom or matter of public or general interest, right or custom, or matters of general interest; of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen. or relates to existence of relationship; marriage or adoption between person as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised. or is made in will or deed relating to family affairs; marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised. or in document relating to transaction mentioned in section 13, clause

(a); which relates to any such transaction as is mentioned in section 13, clause

(a). or is made by several and expresses feelings relevant to matter in question feelings or impressions on their part relevant to the matter in question.

Illustrations A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

(b) The question is as to the date of A's birth. An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Chittagong on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in [Chittagong], for the purpose of conferring with him upon specified business, is a relevant fact. [Chittagong] harbour on a given day. A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from [Chittagong] harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married. The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant. on a certain day. The fact that a letter written by him is dated on that day is relevant.

(h) The question is, what was the cause of the wreck of a ship. A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way. A statement by A, a deceased headman of the village, that the road was public, is a relevant fact. market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married. An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved. Relevancy of certain evidence for proving, in subsequent the truth of facts therein stated



### **§60 · Oral evidence must be direct**

60. Oral evidence must, in all cases whatever, be direct; that is to say- if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection. documents

### **§91 · Evidence of terms reduced to document**

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained. Exception 1.— When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.— Wills admitted to probate in Bangladesh may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations contained must be proved. be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion. Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B. Oral evidence is offered of the payment. The evidence is admissible.

## §92 · Exclusion of oral agreement to vary terms

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

### Illustrations

(a) A policy of insurance is effected on goods "in ships from Chittagong to London". The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Taka 1,000 on the first March, 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved. contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered. evidence to explain or amend ambiguous document

## §101 · Burden of proof

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

### Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

## §102 · On whom burden lies

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

### Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A.

(b) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved. Therefore the burden of proof is on B. Burden of proof as to

### **§103 · Burden as to a particular fact**

103. 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.

Illustration

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission. B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it. to be proved

### **§104 · Burden of proving fact to make evidence admissible**

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost. proving that case of accused comes within

### **§105 · Burden of proving exceptions**

105. 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 [\* \* \*] Penal Code, 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.

Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A. the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under section 325. The burden of proving the circumstances bringing the case under section 335 lies on A.

### **§106 · Burden of fact especially within knowledge**

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him. proving death of known to have been thirty years

### **§115 · Estoppel**

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title. tenant; and of person in possession

### **§116 · Estoppel of tenant/licensee**

116. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given. bill of exchange, bailee or

### **§118 · Who may testify — competency**

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

### **§154 · Question by party to his own witness — hostile witness**

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

### §155 · Impeaching credit of witness

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:-

- (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
- (2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
- (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted; [\*\*\*]

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B. Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B. The evidence is admissible.

(b) A is indicted for the murder of B. C says that B, when dying, declared that A had given B the wound of which he died. Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence. The evidence is admissible. tending to corroborate evidence of relevant fact admissible

**Doctrine of estoppel: definition, ingredients, estoppel against a statute, and the absent co-owner hypothetical** 2025, 2017, 2015, 2012, 2011, 2010...

#### AS ASKED IN THE EXAM

Explain and illustrate the doctrine of estoppel. Can there be estoppel against a statute? A co-owner of an undivided homestead lives abroad for many years, letting his siblings enjoy his share; is he estopped from claiming his share on return?

**Definition (§115).** Where a person has, by his declaration, act or omission, *intentionally* caused or permitted another to believe a thing to be true and to act on that belief, neither he nor his representative may, in a suit between them, deny the truth of that thing.

#### Ingredients.

- An intentional representation (by declaration, act or omission) of an existing fact;
- made to another person;
- that person believed it and was thereby induced to act (relied on it);
- the suit/proceeding is between those parties (or representatives).

Estoppel is a **rule of evidence, a shield, not a sword**: it bars a person from denying what he led another to believe; it does not by itself create a cause of action.

*Illustration (statutory):* A intentionally and falsely leads B to believe land belongs to A and induces B to buy it; the land later becomes A's; A cannot set aside the sale by pleading his earlier want of title.

**No estoppel against a statute.** There can be **no estoppel against a statute**. A person cannot, by representation or conduct, confer jurisdiction, validity or a right that the law denies, nor be barred from asserting a right or pleading an illegality that a statute confers or requires. Estoppel cannot defeat a clear statutory provision or legalise what the law makes void (*cite relevant case law here*).

**Application, the absent co-owner.** A co-owner's title to his share of undivided ancestral property is a legal right; mere absence abroad for ten/fifteen/sixteen years, while letting siblings enjoy his share, does not amount to the *intentional representation, relied upon to the siblings' detriment*, that §115 requires. Permissive enjoyment by co-sharers is not adverse and raises no estoppel. **Conclusion:** he is **not estopped** from claiming his share on return; possession by the other co-owners was on his behalf, and his right of partition survives. (Estoppel could arise only if he had, e.g., expressly represented that he had relinquished his share and the siblings had altered their position on that faith, not present here.)

**Burden of proof: civil suit vs criminal case; plaintiff cannot rely on defendant's weakness** 2025, 2022, 2021

#### AS ASKED IN THE EXAM

Is the burden of proof in a civil suit different from that in a criminal case? Explain. "The plaintiff must prove his own case and cannot rely on the weakness of the defendant."

#### The rule (§§101–103).

- **§101:** whoever wants the Court to give judgment on a right or liability dependent on facts he asserts must prove those facts.
- **§102:** the burden lies on the person who would fail if no evidence were given on either side.
- **§103:** the burden as to any particular fact lies on the person who wishes the Court to believe in its existence.

**Standard, civil vs criminal.** The Act fixes *who* must prove; the **standard** of proof differs by the nature of the case:

- In a **civil suit**, proof is on the **preponderance / balance of probabilities**, the party whose version is more probable succeeds. "Proved" itself is defined (§3) by the *prudent-man probability* test, not mathematical certainty.

- In a **criminal case**, the prosecution must prove guilt **beyond reasonable doubt**; the benefit of every reasonable doubt goes to the accused, who is presumed innocent. Note the carve-outs that shift the burden of *particular* facts onto the accused: §105 (proving a General/special Exception, e.g. private defence or insanity, the Court presumes its absence) and §106 (facts especially within his knowledge). These shift the burden of *that fact only*, never the overall burden of proving guilt.

**"Plaintiff must prove his own case."** Flowing from §§101–102, the plaintiff who seeks a decree carries the burden of establishing the facts on which his claimed right rests. He must **stand on the strength of his own case, not on the weakness of the defendant's**. If, on the whole evidence, he fails to prove his title or cause of action, the suit fails, even if the defendant's evidence is also weak, because the defendant would succeed where no evidence is led against him (§102).

*Illustration:* in a suit for declaration of title, the plaintiff must prove his own title to the land; he cannot get a decree merely by pointing to gaps or defects in the defendant's documents.

**Conclusion:** burden and standard are linked but distinct, §§101–103 allocate the burden in both kinds of case, while the operative standard is preponderance in civil and beyond reasonable doubt in criminal proceedings; and a plaintiff always carries his own burden first.

### Impeaching the credit of a witness, the modes; and impeachment by the party calling the witness 2022, 2020

#### AS ASKED IN THE EXAM

How may the credit of a witness be impeached? Can the party calling a witness also impeach him?

**The modes (§155).** The credit of a witness may be impeached by the adverse party (or, with the Court's consent, by the party who called him) in three ways:

1. **By evidence of persons** who testify that, from their knowledge, the witness is **unworthy of credit**;
2. **By proof** that the witness has been **bribed, or has accepted a corrupt inducement** to give evidence;
3. **By proof of former statements inconsistent** with any part of his evidence liable to be contradicted.

#### Related cross-examination tools.

- **§146:** in cross-examination a witness may be asked questions to test his veracity, discover his identity/position, or shake his credit (subject to the 2022 proviso protecting a rape victim's character/sexual history except with Court leave).
- **§145:** a witness may be cross-examined on previous written statements; to contradict him by a writing, his attention must first be drawn to the relevant part.
- **§153:** answers on collateral matters going only to credit are generally **final**, no evidence may be led to contradict them, *except* (Exception 1) a denied previous conviction may be proved, and (Exception 2) a denial impeaching impartiality (bias) may be contradicted.

#### Impeachment by the party calling the witness, hostile witness.

- **§154:** the Court may, in its discretion, permit the **party who called** a witness to put **cross-examination-type questions to his own witness**, the "hostile witness" provision.
- This dovetails with **§155**, which expressly allows the **caller, with the Court's consent**, to impeach his own witness's credit, including by proof of former inconsistent statements (§155(3)).

**Important caution.** Permission to treat one's own witness as hostile and to cross-examine him does **not** automatically render his entire testimony worthless; the Court may still accept such part of it as it finds reliable.

**Conclusion:** so the proposition is correct, *not only the opposite party but also the party calling the witness can impeach his credit*, by the §155 modes, the caller doing so via §154/§155 with the Court's leave.

### Oral vs documentary evidence: when oral evidence is excluded, and the exceptions 2025, 2022, 2021

#### AS ASKED IN THE EXAM

When is oral evidence excluded by documentary evidence, and under what circumstances is oral evidence admissible against the written terms of a document?

#### The exclusionary rule (§§91–92).

- **§91:** where the terms of a contract, grant or other disposition have been reduced to the form of a document (or are required by law to be in writing), the **terms must be proved by the document itself** (or admissible secondary evidence), no other evidence of the terms is allowed. (Exceptions: a public officer's appointment may be proved otherwise; a will may be proved by probate.)
- **§92:** once the document is proved under §91, **no oral agreement or statement** may be admitted, *between the parties to the document*, to **contradict, vary, add to or subtract from** its terms.

The combined effect: the written document is the exclusive evidence of its terms and cannot be varied by parol evidence.

**The exceptions, when oral evidence IS admissible against the written terms (§92 provisos).** Despite §92, oral evidence may be given to prove:



1. **Invalidating facts**, fraud, intimidation, illegality, want of due execution, want of consideration, mistake of fact/law, or incapacity of a party;
2. A **separate oral agreement** on a matter on which the document is **silent** and which is **not inconsistent** with its terms;
3. A **separate oral agreement constituting a condition precedent** to the attaching of any obligation under the document;
4. A **distinct subsequent oral agreement** to **rescind or modify** the contract (except where the contract is one required by law to be in writing or has been registered);
5. Any **usage or custom** by which incidents not mentioned are usually annexed to contracts of that kind;
6. Facts showing the manner in which the **language** of the document **relates to existing facts** (aiding construction).

Related: latent ambiguities may be explained by evidence (§§95–97), and the meaning of illegible/technical/local expressions may be shown (§98); but a **patent** ambiguity on the face of the document cannot be cured by evidence (§93), nor can evidence show that plain language applying accurately to facts was not meant to apply (§94).

**Apply (the 2022 Tea-Estate hypothetical).** A Tea-Estate is conveyed by a deed containing a map that mistakenly omits the surrounding road. Whether the road can be proved by **oral evidence** to have always been part of the Estate turns on §92: oral evidence to *contradict or add to* the deed's terms is barred, but the **mistake** proviso (proviso (1)) and the construction proviso (proviso (6) / §§95–97 on the document relating to existing facts) may let in evidence, most directly, proviso (1) permits oral evidence of the **mistake** in the map.

**Conclusion:** the omission being a mistake, oral evidence of the road having always been treated as part of the Estate is admissible to that extent.

★ **Confession: meaning, the police bars, the discovery exception, §164 recording, retracted confession, and the co-accused hypothetical** 2022, 2012, 2010, 2008, 2007...

#### AS ASKED IN THE EXAM

What is meant by confession? Can a confession, judicial or extra-judicial, retracted or not, form the sole basis of conviction of the confessing accused? Three accused confess under §164 CrPC and implicate a co-accused (Abdul Aziz/Awal); except those confessions there is no evidence against him. Can the court convict the co-accused solely on the co-accused confessions?

**Meaning.** The Evidence Act does not separately define "confession"; it is a species of admission (§17) made in a criminal proceeding by an accused, directly admitting guilt or substantially all the facts constituting the offence. Hence the maxim: *all confessions are admissions, but not all admissions are confessions*.

**Confession to police / in police custody, inadmissible.**

- **§25:** no confession made to a police-officer may be proved against the accused. This is an absolute bar; it applies even when the accused was not in custody.
- **§26:** no confession made while in police custody is provable against the accused unless made in the immediate presence of a Magistrate.

**The discovery exception, §27.** Where a fact is discovered in consequence of information given by an accused in police custody, so much of that information as relates *distinctly* to the fact discovered may be proved, whether or not it amounts to a confession. Only the discovery-leading portion is admissible, not the whole confessional statement.

*Illustration:* an arrested dacoit tells the police where stolen goods are hidden and they are recovered from his pointing-out, that part is admissible under §27, though the confession itself is barred under §§25–26.

**Recording under §164 CrPC.** A judicial confession is recorded by a Magistrate, who must warn the accused that he is not bound to confess and that it may be used against him, ensure it is voluntary, and record it in the prescribed manner (CrPC §164.). §80 of the Evidence Act lets the Court presume a confession purporting to be recorded and signed by a Magistrate is genuine and duly taken.

**Retracted confession as sole basis.** A confession (judicial or extra-judicial), even if later retracted, can in law found a conviction of the maker if the Court is satisfied it is true and voluntary; but prudence requires corroboration of a retracted confession before acting on it (*cite relevant case law here*).

**The co-accused hypothetical (§30).** Under §30, where persons are tried *jointly for the same offence* and one confesses, implicating himself and another, the Court "*may take into consideration*" that confession against the other too. The settled position is that a co-accused confession is only a weak, supporting consideration, **not substantive evidence** sufficient on its own. Here, the only material against Abdul Aziz/Awal is the confessions of the other three. **Conclusion:** the court cannot convict him solely on the co-accused confessions; §30 permits the confession to be *taken into consideration* but it must be corroborated by independent evidence connecting him to the dacoity, of which there is none. He is entitled to acquittal.

**Dying declaration: admissibility, value if the maker survives, and as sole basis of conviction** 2023, 2009

#### AS ASKED IN THE EXAM

What is a dying declaration? If the maker survives, what is its evidentiary value? When found true and voluntary, can it be the sole basis of conviction?

**Admissibility (§32(1)).** A dying declaration is the statement, written or verbal, of a person *since dead* as to the cause of his death or the circumstances of the transaction that resulted in his death. It is made relevant by §32(1) as an exception to the rule against hearsay, the rationale being that a person facing death is unlikely to lie, and that the best witness (the victim) is no longer available. In Bangladesh the statement is relevant whether or not the maker was under expectation of death and whatever the nature of the proceeding. Before it can be proved, the fact of the maker's death must be established (the burden of that foundational fact lies on the party tendering it, §104).

**If the maker survives.** §32 applies only to a person "*since dead*" (or otherwise unavailable). If the maker **survives**, the statement is **not a dying declaration** under §32. It does not become inadmissible altogether, the survivor can be called as an ordinary witness, and his earlier statement may then be used to **corroborate** his testimony (§157) or to **contradict/impeach** him (§145, §155(3)). But it has no independent substantive value as a dying declaration.

**Sole basis of conviction.** Where the dying declaration is found to be **true, voluntary and reliable**, and the Court is satisfied the declarant was in a fit state to make it, it **can** be the sole basis of conviction; corroboration is a rule of prudence, not of law (*cite relevant case law here*). If the declaration is doubtful, incomplete, or the result of tutoring, the Court will require corroboration before acting on it.

**Apply (the recurring 2023 hypothetical).** Where a burn victim makes two statements naming the assailants (one to a doctor, one to police) and then dies, both are admissible under §32(1); minor discrepancies between them (e.g. "flammable substance" vs "kerosene"; whether one additional name appears) go to weight, and the Court must decide which, if any, it accepts as true and voluntary. If satisfied of truthfulness, conviction can rest on the dying declaration; the police-recording bars in §§25–26 do **not** apply, because a victim's dying declaration is not a confession by an accused.

### Admission vs confession vs dying declaration, define and distinguish 2023, 2017, 2014, 2008, 2007...

#### AS ASKED IN THE EXAM

Define and distinguish admission, confession and dying declaration, mentioning the relevant provisions.

**Admission (§17).** A statement, oral, documentary or in a digital record, suggesting an inference as to a fact in issue or relevant fact, made by the persons and in the circumstances mentioned in §§18–20. As a rule admissions are proved *against* the maker, not for him (§21), and are not conclusive but may operate as estoppel (§31). Admissions occur in **both civil and criminal** cases.

**Confession.** A species of admission, made only in a **criminal** proceeding by an **accused**, admitting guilt. Governed by §§24–30, irrelevant if caused by inducement/threat/promise from a person in authority (§24), barred if made to police (§25) or in police custody (§26, save before a Magistrate), with the §27 discovery exception.

**Dying declaration (§32(1)).** A statement, written or verbal, by a person *since dead* as to the cause of his death or the circumstances of the transaction resulting in it. It is admissible under §32 as an exception to the hearsay rule. In Bangladesh it is relevant whether or not the declarant was under expectation of death, and whatever the nature of the proceeding.

#### Distinctions.

|                   | Admission (§17)            | Confession (§§24–30)                        | Dying declaration (§32(1))             |
|-------------------|----------------------------|---------------------------------------------|----------------------------------------|
| Made by           | any party (§§18–20)        | the accused                                 | a person since dead                    |
| Proceeding        | civil or criminal          | criminal only                               | typically criminal (cause of death)    |
| Maker             | usually alive, may testify | the accused                                 | dead (sine qua non)                    |
| Use               | against maker (§21)        | against the confessor (and §30 limited use) | substantive evidence of cause of death |
| Cross-examination | maker can be examined      | accused (subject to bars)                   | none possible (hence caution)          |

In short: every confession is an admission, but only an accused's guilt-admission in a criminal case is a confession; a dying declaration is a distinct hearsay exception resting on the declarant's death.

### Facts in issue and relevant facts; and leading questions 2025, 2017, 2015

#### AS ASKED IN THE EXAM

Explain 'facts in issue' and 'relevant facts'. What is a leading question? Give an example. May a leading question be asked in examination-in-chief and in cross-examination?

**Facts in issue (§3).** A "fact in issue" is any fact from which, either alone or together with other facts, the existence, nature or extent of a **right, liability or disability** asserted or denied in a suit or proceeding **necessarily follows**. In other words, the matters in dispute that must be decided, fixed by the pleadings (in a civil case) or by the charge (in a criminal case).

*Illustration:* on a charge of murder, that the accused caused the victim's death, and that he did so with the requisite intention, are facts in issue.

**Relevant facts (§3 + §§5–55).** One fact is said to be "relevant" to another when it is connected with it in any of the ways set out in the Act's provisions on relevancy (§§5–55). By §5, evidence may be given of facts in issue and of relevant facts, **and of no others**. Relevant facts are not themselves the matters in dispute but are connected to them, e.g. motive, preparation and conduct (§8), facts forming part of the same transaction / *res gestae* (§6), or occasion, cause and effect (§7).

**Distinction:** a fact in issue is a fact that must be proved to establish the claim or charge; a relevant fact is one that, being connected with a fact in issue, helps to prove or disprove it. (Note: all admissible evidence is relevant, but not everything relevant is necessarily admissible, e.g. relevant facts may still be excluded by a privilege or the documentary-evidence rules.)

**Leading questions (§141).** A leading question is one which **suggests the answer the questioner wishes or expects to receive**.

**Example:** "You saw the accused stab the victim with a knife at 9 p.m., didn't you?", it puts the desired answer into the witness's mouth.

**When leading questions may be asked.**

- **Examination-in-chief and re-examination (§142):** leading questions **must not be asked, if objected to**, except with the Court's permission. The Court permits them on matters that are **introductory, undisputed, or already proved**.
- **Cross-examination (§143):** leading questions **may** be asked.

**Conclusion:** a leading question may freely be asked in **cross-examination** (§143), but **not in examination-in-chief** (or re-examination) if objected to, save with the Court's permission and on introductory/undisputed/already-proved matters (§142).

## Proof of documents; presumptions as to documents and the thirty-year rule 2020

### AS ASKED IN THE EXAM

How are the contents of a document proved? Discuss the presumptions the Court draws as to documents, including the presumption as to documents thirty years old.

**Exam structure (33 minutes):** 1) primary-evidence rule (§§61–64) → 2) what secondary evidence is (§63) → 3) when admissible (§65, notice §66; §67 signature) → 4) public vs private (§§74–77) → 5) shall-presume vs may-presume → 6) §90 thirty-year rule. *Must state:* §90 is discretionary ("may") and presumes EXECUTION, never the truth of the contents.

**Proof of contents, primary or secondary (§61).** The contents of a document may be proved either by **primary** or by **secondary** evidence.

**Primary evidence (§62).** The **document itself** produced for the inspection of the Court. This is the best-evidence rule in documentary form: **documents must be proved by primary evidence except in the cases mentioned in §65** (§64).

**Secondary evidence (§63)** means and includes: (1) **certified copies**; (2) copies made from the original by **mechanical processes** which ensure accuracy, and copies compared with such copies; (3) copies **made from or compared with** the original; (4) **counterparts** of documents as against the parties who did not execute them; and (5) **oral accounts** of the contents given by a person who has himself seen the document.

**When secondary evidence is admissible (§65),** the recognised gateways: (a) the original is in the possession of the **adverse party** (or a person out of reach / not legally bound to produce it) and is **not produced after notice** (the notice requirement and its six dispensations are in §66); (b) the contents are **admitted in writing** by the opposite party; (c) the original is **lost or destroyed**, or cannot be produced in reasonable time otherwise than through the proponent's default or neglect; (d) the original is **not easily movable**; (e) the original is a **public document** under §74; (f) the original is one of which a **certified copy is permitted** by law to be given in evidence; (g) the originals consist of **numerous accounts** or documents which cannot conveniently be examined, and the fact to be proved is their general result. Where a document is alleged to be signed or written by a person, that **signature or handwriting must be proved** to be his (§67).

**Public vs private documents (§§74–77).** Public documents are those forming the **acts or records of the acts** of the sovereign authority, of official bodies and tribunals, and of public officers, together with **public records of private documents** kept in Bangladesh (§74); **all other documents are private** (§75). The officer in custody of a public document must give a **certified copy** on demand and payment (§76), and such certified copies **may be produced in proof of the contents** of the public documents they copy (§77).

**Presumptions as to documents.** The Act arranges these by force:

- **\*Shall\* presume (conclusive of nothing, but obligatory unless disproved):** the genuineness of **certified copies** duly certified by a Government officer (§79); that a record of **evidence, a statement or a confession** purporting to be signed by a Judge or Magistrate is genuine and was duly taken (§80); **powers-of-attorney** executed before and authenticated by a notary public, Court, Judge, Magistrate or consular officer (§85); Government-published **collections of laws and reports** (§84); and, where a document **called for and not produced** after notice, that it was duly attested, stamped and executed (§89).
- **\*May\* presume (discretionary):** certified copies of **foreign judicial records** (§86); published **books, maps and charts** (§87); **telegraphic messages**, that the message forwarded corresponds with the message delivered for transmission, though **never** as to the identity of the sender (§88); and the thirty-year rule below (§90).

**The thirty-year rule, §90.** Where a document **purporting or proved to be thirty years old** is produced from **proper custody**, custody in which it would naturally be found if genuine, the Court **may presume** that the **signature and every other part** of the document in a particular person's handwriting is genuinely that person's, and that a document **executed or attested** was **duly executed and attested** by the persons by whom it purports to be. The rationale is necessity: after thirty years the attesting witnesses and scribes are presumed unavailable. Two limits deserve emphasis: the presumption is **discretionary** ("may", not "shall"), and it attaches to the **execution**, not to the **truth of the contents**, an ancient document from proper custody is presumed duly executed, but what it recites must still be weighed like any other evidence.

**Conclusion.** Contents are proved by the original (primary evidence) as the rule, and by secondary evidence only through the §65 gateways with §66 notice where required; execution is proved under §67. The Act then eases proof by presumptions, obligatory for certified copies, judicial records, authenticated powers-of-attorney and withheld documents (§§79, 80, 85, 89), discretionary for foreign records, publications, telegrams and, most importantly, documents **thirty years old from proper custody** (§90), whose genuineness and due execution, though not the truth of their contents, the Court may presume.

## **B · 15 Code of Criminal Procedure, 1898**

### **The bare act — key provisions** Act V of 1898

#### **§154 · Information in cognizable cases**

154. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.

#### **§156 · Investigation into cognizable cases**

156.(1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial. any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. such and investigation as above mentioned.

#### **§161 · Examination of witnesses by police**

161.(1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case. relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. made to him in the course of an examination under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records. of such statements in

#### **§164 · Power to record statements and confessions**

164.(1) [ Any Metropolitan Magistrate, any Magistrate of the first class] and any Magistrate of the second class specially empowered in this behalf by the Government may, if he is not a police-officer record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial. hereinafter prescribed for recording evidence as is, in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:- "I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A.B. Magistrate."

Explanation-It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

### **§167 · Procedure when investigation not completed in 24 hours**

167.(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by he shall forward a copy of his order, with his reasons for making it to the Chief Metropolitan Magistrate or to the Chief Judicial Magistrate to whom he is subordinate.] [ (4A)] If such order is given by a Chief Metropolitan Magistrate or a Chief Judicial Magistrate, he shall forward a copy of his order, with reasons for making it to the Chief Metropolitan Sessions Judge or to the Sessions Judge to whom he is subordinate.] [ (5) If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation-

(a) the Magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate; and

(b) the Court of Session may, if the offence to which the investigation relates is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Court:

Provided that if an accused is not released on bail under this sub-section, the Magistrate or, as the case may be, the Court of Session shall record the reasons for it:

Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the accused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-section.

Explanation-The time taken for obtaining sanction shall commence from the day the case, with all necessary documents, is submitted for consideration of the appropriate authority and be deemed to end on the day of the receipt of the sanction order of the authority.]

(6)-(7A) [Omitted by section 2 of the Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).] investigation of an offence under section 400 or section 401 of the Penal Code, 1860 (Act XLV of 1860).]

### **§173 · Report of police-officer**

173.(1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall-

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given. under section 158, the report shall in any cases in which the Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police-station to make further investigation. section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit. [ (3A) When such report is in respect of a case to which

(4) a copy of any report forwarded under this section shall on application, be furnished to the accused before the commencement of the inquiry or trial:

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

### **§190 · Cognizance of offences by Magistrates**

190.(1) Except as hereinafter provided, any [ Chief Metropolitan Magistrate,] [ Metropolitan Magistrate], [ Chief Judicial Magistrate, Magistrate of the first class, and any other Magistrate specially empowered in this behalf under sub-section (2) or (3)], may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police- officer;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed. [ (2) the Government may, and subject to any general or special order issued in this behalf by the High Court Division, the Chief Judicial Magistrate may empower any Magistrate of the second or third class to take cognizance under sub-section

(1) clause (a) or clause (b) of offences which he may try or send for trial]

\*\*\*] second class to take cognizance under sub-section (1),

### **§200 · Examination of complainant**

200. A Magistrate taking cognizance of an offence on complaint shall at once examine [ upon oath the complainant and such of the witnesses present, if any, as he may consider necessary,] and the substance of the examination shall be reduced to writing and shall be signed [ by the complainant or witness so examined], and also by the Magistrate:

Provided as follows:-

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require [ such examination] before transferring the case under section 192;

(aa) when the complaint is made in writing nothing herein contained shall be deemed to require [ such examination] in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties; [ \* \* \*]

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already [ examined the complainant and witness if any,] the Magistrate to whom it is so transferred shall not be bound to [ re-examine them]. cognizance of the case



#### **§241A · When accused shall be discharged**

[ 241A. When the accused appears or is brought before the Magistrate, and if the Magistrate, upon consideration of the record of the case and the documents submitted therewith and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, considers the charge to be groundless, he shall discharge the accused and record his reasons for so doing.]

#### **§435 · Power to call for records of inferior courts**

435.(1) The High Court Division or any Sessions Judge, [

\*\*\*] may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation-All Magistrates, [ whether Executive or Judicial,] shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section [ \* \* \*]. [ \*\*\*]

(3) [Repealed by section 116 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).] [ \*\*\*]

#### **§439 · High Court Division's powers of revision**

439.(1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court Division may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429. of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence. passed by a Magistrate [ \* \* \*], the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by [ a Metropolitan Magistrate or] a Magistrate of the first class. [ (4) Nothing in this section shall be deemed to authorize the High Court Division to convert a finding of acquittal into one of conviction, or to entertain any proceedings in revision with respect to an order made by the Sessions Judge under

#### **§496 · In what cases bail to be taken**

496. When any person other than a person accused of a non- bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or taken in case of non-

#### **§497 · When bail may be taken in non-bailable offence**

497.(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail. investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided. sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing. accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered. case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

#### **§498 · Power to direct admission to bail or reduction of bail**

498. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court Division or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

### **★ Investigation and the powers of the police; the §173 report 2025, 2021, 2011, 2010, 2009, 2008...**

#### **AS ASKED IN THE EXAM**

What is meant by "investigation"? Discuss the power of the police in investigation. Is the Magistrate bound by the police report under §173? Can the police submit a supplementary charge-sheet or hold further investigation after the report is accepted?

**Meaning.** Under §4, "investigation" includes all proceedings under the Code for the collection of evidence conducted by a police-officer (or a person authorised by a Magistrate, other than the Magistrate himself). It is the police function, distinct from "inquiry" and "trial",

which are functions of the court.

**Powers of the police.** For a cognizable offence the police machinery is set out in Chapter XIV:

- §154, record the First Information Report (FIR).
- §156, the officer in charge may investigate a cognizable case within his jurisdiction without any order of a Magistrate; a §190 Magistrate may also order investigation.
- §157, on suspecting a cognizable offence, send a report to the Magistrate and proceed to investigate.
- §160, require the attendance of witnesses; §161, examine witnesses (who must answer truly, except self-incriminating questions); §162, such statements are unsigned and usable only to contradict a prosecution witness.
- §165, search; §167, forward the accused for detention where investigation is not finished in 24 hours.

So the police power to investigate a cognizable offence is wide and largely free of judicial control at the collection stage, but it is **not unbounded**: it is hemmed in by §162 (no signed statements), §163 (no inducement), and the §167 / 24-hour custody safeguards.

**The §173 report.** On completing investigation the officer in charge forwards a final report (the **charge-sheet**, or a final/discharge report if evidence is deficient) to the Magistrate.

**Is the Magistrate bound by it?** No. The report is the police opinion; the decision to take cognizance is the Magistrate's under §190. If the police report recommends discharge, the Magistrate is **not bound** to accept it, he may (i) accept it and discharge; (ii) disagree, take cognizance under §190(1)(b)/(c) and proceed; or (iii) treat any protest (Naraji) petition and direct further inquiry.

**Supplementary charge-sheet / further investigation.** Yes. §173 expressly preserves the power of **further investigation** even after the report is filed and accepted; the police may collect further evidence and submit a **supplementary report (charge-sheet)** for the same offence.

**Conclusion.** Investigation is the police's evidence-collection function; their powers are broad but statutorily fenced; the Magistrate is the master of cognizance and is not bound by the §173 report; and a supplementary charge-sheet on further investigation is competent.

#### FIR, GD entry and UD case, distinctions and conversion 2025

##### AS ASKED IN THE EXAM

Distinguish among FIR, GD entry and UD case. When is a UD case converted into an FIR?

**Exam structure (33 minutes):** 1) FIR (§154; effect §156) → 2) GD (Police Act §44; §155 for non-cognizable) → 3) UD case (§§174–176 inquest) → 4) the three-way distinction → 5) when a UD case becomes an FIR. *Must state:* no investigation of a non-cognizable case without a Magistrate's order; no express statutory conversion mechanism, an FIR is simply recorded under §154.

**FIR, §154.** The **First Information Report** is the information relating to the commission of a **cognizable offence** first given to the officer-in-charge of a police-station. If given orally it is **reduced to writing, read over** to the informant, **signed** by him, and the substance **entered in a book** kept in the prescribed form. It sets the criminal law in motion: on its registration the police acquire the power to **investigate without any order of a Magistrate** (§156).

**GD entry.** The **General Diary** (station diary) is not a creature of the CrPC alone: it is the register every police-station is required to keep under **§44 of the Police Act, 1861** (elaborated by the Police Regulations, Bengal, reg. 377), recording **all occurrences, complaints and information** coming to the station's notice, **whether cognizable or non-cognizable**, along with arrivals, departures and movements. The CrPC then channels particular information into it: under **§155**, the substance of information of a **non-cognizable offence** is entered in the station book and the informant is **referred to the Magistrate**, for **no police-officer may investigate a non-cognizable case without the order of a Magistrate** of the first or second class. A GD entry equally records preliminary or incomplete information (a person missing, an apprehension of trouble) that does not yet disclose any offence.

**UD case, §174.** An **Unnatural Death** case is registered where the officer-in-charge receives information that a person has **committed suicide**, or has been **killed by another or by an animal or by machinery or by an accident**, or has died **under circumstances raising a reasonable suspicion** that some other person has committed an offence. The officer **intimates the nearest Executive Magistrate empowered to hold inquests**, proceeds to the place, makes an investigation of the **apparent cause of death** in the presence of respectable inhabitants, and draws up the **inquest report** describing wounds and marks and stating how they appear to have been inflicted. He may summon persons acquainted with the facts (**§175**), and a Magistrate empowered to hold inquests **must** inquire where death occurs in police custody (**§176**). A UD case is thus an *inquiry into a death*, not (yet) the prosecution of an offence.

**The three distinguished:**

|              | FIR (§154)                                             | GD entry (§155 / station diary)                                                      | UD case (§174)                         |
|--------------|--------------------------------------------------------|--------------------------------------------------------------------------------------|----------------------------------------|
| Subject      | Cognizable offence                                     | All occurrences/complaints (Police Act §44); §155 governs non-cognizable information | Suicide / unnatural / suspicious death |
| What follows | Police investigate without a Magistrate's order (§156) | No investigation without a Magistrate's order (§155)                                 | Inquest on the apparent cause of death |

| FIR (§154) |                                            | GD entry (§155 / station diary)  | UD case (§174)                       |
|------------|--------------------------------------------|----------------------------------|--------------------------------------|
| Character  | Accusation setting investigation in motion | Record / reference to Magistrate | Inquiry into a death, no accused yet |

**Conversion of a UD case into an FIR.** "Conversion" is exam shorthand, the Code contains **no express statutory conversion mechanism**. What happens is this: where the inquest or the investigation of the apparent cause of death **discloses the commission of a cognizable offence**, e.g. the post-mortem or the circumstances show the death was homicidal, or an apparent suicide or accident proves on inquiry to have been caused or abetted by another, the information now discloses a cognizable offence, so an **FIR is recorded under §154** (against known or unknown accused) and a regular investigation under Chapter XIV follows, culminating in a §173 report. In short: **so long as the death is merely unnatural or suspicious, it remains a UD case; the moment the material discloses a cognizable offence, an FIR is registered and the regular criminal investigation begins.**

**Conclusion.** The FIR initiates investigation of a cognizable offence; the GD entry records non-cognizable or preliminary information on which the police cannot investigate without a Magistrate's order; the UD case is an inquest-driven inquiry into a suicide or unnatural or suspicious death. A UD case becomes an FIR when its inquiry reveals that a cognizable offence lies behind the death.

### Rights of an arrested person 2023, 2021

#### AS ASKED IN THE EXAM

Discuss the rights of an arrested person under the Constitution and the CrPC, including production within 24 hours and the procedure where investigation is not completed in 24 hours.

**Constitutional rights (Article 33).** A person arrested:

- must be **informed of the grounds** of arrest as soon as may be;
- has the right to **consult and be defended by a legal practitioner** of his choice;
- must be **produced before the nearest Magistrate within twenty-four hours** of arrest (excluding the time necessary for the journey); and
- shall **not be detained** beyond that period without the authority of a Magistrate.

*(These constitutional safeguards do not apply to a person held under a preventive-detention law, Article 33.)*

**CrPC rights.** The Code carries these guarantees in the procedural law:

- **§61, 24-hour rule.** A person arrested without warrant shall not be detained longer than is reasonable and, absent a §167 order of a Magistrate, **not exceeding 24 hours** (exclusive of journey time).
- **§60 / §81**, the arrested person must be **brought before a Magistrate without unnecessary delay**.
- **§50**, no more **restraint** than necessary to prevent escape.
- **§51 / §52**, search on arrest is regulated; a **woman is searched only by a woman**, with due regard to decency.
- **§54–§57**, arrest without warrant is confined to the specified categories; in a non-cognizable matter, refusal to give name allows detention only to ascertain identity, with a 24-hour cap (§57).
- **§340**, the accused has the **right to be defended by a pleader**.
- **§164 (confession safeguard).** §164 confessions must be voluntary and recorded with the §364 warning.

**Procedure where investigation is not completed in 24 hours (§167).** If investigation cannot be completed within 24 hours and there are grounds to believe the accusation is well-founded, the officer forwards the accused, together with the case diary, to the **nearest Judicial Magistrate**, who may authorise **detention** of the accused (in police or judicial custody) for a term not exceeding **fifteen (15) days in the whole**. A Magistrate who has no jurisdiction to try the case may, after recording reasons, order onward forwarding.

**Bail safeguard on delay.** Where the investigation is not concluded within the statutory period, the accused becomes entitled to bail, the Magistrate dealing with it for offences punishable with imprisonment under 10 years, and the Court of Session for death / life / 10-years-plus offences.

**Illustration.** D is arrested without warrant at 6 p.m. He must be informed of the grounds, allowed counsel, and produced before the nearest Magistrate by 6 p.m. the next day (plus journey time). If the police need more time, they must seek a §167 remand; detention beyond 24 hours without that order is unlawful.

**Conclusion.** An arrested person enjoys overlapping constitutional (Article 33) and statutory (§§50–61, 167, 340, 364) protections, grounds of arrest, counsel, no excessive restraint, production within 24 hours, and a Magistrate-controlled §167 remand capped at 15 days in the whole when investigation overruns.

### Discharge vs acquittal; §241A; double jeopardy 2025, 2023, 2015, 2012, 2010, 2007

#### AS ASKED IN THE EXAM

Distinguish discharge from acquittal. What considerations weigh with the Magistrate in discharging under §241A? Can an acquitted accused be tried again for the same offence?

**The distinction.** A **discharge** is the dropping of an accused **before** the case is tried out, on the footing that the charge is **groundless**, the accused is freed but is not declared innocent, and the matter has not been adjudicated on the merits. An **acquittal** is a **final judgment after trial** that the accused is **not guilty**, recorded on the merits. The practical consequence differs: a discharge can, in proper cases, be reopened (e.g. on further inquiry under §436), whereas an acquittal bars a fresh trial.

**Consideration in discharging (§241A).** In a Magistrate's trial, if upon **considering the record** and **hearing the accused and the prosecution**, the Magistrate considers the charge to be **groundless**, he **discharges** the accused and **records his reasons**. The single consideration is whether, taking the material at its highest, there is any ground to presume the accused committed an offence; if none, the charge is groundless and discharge follows (contrast §242, where ground exists and a charge is framed).

**Re-trial after acquittal, double jeopardy (§403).** No. Under §403 (the rule of *autrefois acquit* / *autrefois convict*), a person **once tried and convicted or acquitted by a competent court is not liable to be tried again for the same offence** while that finding stands. This mirrors the constitutional protection against double jeopardy.

**But note the limits of §403:**

- A **discharge** (or dismissal of a complaint, or a §249 stoppage) is **not an acquittal**, so it does **not** bar a later proceeding.
- A **distinct offence** for which a separate charge could have been made (§235(1)) is not barred.
- Where a **fresh consequence** of the same act later arises (§403(3)) constituting a different offence, a trial for that offence is not barred.

**Illustration.** A is **discharged** under §241A on a theft allegation; fresh evidence later emerges, he may be proceeded against again, because a discharge is not an acquittal. But if A had been **tried and acquitted** of that theft, §403 bars a second trial for the same theft.

**Conclusion.** Discharge is a pre-trial release on a groundless charge (§241A, reasons recorded); acquittal is a merits judgment of not-guilty; only the latter attracts the §403 bar against re-trial, subject to the §403 exceptions.

### Revisional power of the Sessions Judge and the High Court Division 2014, 2006, 2005

#### AS ASKED IN THE EXAM

Discuss the revisional power of the Sessions Judge and the High Court Division. Can a revisional court convert an acquittal into a conviction?

**The calling-for power (§435).** The High Court Division **or any Sessions Judge** may **call for and examine the record** of any inferior Criminal Court within its/his jurisdiction to satisfy itself as to the **correctness, legality or propriety** of any finding, sentence or order, and as to the regularity of the proceedings. All Magistrates are inferior to the Sessions Judge for this purpose.

**Power to order inquiry (§436).** On examining a record, the HCD or Sessions Judge may direct the CJM/CMM to make **further inquiry** into a complaint dismissed under §203 (or §204(3)) or into a discharged accused, but a discharged person must be given an opportunity to show cause.

**HCD's revisional powers (§439).** In any proceeding the record of which has been called for or reported, the HCD may exercise the powers of a **Court of Appeal** (§§423, 426, 427, 428) and may, in addition, **enhance the sentence**, after first hearing the accused. Limits: in revision the HCD generally **may not** convert an acquittal into a conviction (§439(4)); and where an appeal lay but was not filed, no revision lies at the party's instance (§439(5)).

**Sessions Judge's revisional power (§439A).** A Sessions Judge may exercise the **same §439 powers** on a record he has called for; his revisional **decision in respect of a person is final**, so the HCD will not entertain a further revision against a §439A order. (An Additional Sessions Judge may exercise the power on a case transferred to him.)

**Can a revisional court convert an acquittal into a conviction? No.** §439(4) bars the revisional court from converting a **finding of acquittal into one of conviction**. The proper route against an acquittal is an **appeal under §417** (by the State through the Public Prosecutor, or by a complainant with leave within 60 days on an error of law). The revisional court may, at most, set aside an improper acquittal and **direct a re-trial / further inquiry**, it cannot itself record the conviction.

**Distinguish appeal and revision (often asked alongside).** An appeal is a **statutory right** (where conferred) and is a re-hearing on fact and law; revision is **discretionary**, the party has **no right to be heard** (§440), it is supervisory (correctness/legality/propriety), and, critically, it **cannot turn an acquittal into a conviction**.

**Conclusion.** Both the HCD (§§435, 439) and the Sessions Judge (§§435, 439A) have revisional jurisdiction over inferior courts; but a revisional court cannot convert an acquittal into a conviction, that requires an appeal under §417.

### Appeals, when no appeal lies 2025

#### AS ASKED IN THE EXAM

Against which conviction orders does no appeal lie under the Code of Criminal Procedure, 1898? Describe.

**Exam structure (33 minutes):** 1) the §404 principle (appeal only where statute allows) → 2) §412 plea of guilty (sentence-only) → 3) §413 petty sentences (1 month Session / fine ≤ Tk 5,000) → 4) §414 summary fine ≤ Tk 5,000 → 5) §415 proviso + §415A joint trial → 6) revision as the fallback. *Must state:* the Tk 5,000 thresholds are the 2026-amended figures; under §412 the conviction is final but the sentence appealable.



**The governing principle, §404.** An appeal is a **creature of statute**: under §404, *no appeal lies from any judgment or order of a Criminal Court except as provided by the Code or by any other law in force*. There is no inherent right of appeal; whoever appeals must point to an enabling provision (e.g. §408, conviction by a Joint Sessions Judge, Metropolitan Magistrate or first-class Magistrate → Sessions Judge; §410, conviction by a Sessions or Additional Sessions Judge → High Court Division).

**Conviction orders from which no appeal lies:**

1. **Conviction on a plea of guilty, §412.** Where the accused has **pleaded guilty** and been convicted **on that plea** by a Court of Session, a Metropolitan Magistrate or a first-class Magistrate, **no appeal lies against the conviction**; the convict may appeal only as to the **extent or legality of the sentence**. The plea, voluntarily made and accepted, forecloses the merits.

2. **Petty sentences, §413.** No appeal lies where,

- a **Court of Session** passes a sentence of **imprisonment not exceeding one month only**; or

- a **Court of Session, Chief Judicial Magistrate, Metropolitan Magistrate or first-class Magistrate** passes a sentence of **fine not exceeding five thousand taka only**. (*Raised from fifty taka by the Code of Criminal Procedure (Amendment) Act, 2026, Act No. XI of 2026; the current threshold is Tk 5,000.*)

The law declines to burden the appellate courts with trifles (*de minimis*).

3. **Petty summary convictions, §414.** No appeal lies where a Magistrate **empowered under §260** to try a case **summarily** passes a sentence of **fine not exceeding five thousand taka only**. (*Raised from two hundred taka by the same 2026 Amendment Act.*)

**The proviso, §415.** Sections 413 and 414 bar the appeal only where the petty sentence stands **alone**: an appeal **lies** where the sentence is **combined with any other punishment** (e.g. fine plus imprisonment, or fine plus a substantive sentence). But a sentence does not become appealable **merely because** the convicted person is also ordered to **furnish security to keep the peace**, nor (in petty-fine cases) merely because imprisonment in **default of payment** of the fine is directed.

4. **Special safeguard, §415A.** Where several persons are convicted in **one trial** and an **appealable** judgment or order is passed as to **any** of them, **all** the persons convicted at that trial have a right of appeal, so a co-convict's petty, otherwise-unappealable sentence becomes appealable alongside his co-accused's appealable one.

**The safety-valve, revision.** Where the appeal is barred, the convict is not wholly without remedy: the **revisional jurisdiction** remains. The High Court Division (or the Sessions Judge) may call for and examine the record of any inferior Criminal Court to satisfy itself as to the **correctness, legality or propriety** of any finding, sentence or order (**§435**), and exercise the powers of revision (**§439/§439A**). Revision is discretionary, it is not a substitute right of appeal, but it polices the legality of even unappealable convictions.

**Conclusion.** Under the Code, no appeal lies (i) from a conviction on the accused's own **plea of guilty** except as to the extent or legality of the sentence (§412); (ii) from **petty sentences**, imprisonment ≤ 1 month by a Court of Session, or fine ≤ **Tk 5,000** by Session/CJM/Metropolitan/first-class Magistrate (§413); and (iii) from **summary convictions** with fine ≤ **Tk 5,000** (§414), both fine ceilings as raised by the 2026 Amendment Act, subject to the §415 proviso for combined punishments and the §415A rule for joint trials, and always subject to the courts' revisional jurisdiction under §§435/439.

**Bail, bailable vs non-bailable; bail for capital offences** 2021, 2017, 2012, 2011, 2010...

**AS ASKED IN THE EXAM**

Distinguish a bailable from a non-bailable offence. In what situation may bail be granted to a person accused of an offence punishable with death or imprisonment for life?

**The distinction (§4).** A **bailable offence** is one shown as bailable in the Second Schedule (or made bailable by another law); a **non-bailable offence** is any other offence. The classification, not the gravity in the abstract, controls the right to bail.

**Bail in a bailable offence, a matter of right (§496).** A person accused of a bailable offence, when arrested or appearing and prepared to give bail, **shall** be released on bail (or on a personal bond without sureties). Neither the officer nor the court has discretion to refuse. Hence the maxim: granting bail here is the accused's right, not a favour.

**Bail in a non-bailable offence, discretionary (§497).** A person accused of a non-bailable offence **may** be released on bail; but bail **shall not** be granted if there appear reasonable grounds for believing he is guilty of an offence punishable with **death or transportation for life**.

**The proviso, when bail may still be granted for a death/life offence.** Even where such reasonable grounds exist, the court retains discretion to grant bail if the accused is:

- under the age of 16, or
- a woman, or
- a sick or infirm person.

**Higher courts (§498).** Independently, the High Court Division or the Court of Session may admit **any** person to bail, and may reduce bail fixed by a police-officer or Magistrate; the amount must be reasonable and not excessive.

**Illustration.** A is accused under Penal Code §302 (a non-bailable, capital offence). The trial Magistrate ordinarily cannot bail him under §497. But if A is a sick and infirm elderly person, the court may, in its discretion, enlarge him on bail under the §497 proviso; failing that,



he may move the Court of Session / HCD under §498.

**Conclusion.** Bail is a right in bailable offences (§496) and a discretion in non-bailable ones (§497); for death/life offences the bar is lifted only for a minor under 16, a woman, or a sick/infirm accused, with §498 as the higher-court safety valve.

### **FIR vs petition of complaint; the Naraji (protest) petition** 2023, 2007, 2006, 2005

#### **AS ASKED IN THE EXAM**

Distinguish an FIR from a petition of complaint. What is a Naraji petition? What options does the Magistrate have on a Naraji, and what remedy lies against its dismissal?

**FIR (§154).** Information of a **cognizable offence** given to the officer in charge of a police-station, reduced to writing, read over, **signed by the informant**, and entered in the prescribed book. It sets the police investigation in motion and is the foundation of a **G.R. (police) case**. By §4, a "complaint" expressly **excludes a police report**, so an FIR is not a complaint.

**Petition of complaint (§4, Ch XVI).** A **complaint** is an allegation made **to a Magistrate**, with a view to his taking action, that some person has committed an offence; it is **not** a report by the police. It founds a **C.R. (complaint) case**, and the Magistrate proceeds under §200 (examine the complainant on oath), §202 (postpone process / direct inquiry), §203 (dismiss if no sufficient ground) or §204 (issue process).

**Key distinctions:** FIR is to the **police** / complaint is to a **Magistrate**; FIR is for **cognizable** offences / a complaint may relate to any offence; FIR triggers **police investigation** / a complaint triggers the **§200 Magisterial** procedure; FIR is **signed by the informant** under §154 / a complaint is examined on oath under §200.

**The Naraji (protest) petition.** A Naraji is a **protest petition** filed by the informant/complainant when he is **dissatisfied with the police final report** under §173 (e.g. a final report recommending discharge, or a charge-sheet he says is inadequate). It asks the Magistrate not to accept the police conclusion.

**The Magistrate's options on a Naraji.** Because the Magistrate is **not bound** by the §173 report (cognizance is his under §190), on receiving a Naraji he may, in substance:

1. **accept** the police final report and reject the Naraji;
2. **disagree** with the report and **take cognizance** under §190(1)(b)/(c) and proceed to trial;
3. treat the Naraji as a **petition of complaint** and proceed under §200 (examine the complainant on oath) and §202 (direct further inquiry/investigation); or
4. order **further investigation** by the police.

**Remedy against dismissal of a Naraji.** Where the Magistrate **dismisses** the Naraji (i.e. accepts the police report / dismisses the complaint under §203), the aggrieved party may:

- move the **Sessions Judge or the High Court Division in revision** under §§435 / 439A / 439 to call for the record and direct **further inquiry** (§436); and/or
- invoke the **HCD's inherent power under §561A** to secure the ends of justice.

**Conclusion.** An FIR (police, cognizable, §154) and a complaint (Magistrate, §200) start cases differently; a Naraji is the protest against a §173 report; the Magistrate may accept it, take cognizance, treat it as a complaint, or order further investigation; and dismissal is challengeable in revision (§§435/439) or under §561A.

### **Section 144, urgent temporary orders; distinction from §145** 2020, 2012, 2008

#### **AS ASKED IN THE EXAM**

Who can pass an order under §144 and in what situation? How long does it remain in force? Distinguish it from a §145 proceeding.

**Who may pass it (§144(1)).** A **District Magistrate**, or any other **Executive Magistrate specially empowered** by the Government or the District Magistrate to act under this section.

**When (the situation).** Where, in the Magistrate's opinion, there is **sufficient ground** for proceeding and **immediate prevention or speedy remedy is desirable**, to prevent obstruction, annoyance or injury to a person lawfully employed, danger to human life, health or safety, or a disturbance of the public tranquillity, a riot or an affray. By a written order stating the material facts he may direct a person to **abstain from a certain act** or to **take certain order with property** in his possession or management.

**Ex parte (§144(2)).** In an emergency, or where there is no time to serve notice, the order may be passed **ex parte**.

**Duration (§144(6)).** A §144 order remains in force for **no more than two months** from the making of it, unless, in cases of danger to life/health/safety or likelihood of a riot or affray, the Government by Gazette notification otherwise directs.

**Not applicable to a Metropolitan Area (§144(7)).**

**Distinction from §145.**

| Point           | §144                                             | §145                                                                  |
|-----------------|--------------------------------------------------|-----------------------------------------------------------------------|
| Object          | Urgent prevention of nuisance/danger/disturbance | Settling <b>possession</b> of land/water to prevent a breach of peace |
| Trigger         | Urgency; immediate remedy desirable              | A possession <b>dispute</b> likely to breach the peace                |
| Nature of order | Direction to do or abstain from an act           | Inquiry into and declaration of <b>actual possession</b>              |
| Inquiry         | May be ex parte; summary                         | Parties file statements; evidence taken (§145(4))                     |
| Duration        | Max <b>2 months</b> (§144(6))                    | Until eviction in due course of law / Civil Court decision            |

**Illustration (the 2020 trap).** A District Magistrate directs Y under §144 to keep off disputed land and to maintain peace "for the next three months." The order is **bad** as to duration: §144(6) caps it at **two months**, and absent a Gazette extension the three-month direction is unlawful and liable to be set aside / rescinded (§144(4)–(5)).

**Conclusion.** §144 is the urgent, short-fuse preventive order (max two months) by a District/empowered Executive Magistrate; §145 is the slower possession-inquiry mechanism, they must not be confused.

#### Proceeding under §145, possession dispute likely to breach the peace 2009, 2008, 2007, 2005

##### AS ASKED IN THE EXAM

What are the essential ingredients for drawing up a proceeding under §145? What does the Magistrate do if he cannot decide who is in possession? Explain the rule about possession within two months before the proceeding.

**Ingredients (§145(1)).** A proceeding is drawn up when:

1. there is a **District Magistrate or specially-empowered Executive Magistrate** with jurisdiction;
2. he is **satisfied from a police report or other information**;
3. that a **dispute likely to cause a breach of the peace** exists;
4. **concerning land or water** (which by §145(2) includes buildings, markets, fisheries, crops, rents and profits) or its boundaries, within his local limits.

On being so satisfied he makes a **written order stating the grounds**, and requires the parties to attend and file **written statements of their actual possession**.

**The possession inquiry (§145(4)).** The Magistrate decides **only the fact of actual possession** as on the date of the order, **not title or the right to possess**. He peruses the statements, hears the parties, receives and weighs their evidence, takes further evidence if needed, and decides which party was in possession. The party found in possession is maintained until evicted **in due course of law**.

**The two-months rule (first proviso to §145(4)).** If it appears that any party was, **within two months next before the date of the order, forcibly and wrongfully dispossessed**, the Magistrate may treat that party as if he had been in possession on the date of the order. So a party ousted within the 60-day window is restored notwithstanding that he was physically out of possession when the order was drawn.

**If possession cannot be decided (§146).** If the Magistrate, on the evidence, is **unable to decide** which party was in possession (or decides that none was in possession), he **attaches the subject of dispute** until a competent **Civil Court** determines the rights of the parties; he may appoint a **receiver** with the powers of a receiver under the CPC.

**Illustration.** P and Q dispute a fishery. If P was forcibly evicted by Q 40 days before the order, the Magistrate may treat P as in possession (two-months rule). If the evidence is evenly balanced and possession is genuinely unascertainable, the Magistrate attaches the fishery under §146 and refers the parties to the Civil Court.

**Conclusion.** §145 protects actual possession to prevent a breach of the peace, ignores title, restores a party dispossessed within two months, and, where possession is undecidable, yields to §146 attachment pending a civil decision.

#### Transfer of a criminal case, HCD and Sessions Judge 2009, 2008, 2005

##### AS ASKED IN THE EXAM

On what grounds, and under which sections, may the High Court Division and the Sessions Judge transfer a criminal case?

**High Court Division (§526).** The HCD may order that a case or appeal be **transferred** from one Criminal Court to another, or be tried by the HCD itself, where it appears that:

- a **fair and impartial trial** cannot be had in the trial court; or
- a **difficult question of law** is likely to arise; or
- it is required for the **general convenience** of parties or witnesses; or
- it is **expedient for the ends of justice**, or required by any provision of the Code.

**Important limit (§526(3) proviso).** An application to the HCD to transfer a case **between two Criminal Courts in the same sessions division** lies **only after the Sessions Judge has rejected** such an application, i.e. the Sessions Judge must be approached first.

**Sessions Judge (§526B).** A Sessions Judge may, where it is **expedient for the ends of justice**, **transfer a case from one Criminal Court to another within his sessions division**, applying the §526(4)–(10) procedure.

**Withdrawal/recall power (§528).** Distinct from transfer, a Sessions Judge may **withdraw or recall** any case made over to a **Joint or Additional Sessions Judge** and either try it himself or make it over to another competent court; by §528(2) a CMM/CJM/District Magistrate may likewise withdraw a case from a subordinate Magistrate. Reasons must be recorded (§528(5)).

**Appellate Division (§525A).** For completeness, the **Appellate Division** may transfer a case or appeal between permanent Benches of the HCD, or between Criminal Courts under different Benches.

**Illustration.** If a complainant fears he cannot get an impartial trial before a particular Magistrate, he first applies to the **Sessions Judge** under §526B; if refused, he may then move the **HCD** under §526. A Sessions Judge who has made a case over to a Joint Sessions Judge may pull it back under §528.

**Conclusion.** The HCD's transfer power is the wider one (§526, including transfer to itself), exercisable on fair-trial / difficult-law / convenience / ends-of-justice grounds; the Sessions Judge transfers within his division under §526B and withdraws/recalls under §528, but for an intra-division transfer the Sessions Judge must be approached before the HCD.

### The case diary (police diary), §172 2017, 2014

#### AS ASKED IN THE EXAM

What is a police diary (case diary)? What are its contents, how may a Criminal Court use it, and can the accused call for it?

**Exam structure (33 minutes):** 1) §172(1) duty (day by day) → 2) the four contents → 3) the Court's use, aid, never evidence (§172(2)) → 4) the accused's bar → 5) the two Evidence Act exceptions (§161 refresh / §145 contradict). *Must state:* "not as evidence but to aid it".

**The provision.** Under **§172(1)**, every police-officer making an investigation under Chapter XIV shall **day by day** enter his proceedings in the investigation in a **diary**, the *case diary* (commonly, the police diary). It is the contemporaneous, chronological record of the investigation itself, distinct from the station's general diary.

**Contents.** The diary must set forth, for each day:

- the **time** at which the information reached the officer;
- the time at which he **began and closed** his investigation that day;
- the **place or places visited** by him; and
- a **statement of the circumstances ascertained** through his investigation.

**Use by the Court, §172(2).** Any Criminal Court may **send for the police diaries** of a case under inquiry or trial in that Court, and may use them, **not as evidence in the case**, but **to aid it** in such inquiry or trial. The diary thus serves the Court as an instrument of scrutiny and orientation: to see how the investigation proceeded, to test the investigating officer, to detect delay or manipulation in recording, and to follow the chain of steps, but no fact can be *proved* by the diary; conviction or acquittal must rest on evidence properly brought on the record.

**Position of the accused (and the officer).** Neither the accused nor his agents are **entitled to call for the diaries**, nor are they entitled to see them merely because the Court has referred to them. The two statutory exceptions are written into §172(2) itself:

1. if the **police-officer who made them uses them to refresh his memory**, the provisions of **§161 of the Evidence Act, 1872** (the adverse party's rights as to a writing used to refresh memory, to have it produced, inspect it and cross-examine upon it) apply; and
2. if the **Court uses them for the purpose of contradicting** that officer, the provisions of **§145 of the Evidence Act** (cross-examination as to previous statements in writing) apply.

To that limited extent, and no further, the defence gets access to the diary.

**Why it matters in practice.** The case diary is the investigation's honesty-meter: because it must be written **day by day**, with times and places, it fixes the investigating officer to a contemporaneous account. Courts examining bail petitions, discharge questions, or the credibility of the investigation routinely call for it under §172(2); yet its shield against the defence (subject to the two Evidence Act gateways) preserves the confidentiality of sources and ongoing lines of inquiry.

**Conclusion.** The §172 case diary is a mandatory day-by-day record of the investigation (time of information, times of investigation, places visited, circumstances ascertained). The Court may call for and use it as an **aid, never as evidence**; the accused cannot demand it, except to the limited extent the investigating officer refreshes memory from it or the Court uses it to contradict him, when Evidence Act §161 or §145 (as the case may be) opens it to the defence pro tanto.

**AS ASKED IN THE EXAM**

Discuss the jurisdiction of the criminal courts in inquiries and trials under the CrPC, 1898. A forged deed comprising the offence was registered in the office of the Sub-Registrar, Khulna, which district court will exercise jurisdiction to try the case? Also discuss the general provisions relating to "search in presence of witnesses" under the Code.

**Exam structure (33 minutes):** 1) §177 the ordinary rule → 2) §179 act/consequence venues → 3) §180 offence-by-relation-to-another-offence → 4) §181 special-offence venues → 5) §182 uncertain/continuing venue → 6) apply to the forged-deed hypo → 7) §103 search procedure. *Must state:* §177 is the default rule, everything else in Ch XV is a variation on it; the forged-deed hypo is answered by §177/§179 (place the offence was committed), not by a special-offence provision.

**The ordinary rule, §177.** Every offence is **ordinarily inquired into and tried by a Court within the local limits of whose jurisdiction it was committed**. This is the default; the sections that follow are variations for particular fact patterns, not exceptions that override it without reason.

**Act-and-consequence venues, §179.** Where an offence consists of an act done and a consequence that ensues, it may be tried **either where the act was done or where the consequence ensued** (illustration: a person wounded in one district who dies in another, the offence may be tried in either).

**Offence by relation to another offence, §180.** Where an act is an offence only because of its relation to another act which is itself an offence (e.g. abetment, receiving stolen property), the charge may be tried **either where the first act was done or where the related offence was committed**.

**Special-offence venues, §181.** Certain offences carry their own venue rules: thug/dacoity/escape-from-custody offences are tried where the accused **is**; criminal misappropriation and criminal breach of trust may be tried where any part of the property was **received or retained** by the accused, or where the offence was committed; theft (and offences involving stolen property) where the theft occurred or where the stolen property was **possessed**; kidnapping/abduction where the person was kidnapped, abducted, conveyed, concealed or detained.

**Uncertain or continuing venue, §182.** Where it is uncertain in which of several local areas an offence was committed, or it was committed partly in one area and partly in another, or it is a continuing offence spanning more than one area, or it consists of several acts in different areas, it may be tried by a Court having jurisdiction over **any** of those areas.

**Applying this to the forged-deed hypo.** A forged deed comprising the offence was **registered in the office of the Sub-Registrar, Khulna**. None of the special venue rules in §180/§181 is triggered, this is not abetment, misappropriation, theft or kidnapping. The governing rule is the ordinary one, **§177**: the offence connected with the deed (its execution/registration as a forged instrument) was committed at the place of registration. The **District Court at Khulna**, i.e. the criminal court within whose local limits Khulna falls, has jurisdiction to try the case, since that is where the act constituting the offence took place.

**Search in the presence of witnesses, §103.** Before making a search, the officer or person about to search must call **two or more respectable inhabitants of the locality** to attend and witness it (and may direct them in writing to do so). The search is made in their **presence**; a list of everything seized, and of where each item was found, is prepared and **signed by those witnesses**. A witness so called is not required to attend Court unless specially summoned. The **occupant of the place searched** (or someone on his behalf) must be permitted to attend throughout, and is entitled to a copy of the seizure list on request. A person who, without reasonable cause, refuses or neglects to attend and witness a search after being called upon in writing commits an offence under Penal Code §187.

**Conclusion.** Jurisdiction under the Code is governed by §177's ordinary rule (place of commission), refined by §179 (act/consequence), §180 (relation to another offence), §181 (special venues for specific offences) and §182 (uncertain/continuing venue), the forged-deed hypo, engaging none of the special provisions, falls to §177 and is triable at Khulna, where the deed was registered. Separately, §103 requires any search under Chapter XI to be conducted before two or more independent local witnesses, who sign the seizure list, with the occupant entitled to attend and to a copy of that list.

**Inherent power of the High Court Division (§561A) 2015**

**AS ASKED IN THE EXAM**

Throw light on the inherent powers of the High Court Division of the Bangladesh Supreme Court, with reference to the relevant provision and an example.

**Exam structure (33 minutes):** 1) the provision, §561A → 2) the three limbs → 3) why it exists, residual, not a new jurisdiction → 4) limits (HCD only; not a substitute for appeal/revision; used sparingly) → 5) an illustrative example. *Must state:* §561A belongs to the **High Court Division only**, not to subordinate criminal courts or even the Sessions Judge (contrast §151 CPC and §561A itself, which are both "saving" clauses, not grants of new power).

**The provision, §561A.** Nothing in the Code shall be deemed to **limit or affect the inherent power of the High Court Division** to make such orders as may be necessary, (a) to **give effect to any order under the Code**, (b) to **prevent abuse of the process of any Court**, or (c) **otherwise to secure the ends of justice**.

**Nature, saving, not granting.** Like §151 of the CPC, §561A does not *confer* a new power on the HCD; it **saves and preserves** a power the HCD already possesses as the superior criminal court, so that nothing elsewhere in the Code is read as cutting it down. It is **residual**: invoked only where the Code's specific machinery (appeal, revision, review) does not adequately reach the injustice complained of.

**The three limbs.** (a) Giving effect to a Code order, ensuring an order already made under the Code is not frustrated in its execution. (b) Preventing abuse of process, the most frequently invoked limb, used to **quash** a criminal proceeding (an FIR, a charge, or the whole prosecution) where its continuation would itself be an abuse, for instance where the allegations, even taken at their highest, disclose no offence, or where the prosecution is manifestly mala fide or vexatious. (c) Securing the ends of justice generally, the residuary limb for situations the first two do not squarely cover.

**Limits on the power.** It belongs to the **High Court Division alone**, not to a Magistrate, Sessions Judge or Court of Session, who must work within the Code's ordinary remedies. It is exercised **sparingly and with caution**, not as a routine substitute for an appeal or a revision that a party simply failed to pursue, and not to re-appreciate evidence as if the HCD were a trial court. Where a specific provision of the Code already addresses the grievance, the inherent power is not the first resort.

**Illustrative example.** A complaint is filed alleging a purely civil dispute over a debt as if it were criminal breach of trust, with no allegation capable of establishing the mental element the Penal Code requires. If a Magistrate nonetheless takes cognizance and issues process, the accused may move the High Court Division under §561A to **quash the proceeding**, continuing a prosecution the record itself cannot sustain would be an abuse of the process of the Court.

**Conclusion.** §561A preserves, and does not create, the High Court Division's inherent power to give effect to Code orders, prevent abuse of process (chiefly by quashing baseless or vexatious proceedings) and otherwise secure the ends of justice, a residual power confined to the HCD, exercised sparingly, and never a substitute for the Code's ordinary appellate or revisional remedies.

### A second FIR for the same occurrence, fresh FIR or a §161 statement? 2025

#### AS ASKED IN THE EXAM

Relatives of the deceased lodged an FIR alleging he was murdered by unknown miscreants. During investigation, police found the relatives themselves had committed the murder, and lodged another FIR. Will the second FIR be treated as a fresh FIR, or as a statement under §161 of the Code, answer stating relevant laws.

**Exam structure (33 minutes):** 1) how Chapter XIV structures one occurrence → one investigation → 2) what §154/§156 do on first information → 3) what §161/§162/§173 do with facts discovered during investigation → 4) reasoning to the answer → 5) the practical effect. *Must state:* the Code has **no express provision** either permitting or barring a second FIR for the same occurrence, this is reasoned from the structure of Chapter XIV, not from a section that says so in terms; say so honestly rather than inventing a citation.

**How the Chapter is structured.** Chapter XIV builds around **one occurrence generating one investigation**: an FIR under §154 sets a single investigation in motion (§156); everything the investigating officer learns afterwards, from any source, including further examination of witnesses, is recorded as it comes in, in the **case diary** (§172) and in **witness statements** (§161); and the investigation culminates in **one report** under §173, which itself expressly preserves the power of **further investigation** and a **supplementary report** if more comes to light after the first report is filed. The machinery does not contemplate a second, independent investigation of the same criminal occurrence running in parallel with the first.

**What changed here, and what didn't.** The occurrence itself, P's death, has not changed; what changed is the police's understanding of **who caused it**. That is precisely the kind of fact a §161 examination of witnesses is built to capture during an ongoing investigation, and precisely what a §173 **supplementary report** exists to record once the true state of the evidence is known. Registering a second, free-standing FIR for the identical occurrence would mean **two FIRs and, in form, two investigations into one crime**, which nothing in Chapter XIV's structure provides for, and which cuts across the very machinery (§161 statements feeding §173's report and supplementary report) already built to handle exactly this situation.

**Reasoned answer.** On this structure, the "second FIR" is not properly a fresh FIR at all, it is more accurately treated as **further information gathered during the investigation already set in motion by the first FIR**, to be recorded as a statement under **§161** and folded into the same investigation, which then proceeds to a **supplementary report under §173** naming the relatives as the accused. The first FIR is not superseded; the case number and investigation continue, now directed at the newly-identified accused.

**Practical effect.** Because the second lodging is treated as §161 material within the same investigation rather than an independent FIR, it does **not** trigger a fresh 24-hour/§167 remand clock, does not open a second case number, and is recorded and used exactly as any other witness statement gathered during investigation would be, unsigned, and usable only to contradict its maker under the Evidence Act, not as substantive evidence in itself.

**Conclusion.** A second report about the same occurrence, made once investigation has revealed a different set of offenders, is best treated as further information under **§161**, feeding a **supplementary report under §173** in the same, continuing investigation, rather than as an independent fresh FIR; the Code does not say so in an express section naming the situation, and this is a reasoned application of Chapter XIV's structure, flagged above for confirmation against current authority before being relied on as definitive.



 **The bare act — key provisions** Act V of 1908**§10 · Stay of suit**

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Bangladesh having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Bangladesh established or continued by the Government and having like jurisdiction, or before the Supreme Court.

Explanation.-The pendency of a suit in a foreign Court does not preclude the Court in Bangladesh from trying a suit founded on the same cause of action.

**§11 · Res Judicata**

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

**§35A · Compensatory costs in respect of false or vexatious claims or defences**

[35A. (1) If in any suit or other proceeding, including an execution proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence, or any part of it, is false or vexatious, and if, thereafter, such claim or defence is disallowed, in whole or in part, the Court shall, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector, such cost by way of compensation which may, without exceeding the limit of the Court's pecuniary jurisdiction, extend upto fifty thousand taka. this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him. respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.]

## §89A • Mediation

[89A. (1) Except in a suit under the [Artha Rin Adalat Ain, 2003 (Act No. 8 of 2003)], after filing of written statement, if all the contesting parties are in attendance in the Court in person or by their respective pleaders, [the Court shall], by adjourning the hearing, mediate in order to settle the dispute or disputes in the suit, or refer the dispute or disputes in the suit to the engaged pleaders of the parties, or to the party or parties, where no pleader or pleaders have been engaged, or to a mediator from the panel as may be prepared by the District Judge under sub-section (10), for undertaking efforts for settlement through mediation[.

\*\*\*] through the pleaders, the pleaders shall, by their mutual agreement in consultation with their respective clients, appoint another pleader, not engaged by the parties in the suit, or a retired judge, or a mediator from the panel as may be prepared by the District Judge under sub-section (10), or any other person whom they may seem to be suitable, to act as a mediator for settlement:

Provided that, nothing in this sub-section shall be deemed to prohibit appointment of more than one person to act as mediator:

Provided further that, a person holding an office of profit in the service of the Republic shall not be eligible for appointment as mediator.

[(3) While referring a dispute or disputes in the suit for mediation under sub-section (1), it shall be for the pleaders, their respective clients and the mediator to mutually agree on and determine the fees and the procedure to be followed for the purpose of settlement through mediation; and when the Court shall mediate, it shall determine the procedure to be followed, and shall not charge any fee for mediation:

Provided that if the pleaders, their respective clients and the mediator fail to determine the fees, the Court shall fix the fees and the fees so fixed shall be binding upon the parties.] [(4) Within ten days from the date of reference under sub-section (1), the parties shall inform the Court in writing whom they have appointed as mediator, and if the parties fail to appoint the mediator during this time, the Court shall, within seven days, appoint a mediator from the panel as mentioned in sub-section (10) and the mediation under this section shall

be concluded within 60 (sixty) days from the day on which the Court is so informed, or a mediator is appointed by the Court, as the case may be, unless the Court of its own motion or upon a joint prayer of the parties, extends the time for a further period of not exceeding 30 (thirty) days.] [(5) The mediator shall, without violating the confidentiality of the parties to the mediation proceedings, submit to the court a report of result of the mediation proceedings; and if the result its of compromise of the dispute or disputes in the suit, the terms of such compromise shall be reduced into writing in the form of an agreement, bearing signatures or left thumb impressions of the parties as

executants, and signatures of the pleaders, if any, and the mediator as witnesses; and the Court shall, within seven days from receiving the said report, pass an order or a decree in accordance with relevant provisions of Order XXIII of the Code.] 1 Sub-section (3) was substituted by section 2(b) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012). 2 Sub-section (4) was substituted by section 2(c) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012). 3 Sub-section (5) was substituted by section 2(d) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

report and pass an order in the manner] to that as stated in sub- section (5). the Court shall, subject to the provision of sub-section (9), proceed with hearing of the suit from the stage at which the suit stood before the decision to mediate or reference for mediation under sub-section (1), and in accordance with provisions of the Code in a manner as if there had been no decision to mediate or reference for mediation as aforesaid. be confidential and any communication made, evidence adduced, admission, statement or comment made and conversation held between the parties, their pleaders, representatives and the mediator, shall be deemed privileged and shall not be referred to and admissible in evidence in any subsequent hearing of the same suit or any other proceeding. to resolve the dispute or disputes in the suit, the same court shall not hear the suit, if the Court continues to be presided by the same judge who led the mediation initiative; and in that instance, the suit shall be heard by another court of competent jurisdiction. shall, in consultation with the President of the District Bar Association, prepare a panel of mediators (to be updated from time to time) consisting of pleaders, retired judges, persons known to be trained in the art of dispute resolution, and such other person or persons, except persons holding office of profit in the service of the Republic, as may be deemed appropriate for the purpose, and shall inform all the Civil Courts under his administrative jurisdiction about the panel:

Provided that, a mediator under this sub-section, shall not act as a mediator between the parties, if he had ever been engaged by either of the parties as a pleader in any suit in any Court. fees Act, 1870 (Act No. VII of 1870), where a dispute or disputes in a suit are settled on compromise under this section, the Court shall issue a certificate directing refund of the court fees paid by the parties in respect of the plaint or written statement; and the parties shall be entitled to such refund within 60 (sixty) days of the issuance of the certificate. decree passed by the Court in pursuance of settlement between the parties under this section. limit the option of the parties regarding withdrawal, adjustment and compromise of the suit under Order XXIII of the Code.

Explanation-(1) "Mediation" under this section shall mean flexible, informal, non-binding, confidential, non- adversarial and consensual dispute resolution process in which the mediator shall facilitate compromise of disputes in the suit between the parties without directing or dictating the terms of such compromise.

(2) "Compromise" under this section shall include also compromise in part of the disputes in the suit.

## §151 • Saving of inherent powers of Court

151. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

**Order 1, Rule 10**

10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just. upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. next friend or as the next friend of a plaintiff under any disability without his consent. Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant. 1908], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

**Order 6, Rule 2**

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

**Order 6, Rule 17**

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties[:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court is of opinion that in spite of due diligence, the party could not have raised the matter before the commencement of trial:

Provided further that if an application for amendment is made after the trial has commenced and the Court is of opinion that the application is made to delay the proceedings, the Court shall make an order for the payment to the objector such cost by way of compensation as it thinks fit.]

**Order 7, Rule 11**

11. The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action:

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(d) where the suit appears from the statement in the plaint to be barred by any law [:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp- paper shall not exceed twenty-one days.]

**Order 9, Rule 9**

9. (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit. of the application has been served on the opposite party.

**Order 9, Rule 13**

13.(1) In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also. apply to the applications under rule 13 (1) of this order.

### Order 17, Rule 1

1. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit. further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded. [(3) Notwithstanding anything contained in sub-rules

(1) and (2), the Court shall not grant more than four adjournments in a suit before peremptory hearing at the instance of either party to the suit, and any adjournment granted to a party beyond the aforesaid limit shall make such party liable to pay a cost of not less than two hundred taka and not more than one thousand taka to the other party, within time to be specified by it; noncompliance with which, by the plaintiff shall render the suit liable to be dismissed and, by the defendant shall render the suit liable to be disposed of ex parte:

Provided that the Court shall not grant more than three adjournments to a party even with cost under this rule. Court shall not grant any adjournment at the peremptory hearing stage and thereafter in a suit at the instance of either party to the suit:

Provided that if for ends of justice any adjournment is granted to a party under this sub-rule, the Court shall direct that party to pay a cost of not less than two hundred taka and not more than one thousand taka to the other party, within time to be specified by it, noncompliance with which, by the plaintiff shall render the suit liable to be dismissed and, by the defendant shall render the suit liable to be disposed of ex parte:

Provided further that the Court shall not grant more than three adjournments to a party even with cost under the above proviso. adjournment under sub-rule (3) or (4) and the applications are allowed with costs, the Court shall direct each party to pay such cost as revenue to the state. under this rule without recording reasons therefor.

(7) A suit dismissed or disposed of ex parte under sub-rule

(3) or (4) shall not be revived for hearing unless the party, for whose noncompliance the suit was dismissed or disposed of ex parte, makes within thirty days of such dismissal or ex parte disposal, an application together with cost of two thousand taka into Court for such revival; and upon such application being made, the suit shall be revived for hearing without any further proceeding; and cost deposited into Court shall be paid to the other party.]

### Order 38, Rule 5

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intend to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security. specify the property required to be attached and the estimated value thereof. attachment of the whole or any portion of the property so specified.

### Order 39, Rule 1

1. Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

### Order 39, Rule 2

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right. such terms, as to the duration of the injunction, keeping an account, giving security or otherwise, as the Court thinks fit. terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release. for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

### Temporary injunction (Order XXXIX) 2022, 2020, 2011, 2012

#### AS ASKED IN THE EXAM

Discuss the jurisdiction of, and the principles to be followed by, the Court in granting or rejecting an application for temporary injunction. When and how may an ex-parte ad-interim injunction be passed?

**Statutory basis.** The power to grant a temporary injunction flows from **§94(c)** (supplemental proceedings, the Court may grant a temporary injunction to prevent the ends of justice being defeated) and is regulated by **Order XXXIX**.

**When granted (O39 rr1–2).** Under **O39 r1**, a temporary injunction may be granted where it is proved by affidavit that (a) the property in dispute is in danger of being **wasted, damaged, alienated or wrongfully sold** in execution, or (b) the defendant **threatens to remove or dispose of** his property with intent to defraud creditors. Under **O39 r2**, in a suit to restrain a **breach of contract or other injury**, the plaintiff may apply (before or after judgment) for an injunction to restrain the breach complained of.

**The three governing principles.** Although Order XXXIX states the *occasions*, the settled judicial principles the Court must be satisfied of before granting a temporary injunction are three, and **all three** must be present:

1. **Prima facie case**, the applicant must show a serious question to be tried and an arguable case on the merits (not necessarily a certainty of success);
2. **Balance of (in)convenience**, the comparative mischief or inconvenience to the applicant if the injunction is refused must outweigh that to the opposite party if it is granted; and
3. **Irreparable injury**, the applicant would suffer injury that cannot be adequately compensated in money / by the eventual decree.

Absent any one of these, the application should be rejected.

**Notice and the ex-parte ad-interim injunction.** The **rule is notice first**. Under **O39 r3**, the Court shall, before granting an injunction, direct notice of the application to the opposite party, except where it appears that the object of granting the injunction would be **defeated by delay**, in which case the Court may proceed ex parte for recorded reasons. Reinforcing this, **O39 r5A** lays down that the Court shall **not pass an order of ad-interim or temporary injunction without hearing the opposite party**; where an ex-parte order is made (delay-defeats-object cases), it must be disposed of **on merit within seven days** of the opposite party's appearance, and an unjustified ex-parte injunction may attract a compensatory cost (up to ten thousand taka if the suit fails). Against the Government or a statutory authority, no ex-parte injunction likely to prejudice a development programme may be passed without hearing the Government Pleader.

**Application (2020(b), the §10/jurisdiction overlap).** Where the Court that granted an *ex-parte* status-quo/injunction order lacks subject-matter jurisdiction over part of the relief (e.g. a cooperative-society matter beyond its competence), the immediate step is to apply under O39 r4 to vary/set aside the order and to challenge the Court's jurisdiction, pointing to O39 r5A (the order should not have been passed ex-parte without hearing) and the want of jurisdiction. **(cite relevant case law here)**

**Conclusion.** The Court has jurisdiction under §94 read with Order XXXIX, but must apply the threefold test (prima facie case, balance of convenience, irreparable injury) and must ordinarily give notice; an ex-parte ad-interim injunction is an exception, permissible only where delay would defeat the object and subject to the seven-day disposal safeguard in O39 r5A.

#### Rejection of plaint vs return of plaint 2021, 2015, 2011, 2009

##### AS ASKED IN THE EXAM

State the grounds for rejection of a plaint. Distinguish rejection of plaint from return of plaint. Against an order of rejection, where does the remedy lie?

**Rejection of plaint, Order VII Rule 11.** A plaint *shall* be rejected on the following grounds:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is **undervalued** and the plaintiff, on being required, fails to correct the valuation within the time fixed;
- (c) where the plaint is written on **insufficient stamp** and the plaintiff fails to supply the requisite stamp-paper within the time fixed; and
- (d) where the suit appears from the statement in the plaint to be **barred by any law**.

(The time fixed to correct valuation or supply stamp shall not exceed twenty-one days in BD.) "Barred by any law" includes a suit shown on the face of the plaint to be barred by limitation.

Two important points: (i) rejection on a *mixed question of law and fact* is not permissible, the bar must appear from the statement in the plaint itself (so the 2021 statement "plaint cannot be rejected on a mixed question of law and fact" is correct); and (ii) under **O7 r13**, rejection does not of its own force preclude the plaintiff from presenting a **fresh plaint** on the same cause of action.

**Return of plaint, Order VII Rule 10.** The plaint is *returned*, at any stage, to be presented to the proper Court when the Court in which it was filed has **no jurisdiction** (territorial, pecuniary or subject-matter) to try it. The Judge endorses the date of presentation and return, the name of the party presenting, and the reasons for return.

##### Distinction:

|        | Rejection (O7 r11)                                           | Return (O7 r10)               |
|--------|--------------------------------------------------------------|-------------------------------|
| Reason | Plaint defective / barred / undervalued / no cause of action | Wrong Court (no jurisdiction) |
| Nature | A <b>deemed decree</b> (defined in §2)                       | Not a decree, only an order   |



| Rejection (O7 r11) |                                                     | Return (O7 r10)                                   |
|--------------------|-----------------------------------------------------|---------------------------------------------------|
| Effect             | Suit ends in that Court; fresh plaint allowed (r13) | Refile the <i>same</i> plaint in the proper Court |

**Remedy against rejection.** Because an order rejecting a plaint under O7 r11 is a **decree** (§2), the remedy is an **appeal** under §96 to the appellate Court, as from any other decree. (Alternatively, since rejection does not bar a fresh suit, the plaintiff may, where the defect is curable, simply present a fresh plaint on the same cause of action under O7 r13.) An order *returning* a plaint under O7 r10 is, by contrast, an appealable **order** under §104 read with **O43 r1(a)**.

**Application (2011(b)).** A's plaint was rejected because he failed to correct an undervaluation within the time fixed, squarely O7 r11(b). His remedy is an appeal against the order of rejection under §96 (it being a deemed decree); alternatively, he may file a fresh, correctly-valued plaint on the same cause of action under O7 r13, subject to limitation.

### Pleadings and their contents (Order VI) 2023, 2020, 2012

#### AS ASKED IN THE EXAM

"Pleadings shall contain only material facts, not law or evidence." Discuss in the context of Order VI. What are the essentials of an ideal pleading, of a plaint, and of a written statement?

**Meaning.** Under **Order VI Rule 1**, "pleading" means a **plaint** or a **written statement**, the plaint being the plaintiff's statement of claim, the written statement the defendant's answer.

**The fundamental rule, material facts, not law or evidence (O6 r2).** A pleading must contain, and contain only, a *concise statement of the material facts* on which the party relies for its claim or defence, **not the evidence** by which those facts are to be proved, and not propositions of law. The pleading is to be divided into numbered paragraphs, and dates, sums and figures stated in figures. Thus the rule is **facta probanda** (the material facts that must be established) and not **facta probantia** (the evidence to establish them); law is for the Court to apply, not for the parties to plead.

#### Hallmarks of an ideal pleading:

- States only **material facts**, concise, not prolix;
- Omits **law** (legal inferences are for the Court) and **evidence**;
- Divided into **numbered paragraphs**; dates/sums/numbers in figures (O6 r2);
- Gives **particulars** where the case rests on fraud, misrepresentation, breach of trust, wilful default or undue influence (**O6 r4**);
- Is **signed** by the party and pleader (**O6 r14**) and **verified** at the foot, distinguishing what is verified on knowledge from what is on information and belief, with signature, date and place (**O6 r15**); and
- Avoids unnecessary, scandalous or embarrassing matter, which the Court may strike out under **O6 r16**.

**Essentials of a plaint (Order VII Rule 1)**, the plaint must contain:

- (a) the name of the Court; (b) the name, description and residence of the plaintiff; (c) the name of the defendant; (d) a statement where either is a minor or of unsound mind;
- (e) the **facts constituting the cause of action** and **when it arose**;
- (f) the facts showing the Court has **jurisdiction**;
- (g) the **relief** claimed;
- (h) where the plaintiff has allowed a set-off or relinquished part of his claim, the amount so allowed or relinquished; and
- (i) a statement of the **value** of the subject-matter for purposes of jurisdiction and court-fees.

The plaint must also be accompanied by the documents relied on (O7 r14) and comply with the valuation/relief rules (O7 rr2–7).

**Essentials of a written statement (Order VIII)**, the defendant's defence, filed within **thirty working days** of service (extendable for reasons up to **sixty working days**; failing which the Court may proceed ex parte) (**O8 r1**). It must:

- raise **specially** all matters showing the suit not maintainable or the transaction void/voidable, e.g. fraud, limitation, release, payment, illegality (**O8 r2**);
- **deny specifically** each allegation of fact not admitted, a general or evasive denial is not enough (**O8 rr3–4**), because under **O8 r5** every allegation not specifically denied is taken to be admitted;
- plead any **set-off** of an ascertained sum under **O8 r6**; and
- be signed and verified like any pleading.

### Remedies against an ex parte decree 2025

#### AS ASKED IN THE EXAM

A suit for declaration of title was disposed of by an ex parte decree against both the defendants. In such circumstances, what remedies are available to the defendants aggrieved?

**Exam structure (33 minutes):** 1) how the decree arises → 2) O9 r13 (grounds + 30 days + \$5 Limitation + the 2026 once-only proviso) → 3) O9 r13A (direct set-aside on cost) → 4) appeal §96 → 5) review §114/O47 r1 → 6) which remedy when. *Must state:* an appeal DOES lie from an ex parte decree; r13 relief is once per defendant.

**How an ex parte decree arises.** Where the defendant does not appear when the suit is called on for hearing despite due service of summons, the Court may proceed **ex parte** (Order IX) and pass a decree on the plaintiff's evidence alone. Such a decree is a valid decree unless and until set aside, but the Code gives the aggrieved defendant a set of concurrent remedies.

**(1) Application to set aside, Order IX Rule 13.** The primary remedy. The defendant may apply to the Court which passed the decree to set it aside on either of two grounds: (a) the **summons was not duly served**, or (b) he was **prevented by sufficient cause** from appearing when the suit was called on. If either is made out, the Court sets aside the decree **on such terms as to costs or otherwise as it thinks fit** and fixes a day for proceeding with the suit; where the decree is indivisible and against all defendants, it may be set aside against all. **By the proviso added by the 2025–26 CPC reform** (the Code of Civil Procedure (Amendment) Act, 2026, Act No. XXXVI of 2026), **no decree shall be set aside more than once under this rule at the instance of the same defendant**, the r13 indulgence is a one-time remedy per defendant.

- **Limitation: thirty days** from the date of the decree or, where the summons was not duly served, from the applicant's **knowledge** of the decree (**First Schedule, Article 164**, Limitation Act 1908). **\$5 of the Limitation Act applies** to such applications, so the delay itself may be condoned on sufficient cause.

**(2) Direct set-aside on payment of cost, Order IX Rule 13A.** A distinctively Bangladeshi shortcut: the Court may set the ex parte decree aside **directly, without taking any evidence of sufficient cause**, on payment of a cost **not exceeding three thousand taka**, provided the application (supported by affidavit) is made **within thirty days**, by a defendant who had **appeared and filed a written statement** before the ex parte decree, and the indulgence is available **not more than once** at the instance of the same defendant.

**(3) Appeal, §96.** An **appeal lies from an ex parte decree** under §96 (the sub-section expressly preserves it), because it is a decree like any other. In the appeal the defendant may attack the decree on the merits, that the plaintiff's own evidence did not justify it. (By contrast, **no appeal lies from a consent decree**.)

**(4) Review, §114 read with Order XLVII Rule 1.** Where the case falls within the review grounds, discovery of new and important matter or evidence which, after due diligence, was not within the applicant's knowledge; a mistake or error apparent on the face of the record; or any other sufficient reason, the defendant may apply for **review** to the very Court which passed the decree (notably where an appeal is allowed but has not been preferred).

**(5) Supplementary remedy (case-law, not the Code), suit to set aside the decree for fraud.** Where the decree was obtained by **fraud**, e.g. by suppression of summons and deliberately false service, the defendant may bring a **separate suit** to set it aside; a decree procured by fraud on the Court binds no one. This is a **supplementary, case-law remedy standing outside the four Code remedies above**, and is unaffected by the dismissal of an O9 r13 application on the merits of service.

**Election among remedies.** The remedies are cumulative in availability but distinct in scope: O9 r13 addresses **service and sufficient cause**, the appeal addresses **the merits**, review addresses **errors apparent**, and the fraud suit addresses **vitiating process**. The defendant may pursue the appeal and the set-aside application; but once the decree is set aside under O9 r13, the appeal against it becomes infructuous, and dismissal of the set-aside application does not preclude the appeal on merits.

**Conclusion.** The aggrieved defendants may: apply under **O9 r13** (non-service / sufficient cause, thirty days, \$5 condonation available, but only once per defendant under the 2026 proviso); apply under **O9 r13A** for a direct set-aside on cost up to Tk 3,000 (if they had appeared and filed a written statement); prefer an **appeal under §96**; or seek **review under §114/O47 r1**, and, as a supplementary case-law remedy, bring a **separate suit** where the decree was obtained by fraud.

## Parties to a suit, joinder, misjoinder and striking out / addition (Order I) 2025

### AS ASKED IN THE EXAM

Discuss the provision as to striking out and addition of parties at any stage of the suit by the Court, as enunciated in Rule 10 of Order I of the Code of Civil Procedure, 1908.

**Exam structure (33 minutes):** 1) who may be joined (O1 rr1, 3) → 2) necessary vs proper party → 3) r9 (suit not defeated) + r13 objections → 4) r10(1) wrong plaintiff → 5) r10(2) striking out/addition (the core) → 6) safeguards: consent, service, limitation (§22 Limitation Act). *Must state:* "at any stage", "suo motu", and that limitation against an added defendant runs from his joinder.

**Who may be joined.** Order I governs parties to a suit. Under **O1 r1**, all persons may be joined as **plaintiffs** in whom any right to relief arising out of the same act or transaction (or series) is alleged to exist, whether jointly, severally or in the alternative, where a **common question of law or fact** would arise if they sued separately. **O1 r3** is the mirror rule for **defendants**. A plaintiff in doubt as to which of several persons is liable may join them all so that the question of liability is settled in one suit (**O1 r7**), and one of numerous persons having the **same interest** may, with the Court's permission, sue or defend on behalf of all (**O1 r8**, the representative suit).

**Necessary and proper parties.** A **necessary party** is one without whom no effective decree can be passed at all; a **proper party** is one whose presence enables the Court to adjudicate the dispute completely and effectually, though a decree could be passed in his absence. The distinction drives Rule 10: the Court adds a party where his presence is *necessary* to enable it to adjudicate upon and settle *all* the questions involved in the suit.

**Misjoinder and non-joinder (O1 r9).** No suit is liable to be **defeated** by reason of the misjoinder or non-joinder of parties; the Court deals with the matter in controversy so far as regards the rights and interests of the parties actually before it. The settled qualification is that this saving does not extend to the non-joinder of a **necessary party**, without such a party an effective decree cannot be passed at all. Objections as to misjoinder or non-joinder must be taken at the **earliest possible opportunity**, at or before the settlement of issues, failing which they are deemed **waived (O1 r13)**.

**Striking out and addition, Order I Rule 10.** The rule has two limbs:

1. **Substitution of the wrong plaintiff (r10(1)).** Where a suit has been instituted in the name of the wrong person as plaintiff, or it is doubtful whether it is instituted in the name of the right plaintiff, the Court may **at any stage**, if satisfied the suit was brought through a **bona fide mistake** and that substitution is necessary for the determination of the real matter in dispute, order any other person to be substituted or added as plaintiff.
2. **Striking out / adding any party (r10(2)).** The Court may **at any stage of the proceedings**, on application of either party **or of its own motion (suo motu)**, and on such terms as appear just, order (a) that the name of any party **improperly joined**, whether as plaintiff or defendant, be **struck out**, and (b) that any person be **added** who ought to have been joined, or **whose presence is necessary** to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

**Safeguards attached to the rule:**

- No person shall be added as a **plaintiff** without his own **consent** (a person cannot be forced to litigate as plaintiff);
- Where a **defendant** is added, the plaint is amended, and amended copies of the summons and plaint are served on the new defendant; and
- For **limitation**, two provisions operate side by side and should be stated separately: under **Order I Rule 10 itself**, the proceedings as against a person added as defendant are **deemed to have begun only on the service of the summons** on him; and under **§22(1) of the Limitation Act, 1908**, where a new plaintiff or defendant is substituted or added, the suit is, as regards him, **deemed to have been instituted when he was so made a party**. The rule operates subject to §22: limitation against the added defendant is tested at his **joinder**, not at the original institution, so a claim already time-barred against him is not saved by the addition. (§22(2) excepts additions by assignment or devolution pendente lite, and a plaintiff re-arrayed as defendant or vice versa.)

**Conclusion.** Order I Rule 10 gives the Court a wide, curative power exercisable *at any stage*: to substitute a bona fide mistaken plaintiff, to strike out parties improperly joined, and to add any person whose presence is necessary for a complete and effectual adjudication, subject to the plaintiff's-consent rule, fresh service on an added defendant, and the limitation consequence that the suit runs against an added defendant only from his joinder.

#### ★ Res judicata vs res sub-judice 2017, 2014

##### AS ASKED IN THE EXAM

Distinguish between *res sub-judice* and *res judicata*, with illustrations and reference to the relevant provisions.

Both doctrines prevent the multiplicity of proceedings, but they operate at different stages and rest on different provisions.

**Res sub-judice (§10, Stay of suit).** Section 10 provides that no Court shall proceed with the trial of a suit in which the matter in issue is also *directly and substantially in issue* in a *previously instituted suit* between the same parties (or their representatives), litigating under the same title, where that earlier suit is pending in a competent Court. The object is to prevent two courts trying the same issue at the same time and the risk of conflicting decrees. It bars the *trial* (i.e. stays the later suit), it does **not** bar the institution of the second suit.

Conditions for §10:

- The matter in the later suit is directly and substantially in issue in the earlier suit;
- Both suits are between the same parties / their representatives, under the same title;
- The earlier suit is **pending** in a Court competent to grant the relief; and
- It was instituted **before** the suit sought to be stayed.

**Res judicata (§11, Bar of trial).** Section 11 provides that no Court shall *try* any suit or issue which was directly and substantially in issue in a *former suit* between the same parties (or those claiming under them) under the same title, which has been *heard and finally decided* by a competent Court. Here the former suit is over and decided; the rule prevents re-litigation of what has already been settled. Section 11 carries six Explanations, including Explanation IV (**constructive res judicata**, a matter that *might and ought* to have been raised as a ground of attack or defence is deemed to have been in issue).

Conditions for §11:

- Matter directly and substantially in issue in the former and present suit;
- Same parties / privies, same title;
- Former Court competent to try the present suit; and
- Matter heard and **finally decided**.

**Key distinctions:**

|                   | Res sub-judice (§10)      | Res judicata (§11)      |
|-------------------|---------------------------|-------------------------|
| Earlier suit      | Pending                   | Heard & finally decided |
| Effect            | Stays trial of later suit | Bars trial altogether   |
| Bars institution? | No                        | Yes (no fresh suit)     |

**Illustration.** A sues B in Court 1 for title to a plot. While that suit is pending, A files a second suit on the same title against B, §10 stays the second suit (sub-judice). If the first suit is finally decided in B's favour and A later sues again on the same title, §11 bars the fresh suit (res judicata).

### Amendment of pleadings 2015, 2010, 2008, 2007, 2006

#### AS ASKED IN THE EXAM

What is meant by amendment of pleadings? What conditions regulate the grant of amendment? Can there be an amendment of pleading after judgment is pronounced by the trial Court?

**Meaning.** Amendment of pleadings means altering, adding to, or correcting a plaint or written statement after it has been filed. The governing provision is **Order VI Rule 17**, which empowers the Court at any stage to allow either party to alter or amend its pleadings in such manner and on such terms as may be just, where the amendment is *necessary for the purpose of determining the real questions in controversy* between the parties.

**Object.** The power is liberally exercised so that the real dispute is adjudicated and multiplicity of litigation avoided. The guiding principle is that all amendments should be allowed which are necessary to determine the real controversy, provided they do not cause injustice or prejudice to the other side that cannot be compensated by costs.

#### Conditions regulating the grant:

- The amendment must be *necessary to determine the real question in controversy*;
- It should not work injustice to the other party that cannot be compensated in costs;
- It should not change the **fundamental nature and character** of the suit (e.g. converting a suit of one character into one of an entirely different character);
- It should not deprive the opposite party of an accrued right (such as a defence of limitation);
- Under the BD proviso to O6 r17, **no amendment shall be allowed after the trial has commenced** unless the Court is satisfied that, in spite of due diligence, the party could not have raised the matter before trial began; and
- An application made merely to delay carries a compensatory cost.

**Can it be allowed after judgment?** As a rule, no. Once judgment is pronounced the suit is at an end at that stage; an application under O6 r17 ordinarily cannot be entertained after judgment because amendment presupposes a pending lis. The proper course after judgment is appeal, review (§114), or, for a mere clerical/arithmetical slip, correction under §152, not amendment of pleadings. (An appellate Court, while the matter is alive before it on appeal, may in a fit case permit amendment, but that is the appellate forum, not the trial Court after its own judgment.)

**Illustration / application (2006(b)).** Where an application seeks to amend the plaint so as to *change the nature and character of the suit property* (and thereby the character of the suit itself), the defendant may object that the amendment is not "necessary to determine the real question in controversy," that it alters the fundamental nature of the suit, and, if the trial has begun, that it offends the BD proviso to O6 r17. On these grounds the Court should refuse the amendment.

### Inherent powers of the Court (§151) 2012, 2008

#### AS ASKED IN THE EXAM

What is meant by the inherent powers of the Court under §151 CPC? In what situations may the Court exercise them, and when can the trial Court exercise this power even though the remedy of appeal is available?

**The provision.** **Section 151** declares that nothing in the Code shall be deemed to limit or otherwise affect the **inherent power of the Court** to make such orders as may be **necessary for the ends of justice** or to **prevent abuse of the process of the Court**. The section does not *confer* a new power; it *saves* a power the Court already possesses by virtue of being a Court.

**Nature and scope.** Inherent power is **residual** and **supplementary**. It can be exercised only where the Code contains **no specific provision** governing the situation. Where a matter is expressly dealt with by a section or rule (for example, restitution under §144, review under §114, amendment of clerical errors under §152, or grant of injunction under Order XXXIX), the Court must act under that provision and cannot fall back on §151. The power cannot be used to override express provisions of the Code or to do what the Code prohibits.

#### Situations in which it is exercised (illustrative):

- to recall or set aside an order obtained by fraud or without jurisdiction;
- to consolidate suits, or to stay proceedings to prevent multiplicity and abuse;
- to restore a matter wrongly dismissed where no specific rule applies; and

- generally, to fill a gap and secure the ends of justice where the Code is silent.

**Even where appeal is available.** The existence of an alternative remedy such as appeal does **not** by itself oust §151. Where the order complained of is a **nullity**, e.g. passed without jurisdiction, in violation of natural justice, or obtained by fraud or abuse of process, the Court may act under its inherent power to undo the wrong, because the ends of justice require it and the abuse of the Court's own process must be prevented. The trial Court may thus invoke §151 in such exceptional cases notwithstanding that the party also had a right of appeal, the inherent power being directed to preventing abuse of process rather than substituting for the appellate remedy.

**Caution.** Section 151 is not a residuary right of appeal or review; it is invoked sparingly and only where no specific provision meets the case and justice positively demands intervention.

### Adjournment of hearing (Order XVII) 2022, 2021

#### AS ASKED IN THE EXAM

"The Court may at any stage adjourn the hearing of the suit." Elucidate in the light of Order XVII. How do the provisions on adjournment serve the speedy disposal of suits?

**The power (O17 r1).** Under **Order XVII Rule 1**, the Court may, if **sufficient cause** is shown, grant time to a party and adjourn the hearing of the suit at any stage, fixing a day for further hearing and (where appropriate) ordering costs. The discretion is judicial, to be exercised on sufficient cause shown, not as of right.

**The statutory caps, speedy-disposal mechanism.** To curb the delay that adjournments cause, the Code (the reforms introduced by Act No. 40 of 2003, since further tightened) places firm limits on adjournments:

- **Not more than four** adjournments may be granted **in a suit** (at the instance of either party) before the peremptory hearing. (*This per-suit ceiling was reduced from six to four by the Code of Civil Procedure (Amendment) Act, 2026, Act No. XXXVI of 2026; the current maximum is four.*)
- Beyond the permitted limit, an adjournment may be granted only on payment of a **cost of 200–1000 taka**;
- In no case may **more than three adjournments be granted to a party**, even on payment of cost;
- Once the **hearing of evidence has begun**, it continues **day to day** until all the witnesses in attendance are examined, unless an adjournment beyond the following day is necessary for reasons to be recorded.

**Consequence of default (O17 rr2–3).** If, on the adjourned day, the parties fail to appear, the Court may dispose of the suit in one of the modes under **Order IX** (e.g. dismissal where the plaintiff defaults, or proceeding ex parte) (**O17 r2**). If a party who was granted time fails to produce its evidence or do the necessary act, the Court may **decide the suit forthwith** notwithstanding the default (**O17 r3**). A suit dismissed / heard ex parte under these provisions revives only on payment of cost within the prescribed time.

**Role in speedy disposal.** By capping the number of adjournments (now four per suit; never more than three to a party), pricing further adjournments with cost, mandating **day-to-day** recording of evidence once it begins, and authorising the Court to dispose of the suit on default, Order XVII converts adjournment from a routine delaying device into a closely-controlled discretion. The result is that suits cannot be dragged out indefinitely, and the trial proceeds to conclusion within a structured timeframe, directly advancing the object of **speedy disposal**.

### Mediation under §89A 2022

#### AS ASKED IN THE EXAM

Describe the procedure for mediation under §89A. When does it arise? Apply it to the scenario where the learned Judge first appointed the parties' advocates as mediators (and fixed their fees), and on their failure himself attempted to mediate before fixing the suit for hearing, was there any deviation from §89A?

**When and what (§89A).** Section 89A provides that, except in suits under the Artha Rin Adalat Ain, **after the written statement is filed**, the Court shall, by adjourning the hearing, **mediate** the dispute itself or **refer** it for mediation by the engaged pleaders, the parties, or a mediator from the panel, to settle the dispute through compromise. Following the 2012 amendment the provision is **mandatory** ("shall"), not merely discretionary.

#### Procedure / timing:

- Mediation is taken up **after filing of the written statement** (by adjourning the hearing);
- Where the dispute is referred, the **parties inform the Court of the mediator within ten days**; failing which the **Court appoints a mediator from the panel within seven days**;
- The mediation must be **concluded within sixty days** (extendable by not more than thirty days);
- If a compromise is reached and reported, the Court passes a decree/order accordingly (concluded under Order XXIII), and **court fees are refunded** where the compromise is within sixty days of the certificate; and
- **No appeal or revision** lies against an order or decree based on a §89A settlement.

**Crucial procedural point, the Court's two roles are mutually exclusive in sequence.** Under §89A the Court has a choice at the outset: **either** to mediate the dispute *itself* **or** to *refer* it to the pleaders/parties/panel mediator. The scheme does not contemplate the Court



doing both in the same matter, having referred the dispute to mediators, the same Judge should not thereafter himself undertake to mediate it.

**Application to the 2022 scenario.** The learned Senior Civil Judge **referred** the dispute by appointing both parties' advocates as mediators (and fixing their fees). When they failed, the **same Judge then himself attempted to mediate**, and only on that failure fixed the suit for regular hearing. On the language of §89A:

- Fixing the mediators' fees **at the outset**: under §89A the mediator's fees / remuneration are ordinarily settled by agreement of the parties (or as the rules provide), not unilaterally pre-fixed by the Court at the very start, this is a **deviation**.
- The Judge **personally mediating after having referred** the matter to the advocate-mediators: this combines the two alternatives the section keeps separate and is a **deviation** from the prescribed procedure.

**Conclusion.** Yes, there was a deviation from §89A: the Court (i) fixed the mediators' fees itself at the outset rather than leaving remuneration to the agreed/prescribed mechanism, and (ii) after referring the dispute to the advocate-mediators, the same Judge himself again attempted mediation, whereas §89A offers the Court the alternatives of mediating itself *or* referring the dispute, not both in sequence.

**Receiver (Order XL)** 2022; and as a short note in 2010, 2007

#### AS ASKED IN THE EXAM

When may a receiver be appointed in a civil suit? What are the duties of a receiver?

**Appointment, Order XL Rule 1.** A receiver is a neutral, impartial person appointed by the Court to take charge of, preserve and manage property that is the subject-matter of litigation, pending the suit. Under **O40 r1**, where it appears to the Court to be **just and convenient**, the Court may, **before or after decree**, appoint a receiver of any property, remove any person from possession or custody of it, commit the property to the receiver, and confer on the receiver the owner's powers (to bring/defend suits, to realise, manage and protect the property, to collect rents and profits, and to execute documents). A receiver is appointed to **preserve the property** and prevent its waste/loss, and to secure the fruits of the litigation for whoever ultimately succeeds.

The "just and convenient" standard is exercised judicially. Typical occasions include: where the property is in danger of being dissipated; where there is a serious dispute as to possession and the property needs neutral management; or where neither party should be left in sole control pending decision. A limit is fixed by the rule itself: the Court **cannot remove from possession a person whom no party to the suit has a present right so to remove** (O40 r1(2)).

**Duties of a receiver, Order XL Rule 3.** Every receiver so appointed is bound:

- to **furnish security** (as the Court directs) duly to account for what he receives in respect of the property;
- to **submit his accounts** for such periods and in such form as the Court directs;
- to **pay** the amount due from him as the Court directs; and
- to be **responsible for any loss** occasioned to the property by his **wilful default or gross negligence**.

**Remuneration and enforcement.** The Court fixes the receiver's remuneration by general or special order (**O40 r2**). If the receiver fails to account or pay, or causes loss by wilful default or gross negligence, the Court may, under **O40 r4**, direct his property to be attached and sold to make good the amount or the loss (the balance, if any, paid to him). Where the property is revenue-paying land and its interests would be promoted by the Collector's management, the Court may, with the Collector's consent, appoint the **Collector** as receiver (**O40 r5**).

**Core CPC concepts, the "explain any four" set** 2012, 2010, 2009, 2007

#### AS ASKED IN THE EXAM

Explain any four of the following with reference to the Code of Civil Procedure, 1908: decree; ex parte decree; legal representative; cause of action; set-off; mesne profits; substituted service.

**Exam structure (33 minutes):** answer ONLY the number asked (usually four); per concept, definition → section → one line of application. *Must state:* decree = §2(2) (preliminary/final; deemed decrees); cause of action links to O7 r11(a) rejection; set-off needs an ASCERTAINED sum (O8 r6).

*(In the exam, answer only the number asked, usually four, but at full depth: definition, section, and one line of application each.)*

**Decree (§2(2)).** The **formal expression of an adjudication** which, so far as regards the Court expressing it, **conclusively determines the rights of the parties** with regard to all or any of the matters in controversy in the suit. It may be **preliminary** (further proceedings remain before the suit is completely disposed of), **final** (the adjudication completely disposes of the suit), or **partly both**. It is **deemed to include** the rejection of a plaint and the determination of any question within **§144** (restitution), but does **not** include (a) an adjudication appealable as an **appeal from an order**, or (b) an **order of dismissal for default**. The decree follows the judgment (the statement of the grounds, §2(9)) and is the executable instrument.

**Ex parte decree (Order IX).** A decree passed in the **absence of the defendant** where, despite due service of summons, he fails to appear at the hearing and the Court proceeds ex parte on the plaintiff's evidence. It is a **valid, binding decree unless set aside**; the

defendant's remedies are an application under **O9 r13** (non-service or sufficient cause; thirty days, Art 164), the direct set-aside on cost under **O9 r13A**, **appeal under §96**, review, and, where obtained by fraud, a separate suit.

**Legal representative (§2(11)).** A person who **in law represents the estate of a deceased person**, including any person who **intermeddles** with the estate, and, where a party sues or is sued in a representative character, the person on whom the estate devolves on that party's death. Consequences: a decree may be executed against the deceased judgment-debtor's legal representative, but he is **liable only to the extent of the deceased's property that has come to his hands** and has not been duly disposed of (**§50**); and on a party's death the right to sue survives by substitution of the legal representative under **Order XXII**, failing which the suit abates.

**Cause of action.** The Code does not define it; it means the **bundle of essential facts** which the plaintiff must allege and prove to entitle him to the relief claimed, every fact which it would be necessary to establish, if traversed, to support the right to judgment. Its footprint in the Code: the plaint must state the facts constituting the cause of action **and when it arose (O7 r1(e))**; a plaint disclosing **no cause of action is rejected (O7 r11(a))**; the suit must include the **whole of the claim** arising from that cause of action, any relinquished portion being barred afterwards (**O2 r2**); and territorial jurisdiction may rest on where the cause of action wholly or partly arises (**§20**).

**Set-off (Order VIII Rule 6).** In a suit for the **recovery of money**, the defendant may claim to set off against the plaintiff's demand an **ascertained sum of money legally recoverable** by him from the plaintiff, provided it does not exceed the **pecuniary limits of the Court's jurisdiction** and **both parties fill the same character** as in the plaintiff's suit. The claim is presented at the **first hearing** (later only by leave), and the written statement then has **the same effect as a plaint in a cross-suit**, enabling the Court to pronounce a final judgment both on the claim and the set-off (see O20 r19). An **unascertained** sum (e.g. unliquidated damages) cannot be the subject of legal set-off.

**Mesne profits (§2(12)).** Those profits which the person in **wrongful possession** of property **actually received or might with ordinary diligence have received, together with interest** on such profits, but **excluding profits due to improvements** made by the person in wrongful possession. They compensate the person entitled to possession for being kept out of it. In a suit for possession, the Court may decree possession with accrued mesne profits and direct an **inquiry as to future mesne profits** until delivery of possession, relinquishment with notice, or the expiry of **three years from the decree**, whichever occurs first (**O20 r12**).

**Substituted service (Order V Rule 20).** Where the Court is satisfied that the defendant is **keeping out of the way to avoid service**, or that service cannot be effected in the ordinary way, it orders service by **affixing a copy of the summons in some conspicuous place in the Court-house and at the house where the defendant last resided or carried on business**, or in such other manner as it thinks fit, including advertisement in a **daily newspaper circulating in the locality**. It is a **last-resort mode, not a first option**, and requires the Court's recorded satisfaction; once effected, it is **as effectual as personal service**, and the Court fixes the time for appearance.

## Restitution (§144) 2017, 2014

### AS ASKED IN THE EXAM

What do you mean by restitution under §144 of the Code of Civil Procedure, 1908? Explain with an example.

**Exam structure (33 minutes):** 1) meaning + the governing principle → 2) §144(1), who may apply, what the Court may order → 3) §144(2), application, not a fresh suit → 4) an illustration → 5) how it differs from an appeal/review. *Must state:* restitution is by **application** to the Court of first instance, not a separate suit; it applies only **where and in so far as** a decree is varied or reversed.

**Meaning and governing principle.** Restitution embodies the equitable principle that **a party cannot be allowed to retain a benefit obtained under a decree that has since been varied or reversed**, the law restores the parties, as far as possible, to the position they would have occupied but for that decree (or the part of it that has been undone). It operates strictly as a **consequence of variation or reversal on appeal, revision or review**; it presupposes no fresh wrong, only the undoing of an earlier one.

**§144(1), who may apply, what the Court may order.** Where, and **in so far as**, a decree is **varied or reversed**, the **Court of first instance** shall, on the application of any party entitled to benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, **place the parties in the position they would have occupied but for the decree (or the part of it) that has been varied or reversed**. For this purpose the Court may make any order that is **properly consequential** on the variation or reversal, including orders for the **refund of costs** and for **payment of interest, damages, compensation and mesne profits**.

**§144(2), application, not a fresh suit.** No **suit** may be instituted for restitution or other relief obtainable by application under §144(1). The remedy is deliberately kept **summary and within the same proceeding**: the party goes back to the **Court of first instance** by application, not to a fresh forum by plaint.

**Illustration.** A sues B and obtains a money decree for Tk 5 lac; B pays under threat of execution. B appeals, and the appellate Court reverses the decree, dismissing A's suit. B may apply under §144(1) to the Court of first instance for restitution, repayment of the Tk 5 lac with interest from the date of payment, rather than filing a fresh suit for money had and received.

**How it differs from an appeal or review.** An appeal or review challenges the **correctness** of a decree and may itself produce the variation or reversal; restitution comes **after** that variation or reversal and only restores what the now-undone part of the decree had disturbed. Restitution is thus consequential, not corrective, it presupposes a decree has already been varied or reversed by some other process, and simply undoes its practical effects.

**Conclusion.** §144 lets a party who has lost the benefit of a decree that is later varied or reversed recover, **by application to the Court of first instance** (never by a fresh suit), whatever restores them to their pre-decree position, including refund of costs, interest, damages,

compensation and mesne profits, to the extent the variation or reversal made such restoration necessary.

## **A · 15 Specific Relief Act, 1877**

### **The bare act — key provisions** Act I of 1877

#### **§8 · Recovery of specific immoveable property**

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.

#### **§9 · Suit by person dispossessed of immoveable property**

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such suit. Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof. No suit under this section shall be brought against the Government. No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

#### **§12 · Cases in which specific performance enforceable**

12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced-

- (a) when the act agreed to be done is in the performance, wholly or partly, of a trust;
- (b) when [there] exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done;
- (c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or
- (d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation - Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations [ \* \* \* ] of clause (b)- A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare china vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance. of clause (c)- A contracts with B to sell him a house for taka 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money. In consideration of being released from certain obligations imposed on it by its act of Incorporation, a railway-company contract with Z to make an archway through there railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced for his interest in its performance cannot be adequately compensated for by money: and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf. A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a share-holder, which cannot otherwise be procured. A contracts with B to paint a picture for B, who agrees to pay therefor taka 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the taka 1,000. "of clause (a)" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973). of clause (d)- A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

## §21 · Contracts not specifically enforceable (c)

21. The following contracts cannot be specifically enforced:–

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;
- (c) a contract the terms of which the Court cannot find with reasonable certainty;
- (d) a contract which is in its nature revocable;
- (e) a contract made by trustees either in excess of their powers or in breach of their trust;
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;
- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;
- (h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist. And, save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract other than an arbitration agreement to which the provisions of the said Act apply and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations to (a)– A contracts to sell, and B contracts to buy, a lakh of taka in the four per cent loan of the [\* \* \*] Government. A contracts to sell, and B contracts to buy, 40 chests of indigo at taka 1,000 per chest: In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of taka 10,000, and to honour A's drafts to that amount: The above contracts cannot be specifically enforced, for in the first and second both A and B, and in the third A, would be reimbursed by compensation in money. to (b)– A contracts to render personal service to B: A contracts to employ B on personal service: A, an author, contracts with B, a publisher, to complete a literary work: B cannot enforce specific performance of these contracts. A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed: By a charter-party entered into in Chittagong between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Karachi and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Karachi, and two-thirds on delivery of the cargo in London: A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease: A and B contract that, in consideration of annual advances to be made by A, B will for three years next after date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery: A contracts with B that, in consideration of taka 1,000 to be paid to him by B, he will paint a picture for B: A contracts with B to execute certain works which the Court cannot superintend: A contracts to supply B with all the goods of certain class which B may require: A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated", even if it is held to have so much certainty that compensation can be recovered for its breach: A contracts to marry B: The above contracts cannot be specifically enforced. to (c)– A, the owner of a refreshment-room, contracts, with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined. to (d)– A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership. to (e)– A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced. The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced. Two trustees, A and B, empowered to sell trust-property worth a lakh of taka contract to sell it to C for taka 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance. The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property- and in fact agree to pay an extravagant price therefore. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced. to (f)– A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced. to (g)– A contracts to let for twenty-one years to B the right to use such part of certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B. to (h)– A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

## §22 · Discretion as to decreeing specific performance

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal. The following are cases in which the Court may properly exercise a discretion not to decree specific performance:- I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

### Illustrations

- (a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.
  - (b) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.
  - (c) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.
  - (d) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.
- II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

### Illustrations

- (e) A is entitled to some land under his father's will on condition that if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.
  - (f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy encumbrances to which it is subject. The purchase-money is not nearly enough to discharge those encumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.
  - (g) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property.
  - (h) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.
  - (i) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.
  - (j) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.
  - (k) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.
- The following is a case in which the Court may properly exercise a discretion to decree specific performance: – III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration A sells land to a railway-company, who contract to execute certain works for his convenience. The company takes the land and uses it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.



### **§39 · When cancellation may be ordered**

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. If the instrument has been registered under the [Registration Act, 1908], the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

#### **Illustrations**

- (a) A, the owner of a ship by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.
- (b) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.
- (c) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st January, 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October, 1876, and procures the lease to be registered under the Indian Registration Act. B may obtain the cancellation of this lease.
- (d) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to taka 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills. instrument may

### **§40 · What instruments may be partially cancelled**

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustration A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

### **§41 · Power to require party for whom instrument is cancelled to make compensation**

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

### **§42 · Discretion of Court as to declaration of status or right. Bar to such declaration**

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation - A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

#### **Illustrations**

- (a) A is lawfully in possession of certain land. The inhabitants of a neighboring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.
- (b) A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children". No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.
- (c) A covenants that, if he should at any time be entitled to property exceeding one lakh of taka, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.
- (d) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.
- (e) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survives her may, in a suit against the alliance, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.
- (f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.
- (g) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.
- (h) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children, may, in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

#### **§43 · Effect of declaration**

43. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

#### **§52 · Preventive relief how granted**

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

#### **§53 · Temporary injunctions Perpetual injunctions**

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure. A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff. injunction

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#### §54 • Perpetual injunctions when granted

54. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act. When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):-

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation - For the purpose of this section a trademark is property.

#### Illustrations

- (a) A lets certain lands to B and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.
- (b) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.
- (c) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.
- (d) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.
- (e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.
- (f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.
- (g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the Sale.
- (h) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.
- (i) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.
- (j) A, the owner of two adjoining houses, lets, one to B and after-wards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.
- (k) A lets certain arable lands to B for purposes of husbandry, but without any express contracts as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue or an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.
- (l) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.
- (m) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.
- (n) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.
- (o) A, the owner of certain houses in Chittagong, becomes insolvent B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.
- (p) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over land. A may sue for an injunction to restrain them.
- (q) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.
- (r) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mines and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.
- (s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.
- (t) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.
- (u) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the

infringement.

(v) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x) A, a trades man, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property, in the letters, and may, sue for an injunction to restrain C from publishing them.

(z) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

### **§55 · Mandatory injunctions**

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations

(a) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the [Limitation Act, 1908] Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c) In the case put as illustration (i) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(d) In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed.

(e) A threaten to publish statement concerning B which would be punishable under Chapter XXI of the [Penal Code]. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g) In the cases put as illustrations (v) and (w) to section 54 and in illustrations (e) and (f) to this section, the Court may also order the copies produced by piracy, and the trade-marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

### **§56 · Injunction when refused**

56. An injunction cannot be granted- when refuse

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(c) to restrain persons from applying to any legislative body;

(d) to interfere with the public duties of any department of the Government, or with the sovereign acts of Foreign Government;

(e) to stay proceedings in any criminal matter;

(f) to prevent the breach of a contract the performance of which would not be specifically enforced;

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(h) to prevent a continuing breach in which the applicant has acquiesced;

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(k) where the applicant has no personal interest in the matter.

Illustrations

(a) A seeks an injunction to restrain his partner, B, from receiving the partner-ship-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles, designating them as "patent plumbago crucibles", though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called "Mexican Balm," stating that it is compounded of diverse rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

## §57 · Injunction to perform negative agreement

57. Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations

- (a) A contracts to sell to B for taka 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Chittagong. B pays A the taka 1,000 but A carries on the business in Chittagong. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Chittagong.
- (b) A contracts to sell to B the goodwill of a business. A then sets up a similar business close by B's shop and solicits his old- customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their goodwill may be withdrawn from B.
- (c) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere, B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.
- (d) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of the contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.
- (e) A contracts with B that, in consideration of taka 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.
- SCHEDULE.- [Repealed by the Amending Act, 1891 (Act No. XII of 1891).] \_\_\_\_\_

### Injunctions, temporary, perpetual and mandatory; when an injunction cannot be granted (§§52–57) 2025, 2022, 2009

#### AS ASKED IN THE EXAM

Distinguish temporary, perpetual and mandatory injunction. On what grounds can an injunction NOT be granted? Illustrate.

**Rule (§52).** Preventive relief is granted at the **discretion** of the court by injunction, **temporary or perpetual**.

**Temporary injunction (§53).** Continues until a specified time or until further order of the court; may be granted at **any stage** of a suit; and is **regulated by the Code of Civil Procedure** (Order 39), not by SR's substantive rules. It is interim, meant to preserve the status quo pending the suit.

**Perpetual injunction (§§53–54).** Can be granted **only by the decree at the hearing on the merits**; it perpetually enjoins the defendant from asserting a right or committing an act contrary to the plaintiff's rights. Under §54 it may issue to prevent the breach of an obligation existing in favour of the applicant, and, where the defendant invades or threatens the plaintiff's property right, where: (a) the defendant is the plaintiff's trustee; (b) there is no standard to ascertain the damage; (c) compensation would not afford adequate relief; (d) compensation probably cannot be got; or (e) the injunction is necessary to prevent **multiplicity of proceedings**. (A trademark is "property" for this section.)

**Mandatory injunction (§55).** Where, to prevent the breach of an obligation, it is necessary to **compel the performance of certain acts** which the court is capable of enforcing, the court may in its discretion grant an injunction both to prevent the breach AND to compel the requisite positive acts (e.g. to pull down an obstruction). It is thus **positive** in operation, unlike the prohibitory perpetual injunction.

**When an injunction CANNOT be granted (§56).** An injunction cannot be granted, among other cases:

- (a) to stay a judicial proceeding pending when the suit was instituted (unless to prevent multiplicity);
- (b) to stay proceedings in a **court not subordinate** to that from which the injunction is sought;
- (c) to restrain a person from applying to a **legislative body**;
- (d) to interfere with the **public duties of a Government department** or the sovereign acts of a foreign Government;
- (e) to stay proceedings in any **criminal** matter;
- (f) to prevent the breach of a contract whose performance **would not be specifically enforced**;
- (g) to prevent, on the ground of nuisance, an act not reasonably clear to become a nuisance;
- (h) to prevent a continuing breach the applicant has **acquiesced** in;
- (i) where **equally efficacious relief** can certainly be had by another usual mode (except in breach of trust);
- (j) where the applicant's own conduct disentitles him to the court's assistance;
- (k) where the applicant has **no personal interest** in the matter.

**Carve-out (§57).** Although §56(f) bars injunction the breach of a non-enforceable contract, where a contract contains an **affirmative agreement coupled with a negative agreement** not to do a certain act, the court's inability to compel SP of the affirmative part does not prevent it enforcing the **negative** part by injunction (provided the applicant has himself performed so far as binding on him).

**Illustration:** X agrees to sing at Y's theatre for 12 months and not to sing elsewhere. The court cannot compel X to sing (personal service, §21(b)), but it can **restrain X from singing for a rival** under §57. Conversely, the court cannot grant an injunction to stay a pending criminal proceeding (§56(e)).



**AS ASKED IN THE EXAM**

What is meant by specific performance? Which contracts may be specifically enforced (including the immoveable-property presumption) and which may not? In what situations will the court refuse a decree?

**Meaning.** Specific performance (SP) is the equitable remedy by which the court directs a party actually to perform the contract he is bound to perform, instead of awarding only money damages.

**Contracts that MAY be enforced (§12).** Subject to the Chapter, SP may, in the court's **discretion**, be enforced in four cases:

- (a) where the act is performance, wholly or partly, of a **trust**;
- (b) where **no standard exists** for ascertaining the actual damage caused by non-performance;
- (c) where **pecuniary compensation would not afford adequate relief**;
- (d) where pecuniary compensation **probably cannot be got**.

**The immoveable-property presumption (§12 Explanation).** The court **presumes** that breach of a contract to transfer **immoveable** property cannot be adequately relieved by money (so SP is available); and presumes that breach as to **moveable** property *can* be relieved by money (so SP is usually refused). Both presumptions are **rebuttable**.

*Illustration:* A contracts to sell B a specific plot. B may sue for SP, since damages are presumed inadequate for land. By contrast, a contract for ordinary goods is normally left to damages, unless the article is special (e.g. an heirloom or a unique painting), which rebuts the presumption.

**Contracts that may NOT be enforced (§21).** The principal categories:

- (a) where **compensation in money is an adequate** relief;
- (b) where the contract runs into **minute or numerous details**, or depends on the **personal qualifications or volition** of the parties, or is otherwise such that the court cannot enforce its material terms (this is the basis for "**personal-service contracts cannot be specifically enforced**");
- (c) where the terms **cannot be found with reasonable certainty**;
- (d) where the contract is in its nature **revocable**;
- (e) made by trustees in excess of their powers or in breach of trust;
- (f) made by or for a corporation/company in excess of its powers;
- (g) where performance involves a **continuous duty extending over a period longer than three years** from its date;
- (h) where a material part of the subject-matter, supposed to exist, had ceased to exist before the contract.
- **Arbitration bar:** save as provided by the Arbitration Act, an agreement to refer differences to arbitration is not specifically enforceable (though it bars a suit on the referred subject).

**When the court refuses a decree, the discretion (§22).** The jurisdiction is **discretionary**; the court is not bound to grant SP merely because it is lawful, though the discretion is sound, judicial and correctable on appeal. The court may **properly refuse** SP where:

- the contract gives the plaintiff an **unfair advantage** over the defendant (even without fraud or misrepresentation); or
- performance would cause the defendant **hardship he did not foresee**, while non-performance causes the plaintiff none.

Personal bars in **§24** (e.g. the plaintiff who cannot himself perform an essential term, or who has already elected and obtained satisfaction) also defeat the suit.

**Conclusion:** SP lies chiefly where damages are inadequate (presumed so for land); it does not lie for the categories in §21 (notably personal-service and revocable contracts), and remains refusible on the equitable grounds in §22.

**Declaratory suit (§§42–43); is a declaratory decree executable?** 2025, 2012, 2009

**AS ASKED IN THE EXAM**

What is a declaratory suit? Who may sue? Explain the "no further relief" proviso. Is a declaratory decree executable by filing an execution case?

**Rule (§42).** Any person entitled to any **legal character**, or to any **right as to property**, may sue any person **denying, or interested to deny**, his title to such character or right, and the court may **in its discretion** make a declaration that he is so entitled. Importantly, the plaintiff **need not ask for any further relief**.

**Who may sue:** A person who holds (and claims) a legal character (e.g. status, office) or a right as to property, against anyone who denies or is interested to deny that title. (Per the Explanation, a trustee of property is a "person interested to deny" a title adverse to a beneficiary not yet in existence.)

**The "no further relief" proviso (the bar).** Although the plaintiff *need not* ask further relief, the proviso bars the court from making a declaration **where the plaintiff, being \*able\* to seek further relief than a mere declaration of title, omits to do so**. So a bare declaratory suit fails where consequential relief was available and was left out.

*Application:* A plaintiff who is **out of possession** cannot sue merely for a declaration of title, he is *able* to (and must) also pray for **recovery of possession**; the declaration-only suit is hit by the proviso. Equally, where a forged/voidable deed clouds the title, the plaintiff who can pray for its **cancellation** should do so rather than seek a mere declaration. A plaintiff **in possession** facing only a denial of his right (e.g. a claimed right of way over his land) may properly sue for a declaration alone, since no further relief is available to him.

**Effect of the decree (§43).** A declaration binds **only** the parties to the suit, persons claiming through them, and (where a party is a trustee) the persons for whom he is trustee. It is *in personam* in reach, not a judgment against all the world.

#### Is a declaratory decree executable by an execution case?

**No.** A declaratory decree merely **declares** the parties' rights; it does not direct any party to do, pay or deliver anything. There being nothing to be executed, it **cannot be put into execution**, it is not "executory." If the declared right is later obstructed, the holder's remedy is a **fresh suit** for the appropriate consequential relief (e.g. possession or injunction), not an execution case on the declaratory decree.

**Conclusion:** A declaratory suit lies under §42 for a person whose legal character or property right is denied; the "no further relief" proviso forces him to add consequential relief whenever it is available; and the resulting decree, being merely declaratory, **is not executable** by an execution case.

#### Cancellation of an instrument (§§39–41) 2015, 2010, 2009, 2007, 2006...

##### AS ASKED IN THE EXAM

What is meant by cancellation of an instrument? Who can seek it and on what grounds? State the procedure for a registered instrument. Can a party to a forged/disputed document maintain a suit for a mere declaration that it is forged and not binding on him?

**Meaning and rule (§39).** Cancellation is the relief by which the court adjudges a written instrument void or voidable and orders it delivered up and cancelled, so that it cannot be used to injure the plaintiff.

**Who may sue:** Any person **against whom** a written instrument is *void or voidable*.

#### Grounds (the two requirements):

1. The written instrument is **void or voidable** as against the plaintiff; and
2. The plaintiff has a **reasonable apprehension** that the instrument, *if left outstanding, may cause him serious injury*.

If these are made out, the court **may in its discretion** adjudge the instrument void/voidable and order it delivered up and cancelled. (Illustration: A is fraudulently induced to insure an unseaworthy ship; the underwriter may obtain cancellation of the policy.)

**Partial cancellation (§40).** Where an instrument evidences different rights or obligations, the court may in a proper case cancel it **in part** and let it stand for the residue.

**Registered-instrument procedure (§39, second paragraph).** If the instrument has been registered under the **Registration Act, 1908**, the court shall **send a copy of its decree to the registering officer**, who notes the fact of cancellation on the copy of the instrument in his books.

**Compensation (§41).** On adjudging cancellation the court may require the party for whom the instrument is cancelled to make such compensation to the other as justice requires.

#### Can a \*party\* to the document sue for a mere declaration that it is forged?

Distinguish two situations:

- A person **against whom** the instrument operates (a *non-party*, or a party suing to be relieved of an instrument that is void/voidable *against him*) is the proper plaintiff for cancellation under §39, e.g. a forged deed casting a cloud on his rights.
- A person who claims **to be a party** to a deed but says it is *forged* is in difficulty: if it is genuinely forged, he is *not* truly a party to it at all, and what he really needs may be a declaration that he is not bound by it. A suit for a **mere declaration** that the document is forged and not binding runs into the **§42 proviso**, if the plaintiff is *able to seek further relief* (e.g. recovery of possession, or cancellation) and omits to do so, the bare declaratory suit is barred.

**Conclusion:** Cancellation under §39 lies for a person against whom a void/voidable written instrument creates a reasonable apprehension of serious injury; for a registered instrument the decree-copy must reach the registering officer (§39). A party who merely wants a declaration that a disputed/forged document is not binding should be advised to claim **consequential relief as well** (cancellation/possession), because a bare declaration is liable to be refused under the §42 proviso. \*\*

#### ★ Section 9, suit for recovery of possession; meeting a defendant's plea of purchased title 2017, 2014, 2011, 2010, 2008

##### AS ASKED IN THE EXAM

A person says he was dispossessed of his land and wants possession back. You file under **section 9**. What points will you ascertain from him and embody in the plaint? Is title relevant? In his written statement the defendant sets up that he has title as a purchaser from the real owner, how will you meet that plea? Contrast with a title-based recovery suit.

**Rule (§9).** Where any person is dispossessed *without his consent* of immoveable property *otherwise than in due course of law*, he (or any person claiming through him) may by suit recover possession, **notwithstanding any other title set up in such suit**. It is a summary possessory remedy that protects possession as such, the plaintiff need NOT prove title.

**Limitation.** The suit must be filed **within 6 months** of dispossession (the period is fixed by the Limitation Act, First Schedule Art. 3, running from the date of dispossession, not stated in §9 itself).

**Points to ascertain and embody in the plaint:**

- That the plaintiff was in **actual/peaceful prior possession** of the specific immoveable property (give schedule, boundaries, area).
- The **date and manner of dispossession**, and that it was *without his consent* and *otherwise than by due course of law* (i.e. not under any decree/legal process).
- That the suit is **within 6 months** of dispossession.
- A clear prayer for **recovery of khas possession** under §9; costs.

Title, chain of ownership and the merits of any rival claim are **deliberately left out**, they are irrelevant under §9 and may even invite the court to stray into a title enquiry, which §9 forbids.

**Meeting the defendant's plea of purchased title.** When the written statement pleads that the defendant has title as a purchaser from the real owner, the answer is short and decisive: **§9 excludes any enquiry into title**. The section expressly allows recovery "notwithstanding any other title that may be set up in such suit." So you submit that:

- The only issues are *prior possession* and *wrongful dispossession within 6 months*; the alleged purchase is legally irrelevant and cannot be tried in a §9 suit.
- Even a real owner cannot take the law into his own hands and dispossess a person in settled possession otherwise than by due course of law; he must sue.
- The defendant is not without remedy, §9 itself preserves his right to file a **separate suit to establish title and recover possession** (so his title plea belongs in that suit, not here).

**Contrast, title-based recovery (§8).** §8 lets a person *entitled to possession* recover specific immoveable property in the manner prescribed by the CPC. There title IS the issue, the limitation is long (12 years), and the decree is final and appealable. By contrast §9 is possessory and summary: **no appeal and no review** lie from a §9 order/decreed, the only remedy is **revision**, and it does not lie against the Government.

**Conclusion:** File under §9 within 6 months, plead only possession and wrongful dispossession, and meet the title plea by pointing out that title cannot be litigated in a §9 suit (leaving the defendant to his separate title suit).

## Part 3 — Court-Format Drafts (templates first)

The six template families come first in each law — master these skeletons; only the facts and grounds change. The remaining drafts follow for coverage.

### **F** Professional Ethics & Bar Council

#### Application to the Bar Council, misappropriation of the client's money

**When to use:** Where an advocate receives money on the client's behalf (here, a decreed sum of dower and maintenance in a family suit), deposits it into his own account, fails to inform the client, and applies part of it to his personal expenses, misappropriation of client funds.

To  
The Secretary,  
Bangladesh Bar Council,  
Bar Council Bhaban,  
Shahbag, Dhaka.

**Subject:** Complaint against Mr. X, Advocate, for professional misconduct under the Canons of Professional Conduct and Etiquette.

Dear Sir,

I, Ms. Y, respectfully submit that I filed a family suit and appointed Mr. X as my advocate to conduct and defend my case.

The facts in brief: in a family suit, the Hon'ble Court ordered the defendant to pay me Tk. 5,00,000/- as dower and maintenance. Mr. X, being my engaged lawyer, received the said amount from the defendant side. However, he deposited the money into his personal bank account and did not inform me about it for more than a month. On inquiry, Mr. X admitted that he had utilized a portion of the said amount for his personal chamber expenses and promised to return it soon.

The said advocate, by engaging in acts contrary to the prescribed rules, has undermined the professional and personal dignity of the entire legal community, thereby committing a punishable offence under the Canons of Professional Conduct and Etiquette.

The matter concerns acts in violation of Rule 6 of Chapter II of the Canons of Professional Conduct and Etiquette, framed under the Bangladesh Legal Practitioners and Bar Council Order, 1972, which amount to professional misconduct.

Therefore, it is most humbly prayed that appropriate legal action be taken against the accused advocate "X", and that the Bangladesh Bar Council be pleased to pass necessary orders, in accordance with the prescribed rules of conduct, to restrain such activities that are contrary to the ethical standards of the legal profession.

Yours sincerely  
Ms. 'Y'  
S/O:-----  
Address:-----

#### **Schedule**

Identity of accused advocate  
Mr. 'X'  
Membership No-

#### Petition of complaint, touting / employing clerks to procure clients

**When to use:** Where an advocate runs a "roaring" criminal practice by deputing paid clerks (at the railway station, bus stand, police station, etc.) to find clients and shares his fees with them for procuring cases, i.e. soliciting/touting and fee-sharing for case procurement.

To  
The Secretary  
Bangladesh Bar Council  
Shahbag, Dhaka

**Subject:** A complaint against Mr. 'A' for violation of professional conduct and etiquette.

Dear Sir,

Most humbly and respectfully I beg to state that the under-mentioned advocate Mr. 'A' has a roaring criminal practice in the subordinate court. He has engaged three clerks. One of them is deputed to the railway station, one at the bus stand and the other at the police station of the District Headquarter to find clients.

Mr. 'A' also shares his fees with the three clerks for procuring cases. A document of proof is annexed with this application.

That Mr. 'A' has infringed the Rules 3 and 8 of Chapter-1 of the Canons of Professional Conduct and Etiquette. And his act is to be considered as a professional misconduct.

For that, it is necessary to constitute a Tribunal under Article 33 of the Bangladesh Legal Practitioners and Bar Council Order, 1972 to take necessary steps against him to uphold the dignity and high standing of the law profession.

Wherefore, it is most humbly prayed that you would graciously be pleased to refer this matter to the Tribunal to take the necessary action.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

Address:-----

#### **Schedule**

Identity of accused advocate

Mr. 'A'

Membership No-

-----Bar Association

### **Petition of complaint, advertising / soliciting employment (signboard)**

**When to use:** Where an advocate advertises or solicits professional employment by means such as a large roadside signboard (here, displayed beside a commercial advertisement), contrary to the bar on advertising professional services.

To  
The Secretary  
Bangladesh Bar Council  
Shahbag, Dhaka

**Subject:** A complaint against Mr. 'A' for violation of professional conduct and etiquette.

Dear Sir,

Most humbly and respectfully I beg to state that, while traveling by road to Chittagong, I came across in a market place a big signboard of an advocate by the side of another signboard advertising Akiz Biri.

That I feel it is my duty to bring the matter to the notice of the Bar Council.

That Mr. 'A' has infringed the Rule 2 of Chapter-1 of the Canons of Professional Conduct and Etiquette. And his act is to be considered as a professional misconduct. Rule 2 of Chapter-1 states that an Advocate shall not solicit professional employment by advertisement or by any other means. This clause shall not be construed as prohibiting the publication or use of ordinary professional cards, name plates or conventional listings in directories, so long as the information contained therein is limited to professional and academic qualifications and public offices currently held, and does not contain any matter which savours of personal advertisement.

For that, it is necessary to constitute a Tribunal under Article 33 of the Bangladesh Legal Practitioners and Bar Council Order, 1972 to take necessary steps against him to uphold the dignity and high standing of the law profession.

Wherefore, it is most humbly prayed that you would graciously be pleased to refer this matter to the Tribunal to take the necessary action.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

### **Petition of complaint, meeting the judge ex parte / securing adjournment in chamber**

**When to use:** Where an advocate enters the Judge's chamber during court recess and secures an adjournment (or other order) in the absence of the opposing side, improper private communication with the court.

To  
The Secretary  
Bangladesh Bar Council  
Shahbag, Dhaka

**Subject:** A complaint against Mr. 'A' for violation of professional conduct and etiquette.

Dear Sir,

Most humbly and respectfully I beg to state that the under-mentioned advocate Mr. 'A' entered the chamber of a Judge during court recess and secured an adjournment in a case in the absence of the other side.

That Mr. 'A' used to follow this practice.



This practice is a breach of the Canon of Professional Conduct and Etiquette under the Rule 5 of Chapter-1 of the Canons of Professional Conduct and Etiquette. And his act is to be considered as a professional misconduct.

For that, it is necessary to constitute a Tribunal under Article 33 of the Bangladesh Legal Practitioners and Bar Council Order, 1972 to take necessary steps against him to uphold the dignity and high standing of the law profession.

Wherefore, it is most humbly prayed that you would graciously be pleased to refer this matter to the Tribunal to take the necessary action.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

Yours sincerely

Md. 'Y'

S/O:-----



### **Petition of complaint, extortion of fees, abandoning the brief, abusing the client**

**When to use:** Where an advocate, after accepting a brief and the agreed fee, demands a further sum mid-engagement, refuses to act or refund on non-payment, and abandons/throws away the brief and abuses the clients, breach of duty to the client and to the profession.

To  
The Secretary  
Bangladesh Bar Council  
Shahbag, Dhaka

**Subject:** A complaint against Mr. 'X' for violation of professional conduct and etiquette.

Dear Sir,

Most humbly and respectfully I beg to state that Mr. A and B were convicted by the Sessions Judge, Manikgonj u/s 302/34 of the Penal Code and sentenced to suffer rigorous imprisonment for life and to pay a fine of Tk. 10,000.00 each, in default, to suffer R.I. for a further period of 2 years.

That the relations of accused A and B approached Mr. X, an Advocate practising in the High Court Division of the Supreme Court of Bangladesh, to file an appeal in the High Court Division of the Supreme Court of Bangladesh. Mr. X received the brief with the clear stipulation that he would do everything in connection with the appeal at a total consideration of Tk. 50,000.00 (fifty thousand) only, which the relations of the convict paid him in cash in the same sitting. That Mr. X asked the relations of the convict to enquire about the appeal after one week. The certified copy of the impugned judgment, the Vokatnama executed by the convict at the trial Court Manikgonj District jail and the hand brief of the conducting Advocate at the trial Court were duly handed over to Mr. X.

Thereafter, one week later, the relations of the convict went to Mr. X at his chamber and wanted to know about the fate of the appeal, when Mr. X gave out that the case was a very complicated one and as such they were required to pay him another sum of Tk. 1,50,000.00 (one lac and fifty thousand) only, failing which he would not file any appeal nor would he refund any money. At this an altercation ensued.

That at one stage, Advocate X got furious and threw away the brief on the street and turned out the clients from his chamber after abusing them in filthy language.

That Mr. 'X' has infringed the Rule 1 of Chapter I, Rule 9 of Chapter II, and Rule 4 of Chapter 4 of the Canons of Professional Conduct and Etiquette. And his act is to be considered as a professional misconduct.

For that, it is necessary to constitute a Tribunal under Article 33 of the Bangladesh Legal Practitioners and Bar Council Order, 1972 to take necessary steps against him to uphold the dignity and high standing of the law profession.

Wherefore, it is most humbly prayed that you would graciously be pleased to refer this matter to the Tribunal to take the necessary action.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

Yours sincerely

Md. 'Y'

S/O:-----

Address:-----

### **Schedule**

Identity of accused advocate

Mr. 'X'

Membership No-

 **Application for bail in a non-bailable offence (§497)**

**When to use:** Accused in custody in a non-bailable case (here, under §304 of the Penal Code) applies to the Magistrate for release on bail under §497 CrPC.

In the court of Chief Judicial Magistrate, Dhaka

Source: Savar Thana, Case No:-5(2)2011

Under section 304 of P.C. 1860

**IN THE MATTER OF:**

An application of Bail under section 497 of the Code of Criminal Procedure, 1898.

AND

**IN THE MATTER OF:**

The State

-----Prosecution

VERSUS

Mr. Nazrul,

Son of -----

H# 32/1, Road No-10, Savar

PS: Savar, District: Dhaka

-----Accused-Petitioner  
(In Custody)

The humble petition on behalf of the above named Accused-Petitioner most respectfully-

**SHEWETH:**

1. That the prosecution case in short is that one Ayman Sadiq, uncle of victim, lodged a FIR to Savar Police station alleging that the accused Nazrul along with others 5 miscreants come to victim and claimed one lac taka.
2. That the accused Nazrul inflicted grievous hurt on victim on refusal of giving money. Victim has been taken to hospital immediately. But after 10 days victim died during the treatment.
3. That the uncle of victim lodged FIR to Savar Police Station on 05.02.2011.
4. That the Investigation officer arrested the accused on 07.02.2011 from Savar Bazar.
5. That the petitioner begs to prefer an application of bail before your learned court on following grounds:

**Grounds:**

- i. For that the accused petitioner is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
- ii. For that the petitioner is quite innocent and has become the victim of the circumstances.
- iii. For that the petitioner is in custody since 07.02.2011.
- iv. For that the prosecution case does not disclose any offence under section 304 of Penal Code, 1860 against the accused petitioner.
- v. For that the petitioner was sent to police remand for 2 days and there was no development in the remand report and nothing was recovered.
- vi. For that the accused petition is in custody for about 6 months and long detention is a good ground for bail.
- vii. For that the accused petitioner has got his permanent residence and there is no chance of abscond if he is released on bail.
- viii. For that the petitioner is the sole earner of his family and in his absence his family is passing the days miserably.
- ix. For that the case is a false and the accused petitioner falsely implicated in this case.
- x. For that the accused petitioner suffering a heart diseases for 4 years.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to enlarge the petitioner on bail on such conditions as your honour deems fit and proper in law.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

**Variant noted:** The corpus carries a near-identical \$497 bail application before the **Chief Judicial Magistrate, Jhenaidah**, accused **Mr. Kiran Chandra**, Jhenaidah Thana Case No:-5(2)2011, \$304 P.C. (arrested from Jhenaidah Sadar Hospital). Its grounds add: "VII. For that the petitioner is a prominent politician and very popular person of Jhenaidah; VIII. For that the petitioner is candidate of the Upazila Chairman Election and it is necessary to release him on bail for canvas; XI. For that there is no previous criminal record against the petitioner." Same prayer.

### **Naraji (protest) petition against the police report**

**When to use:** Where the informant is aggrieved by the investigating officer's report (final report / charge under a lesser or wrong section); the informant files a Naraji petition before the Magistrate praying that the police report be rejected and further investigation ordered.

In the Court of Chief Judicial Magistrate, Dhaka

Source: Savar Thana, Case No:-25(11)2023

Under sections 109/34/323/326 of P.C. 1860

**In The Matter Of:**

Naraji Petition against the Police Report.

AND

**In The Matter Of:**

A

-----Informant-Petitioner

VERSUS

1. Y

2. Z

-----Accused

The humble petition on behalf of the above named Petitioner most respectfully-

**SHEWETH:**

1. That the informant filed a First Information Report (FIR) at Savar Police Station on 03/11/2023 stating that X assaulted Y, which made Y extremely angry. Taking advantage of Y's anger, Z handed Y a knife with the intention of killing X. Using that knife, Y killed X at Rasulpur Bazar under Sadar Police Station on 03/11/2023 at 9 AM.
2. That after accepting the case, the Officer-in-Charge of the police station assigned an investigation officer to investigate the matter.
3. That the incident, the police charged Y and Z under Sections 109, 34, 323, and 326 of The Penal Code, 1860, and submitted a report.
4. That the investigating officer submitted the report without properly understanding the subject matter of the case and without inspecting the crime scene, the informant, being aggrieved and dissatisfied with the said report, hereby submits this protest petition on the following grounds:

**GROUND S:**

- i. For that the concerned investigation officer did not visit the crime scene and did not take the subject matter of the case into consideration.
- ii. For that X assaulted Y, which made Y extremely angry, leading to Y killing X with the assistance of Z. In this case, the investigation officer should have charged Z under Section 302/38 of the Penal Code, and Y's offense should have been charged under Section 304 of the Penal Code.
- iii. For that the informant will be able to prove the case based on witness testimonies and evidence.
- iv. For that other matters will be presented before the learned court during the hearing.

Wherefore, it is humbly prayed that your honour would graciously be pleased to issue an order to reject the submitted police report and issue an order for further investigation of the case for the ends of justice.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

### **Revision petition under §439A read with §435**

**When to use:** Where a party (here the complainant) is aggrieved by an order of the Magistrate (here an illegal discharge of the accused without framing charge), a criminal revision is filed before the Sessions Judge under §439A read with §435 CrPC to call for the record and set aside the impugned order.

In the Court of Metropolitan Sessions Judge, Dhaka

Criminal Revision Case No.\_\_\_\_of 2025

**In the matter of:**

Revision Petition under Section 439A read with Section 435 of the Code of Criminal Procedure, 1898

And

**In the matter of:**

Y

Complainant-Petitioner.

-Versus-

X

Accused-Opposite Party.

And

**In the matter of:**

Order dated----/----/2025 passed by the learned Metropolitan Magistrate, Court No. 1, Dhaka in C.R. case No. 45 of 2025 under sections 406/420 of the Penal Code, 1860.

The humble petition of the petitioner above-named most respectfully:

**SHEWETH:**

1. That the petitioner filed a complaint case under Sections 406 and 420 of the Penal Code, 1860 before the learned Magistrate alleging that the opposite party (X), an income tax lawyer, took money from the petitioner for paying income tax but misappropriated the same.
2. That during the hearing under Section 241A CrPC, the accused produced an audit report claiming that the income tax had been paid, but there is no direct evidence to prove that the accused utilized the money for the purpose intended at the relevant time.
3. That the learned Magistrate, relying solely on the audit report and without properly appreciating the complainant's evidence and without framing charge, discharged the accused illegally and arbitrarily.
4. That being aggrieved by and dissatisfied with the order dated----/----/2025 passed by the learned Metropolitan Magistrate, Court No. 1, Dhaka in C.R. case No. 45 of 2025 under sections 406/420 of the Penal Code, 1860, the petitioner filed this revision before this learned court on the following amongst others:

**GROUND:**

- I. For that the order of discharge is bad in law, perverse, and liable to be set aside as the audit report does not conclusively disprove criminal breach of trust or cheating at the relevant time.
- II. For that the learned Magistrate failed to consider that at the stage of Section 241A, only prima facie materials are required for framing of charge, not proof beyond reasonable doubt.
- III. For that the discharge order has caused miscarriage of justice by preventing the complainant from proving misappropriation and cheating through trial and cross-examination.
- IV. For that the Magistrate acted illegally in law by relying on extraneous material (audit report) without giving due opportunity to the complainant to challenge its authenticity.

Wherefore, it is most humbly prayed that Your Honour would graciously be pleased to:

- i) Set aside the order of discharge passed by the learned Magistrate;
- ii) Direct the learned Magistrate to frame charge against the accused under Sections 406/420 of the Penal Code;
- iii) Pass such other order(s) as may be deemed fit and proper.

And for this act of kindness, the petitioner as in duty bound shall ever pray.

 **Application for reduction of the amount of the bail bond (\$498)**

**When to use:** Bail has been granted but the Magistrate has fixed an excessive bail bond; the applicant moves the Court of Session (or High Court) under §498 CrPC to reduce the bond to a reasonable amount. Legal basis, under §498 CrPC the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive, and the High Court or Court of Session may direct that the bail required be reduced.

In the court of District and Session Judge, Dhaka

Misc.case No-----/2011

Source: Savar Thana, Case No:-5(2)2011

Under section 304 of P.C. 1860

**IN THE MATTER OF:**

An application for reduction of the amount of the bail bond to a reasonable limit, under section 498 of the Code of Criminal Procedure.

AND

**IN THE MATTER OF:**

The State

-----Prosecution

VERSUS

Mr. Nazrul,

Son of -----

H# 32/1, Road No-10, Savar

P.S: Savar, District: Dhaka

-----Petitioner

**IN THE MATTER OF:**

The order dated 10.07.2011 passed by the learned Chief Judicial Magistrate, Dhaka, in Savar Thana Case No:-05(02)2011, imposed a bail bond of an excessive amount.

The humble petition on behalf of the above named Petitioner most respectfully-

**SHEWETH**

1. That the petitioner is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
2. That the petitioner filed a bail petition before the learned Chief Judicial Magistrate.
3. That the learned Chief Judicial Magistrate was pleased to grant bail of the petitioner but he imposed a bail bond of an excessive amount in Savar Thana Case No:-05(02)2011, on 10.07.2011.
4. That the petitioner is a poor man and he has no sufficient money.
5. That the learned court imposed a bail bond of an excessive amount.
6. That the petitioner need to be reduced of amount of the bail bond from one lac taka which is unreasonable.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to reduce the amount of the bail bond and to fix a reasonable amount of the bond, for the ends of justice.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

 **Criminal Miscellaneous Case, bail under §498 (after Magistrate's rejection)**

**When to use:** When the Magistrate (here, Chief Judicial Magistrate) rejects the bail petition, a fresh bail application is moved before the Court of Session under §498 CrPC, e.g. where a Chief Judicial Magistrate at Dhaka rejects bail, the fresh petition is filed before the District & Sessions Judge, Dhaka.

In the court of Learned Session Judge, Dhaka

Criminal Misc.case No-----/2011

Source: Savar Thana, Case No:-5(2)2011

Under section 304 of P.C. 1860

**IN THE MATTER OF:**

An application under section 498 of the Code of Criminal Procedure, 1898.

AND

**IN THE MATTER OF:**

The State

-----Prosecution

VERSUS

Mr. Nazrul,

Son of -----

H# 32/1, Road No-10, Savar



**IN THE MATTER OF:**

The order dated 10.07.2011 passed by the learned Chief Judicial Magistrate, Dhaka, in Savar Thana Case No:-05(02)2011, rejecting the bail of the accused petitioner.

The humble petition on behalf of the above named Accused-Petitioner most respectfully-

**S H E W E T H**

1. That the prosecution case in short is that one Ayman Sadiq, uncle of victim lodged a FIR to Savar Police station alleging that the accused Nazrul along with others 5 miscreants come to victim and claimed one lac taka.
2. That the accused Nazrul inflicted grievous hurt on victim on refusal of giving money. Victim has been taken to hospital immediately. But after 10 days victim died during the treatment.
3. That the uncle of victim lodged FIR to Savar Police Station on 05.02.2011.
4. That the Investigation officer arrested the accused on 07.02.2011 from Savar Bazar.
5. That the petitioner filed an application of bail before learned Chief Judicial Magistrate Court but learned court refused to grant the bail petition.
6. That the petitioner being aggrieved by and dissatisfied with the order dated 10.07.2011 passed by the learned Chief Judicial Magistrate, Dhaka, in Savar Thana Case No:-05(02)2011, rejecting the bail of the accused and petitioner begs to prefer an application of bail before your learned court on following grounds:

**Grounds:**

- I. For that the accused petitioner is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
- II. For that the petitioner is quite innocent and has become the victim of the circumstances.
- III. For that the petitioner is in custody since 07.02.2011.
- IV. For that the prosecution case does not disclose any offence under section 304 of Penal Code, 1860 against the accused petitioner.
- V. For that the petitioner was sent to police remand for 2 days and there was no development in the remand report and nothing was recovered.
- VI. For that the accused petition is in custody for about 6 months and long detention is a good ground for bail.
- VII. For that the accused petitioner has got his permanent residence and there is no chance of abscond if he is released on bail.
- VIII. For that the petitioner is the sole earner of his family and in his absence his family is passing the days miserably.
- IX. For that the case is a false and the accused petitioner falsely implicated in this case.
- X. For that the accused petitioner suffering a heart diseases for 4 years.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to enlarge the petitioner on bail on such conditions as your honour deems fit and proper in law.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

**Variant noted:** A parallel §498 Sessions bail draft uses the **Dhanmondi** thana facts, Dhanmondi Thana Case No:-05(02)2011, rejection order of the **Chief Metropolitan Magistrate, Dhaka**, with the injury pleaded as "chopping of his left thumb by dangerous weapon on refusal of giving money" (accused arrested from Dhanmondi Lake). Grounds and prayer are otherwise identical to the above.

 **Application for bail by surrender in a bailable offence (§496)**

**When to use:** Where the offence is bailable (here §471 of the Penal Code, using a forged document as genuine), the accused surrenders before the Magistrate and applies for bail as of right under §496 CrPC.

In the Court of Chief Judicial Magistrate Court, Dhaka

Source: C.R. Case No-20/2020

Under section 471 of P.C. 1860

**IN THE MATTER OF:**

An application of Bail under section 496 of the Code of Criminal Procedure, 1898 by surrender.

AND

**IN THE MATTER OF:**

The State

-----Prosecution

VERSUS

Mr. T

Son of -----

Vill..... Post Office:...

P/S. Sultanapur, District-Dhaka

-----Accused-Petitioner

The humble petition on behalf of the above named Accused-Petitioner most respectfully-

**SHEWETH**

1. That the prosecution case in short is that while T was registering a land in Sultanpur Subregistry office by submitting a forged copy of mutation, Subregistrar came to understand that the paper of mutation was forged.
2. That the Sub Register filed a complaint against T under section 471 of the Penal Code 1860 to the Magistrate Court concerned as per section 195(c) of the Code of Criminal Procedure 1898.
3. That the magistrate issued a warrant of arrest against T accordingly.
4. For that the petitioner is quite innocent and has become the victim of the circumstances.
5. For that the accused petitioner has got his permanent residence and there is no chance of abscond if he is released on bail.
6. For that the petitioner is the sole earner of his family and in his absence his family is passing the days miserably.
7. For that, there is no previous criminal record against the petitioner.
8. For that the case is a false and the accused petitioner falsely implicated in this case.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to enlarge the petitioner on bail on such conditions as your honour deems fit and proper in law.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

 **Petition under §145 (apprehended breach of peace over land / fishery)**

**When to use:** Where there is a dispute over immovable property (here a fishery) likely to cause a breach of the peace; the aggrieved party moves the Magistrate to draw up proceedings under §145 CrPC, inquire into actual possession, and order recovery of possession.

In the court of District Magistrate, Jhenaidah.

Petition Case No----- of 2001

**In The Matter Of:**

An application under section 145 of the Code of Criminal Procedure, 1898.

And

**In The Matter Of:**

Mr. Kalimuddin

Son of ----

H# 32/1, Road No-10, Modern Para

P.S: Jhenaidah, District: Jhenaidah

-----1st Party

VERSUS

Mr. Ashraf

Son of-----

H# 35/1, Road No-10, Modern Para

P.S: Jhenaidah, District: Jhenaidah

Name of the Witnesses:

1. The petitioner.
2. Md. Rakib Uddin

Son of-----

45/1, Road No-10, Modern Para

P.S: Jhenaidah, District: Jhenaidah

3. Md. Hasan

Son of-----

H# 44, Road No-10, Modern Para

P.S: Jhenaidah, District: Jhenaidah

Date of Occurrence: 30th November, 2001

Time of Occurrence: At 4 pm

Place of Occurrence: 10 No Road, Modern Para, Jhenaidah

The humble petition on behalf of the above named petitioner most respectfully-

### **SHWETH:**

1. That the petitioner is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
2. That on the other hand the 2nd party is a miscreant, and law avoiding citizen of Bangladesh. He has a great influence over the disputed area because he is a member of famous political party.
3. That the 1st party and 2nd party are of the same localities and the residence of the 1st party is near to the 2nd party.
4. That the 1st party got the fishery from his uncle on 01.01.1990.
5. That the 1st party had actual possession over the disputed matter for 10 years and enjoying such property without any interruption.
6. That on 30th November, 2001 at 4 pm the 2nd party arrived with some other dangerous persons into the disputed property and claimed the ownership of the property. And at one stage he dispossessed the 1st party from the disputed property.
7. That the 1st party went to Officer in Charge of Jhenaidah Sadar Police station and reported the matter to the officer in charge, who advised the 1st party to take shelter of the court.
8. That the 2nd party had no ownership over the disputed property.
9. That the 2nd party illegally dispossessed 1st party from the disputed property. For this reason the petition is preferred before the learned Magistrate Court to take necessary legal action.
10. That there is a great chance of breach of peace at any time by the 2nd party.
11. That the 1st party has submitted all kinds of documents and papers for adjudication of the petition.
12. That the plaintiff will suffer irreparable loss, if the court does not pass an order in favour of petitioner.
13. That the learned court has a jurisdiction to try this petition.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to draw up proceedings under section 145 of the Code of Criminal Procedure, 1898 and hold inquiry in accordance with law to ascertain the fact of actual possession of the fishery by issuing notice to the 2nd party, and order for recovery of possession of the fishery.

And pass such other order or orders as to your honour deems fit and proper.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

### **Application for discharge under §265C**

**When to use:** At the stage of framing of charge in a Sessions trial, the accused applies under §265C CrPC to be discharged on the ground that, on consideration of the record and documents, no prima facie case is made out against him.

In The Court of Metropolitan Session Judge, Dhaka

Metropolitan Session Case No. 12 of 2020

Under Ss. 326, 341, 379, 386 of the Penal Code, 1860

### **In The Matter Of:**

The State

-----Prosecution

Vs.

Y and Z

-----Accused-Petitioner

**In The Matter Of:**

An application of the discharge of the petitioner under section 265C of the Code of Criminal Procedure, 1898.

The humble petition of the petitioner most respectfully-

**SHEWETH:**

1. That the accused-petitioner was arrested by police and was taken in to police remand. From that police remand nothing was recovered.
2. That there was no confessional statement of accused-petitioner under section 164 of the Code of Criminal Procedure, 1898.
3. That the evidentiary materials on record do not make out a prima facie case against the accused.
4. That all the witnesses mentioned in the police report are examined under section 161 and they do not disclose any allegation against the accused-petitioner.
5. That the principle accused made a confessional statement under section 164 of the Code of Criminal Procedure, 1898 and there is no mention of the name of accused petitioner.
6. That the accused-petitioner was not in Dhaka at the time of occurrence. He was on duty as a Night Guard at Bashkali High School, Chattragram.
7. That due to aforesaid reasons, the humble petitioner begs to move this application to discharge the accused petitioner from the allegation as brought against him in the charge sheet.

Wherefore, it is humbly prayed that your honor would be kind enough to discharge the petitioner from the baseless allegations as brought against him for the ends of justice.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

** Petition of complaint to a Magistrate (§200)**

**When to use:** Where the police refuse to record/accept an FIR, the aggrieved person files a petition of complaint directly before the Magistrate (cognizance on complaint, §200 CrPC), praying that the court take cognizance and issue process / warrant of arrest against the accused.

In the court of Chief Judicial Magistrate, Sathkhira

C.R. Case No----- of 2023

Under section 326/387/392/394/34 of P.C. 1860

**IN THE MATTER OF:**

X

Son of -----

Village: ----PS: ---- District: -----

-----Complainant

VERSUS

1. Y

Son of -----

2. Z

Son of -----

3. N

Son of -----

4. M

Son of -----

All are of Village: ----PS: ---- District: -----

-----Accused

Name of the Witnesses:

1. The petitioner.

2. Md. Belal

3. Md. Mannan

All are Son of -----

All are of Village: ----PS: ---- District: -----

Date of Occurrence: 15.02.2023

Time of Occurrence: At 10 AM

Place of Occurrence: Rajapur village Market under Sadar Police Station in Satkhira district.

The humble petition on behalf of the above named complainant most respectfully-

### **SHEWETH**

1. That the complainant is the permanent citizen of Bangladesh, who is religious, educated and law abiding people also.
2. That on the other hand the accused is a miscreant, and law avoiding citizen of Bangladesh. He has a great influence over the disputed area because he is a member of famous political party.
3. That on 15.02.2023, at 10:00 AM, the complainant, X, along with his friends P, Q, and R, were on their way to the local market. When they reached a place called Rajapur under Sadar Police Station, Y and Z stopped them and demanded a ransom of 30,000 Taka and threatened them with death.
4. That thereafter during the threat, the accused persons N, Y, and Z started punching the complainant X indiscriminately. M, who was near a roadside tea shop, fetched boiling water and poured it over X's body. X was seriously injured.
5. That the complainant X, after receiving treatment for 21 days at Satkhira Sadar Hospital and recovering somewhat, went to file a case at the Sadar Police Station, but the police refused to accept the case.
6. That the learned court has a jurisdiction to try this petition.
7. That the accused have committed an offense that is punishable under the prevailing law, it is essential to issue an arrest warrant against the accused, bring them to justice, and punishment. Therefore, this case has been filed in the honorable court.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to take cognizance of the offence and issue warrant of arrest against the accused and to punish the accused and or pass such other order or orders as to your honour deems fit and proper in law.

And for this act of kindness, the complainant, as in duty bound shall ever pray.

**Variant noted:** A second petition of complaint is drafted before the **Chief Judicial Magistrate, Dhaka** (C.R. Case No----- of 2004, under §326 P.C.), complainant **Mr. Ratan**, accused **Mr. Karim** (with Rahamat and Abed), occurrence 20.10.2004 at 10 No Road, Savar. Facts: a palm-tree boundary-possession dispute (20 years' possession) where the accused, on resistance, inflicted grievous hurt by "chopping of my left thumb by dangerous weapon," and the Officer-in-Charge of Savar Police Station refused to record the FIR. Same prayer (take cognizance / issue warrant of arrest).

## **A Code of Civil Procedure, 1908**

### **Application for temporary injunction**

**When to use:** Where the plaintiff is in possession and the defendant (a land grabber) threatens to dispossess him pending the suit, application under Order 39 Rule 1 CPC to restrain the defendant, on prima-facie case, balance of convenience and irreparable injury.

In the court of Senior Civil Judge, 1st Court, Feni

Title Suit No 45 of 2017

Mr. Kamal

-----Plaintiff-Petitioner

VERSUS

Mr. Jamal

-----Defendant-Opposite party

### **In the matter of**

An application for Temporary Injunction Rule-1, Order-39 of the Code of Civil Procedure, 1908.

The humble petition on behalf of the above named Plaintiff-Petitioner most respectfully-

### **SHEWETH**

1. That the plaintiff-petitioner is the permanent citizen of Bangladesh who is religious educated and law abiding people also.
2. That on the other hand the defendant is a miscreant, and law avoiding citizen of Bangladesh.



3. That the Plaintiff 'A' owned and possessed a piece of land by way of inheritance since the death of his father on 26.05.1998.
4. That the defendant 'B', a local notorious land grabber is trying to dispossess plaintiff from the land.
5. That the dependant plead that uncle of plaintiff, gifted the disputed land to him, which is absolutely false.
6. That the defendant claim ownership over the disputed land.
7. That the schedule property originally belonged to plaintiff's father and his name was correctly recorded in C.S. Khatian.
8. That thereafter plaintiff inherit the schedule property after his father death.
9. That the plaintiff enjoying the property since 26.05.1998 without interruption.
10. That the defendant claimed the title over the land and threatened to dispossess the plaintiff from the disputed land.
11. That the plaintiff is bound to suffer irreparable loss and injury if the temporary injunction is not granted at once.
12. That the case is prima facie and arguable.
13. That the activities of the defendant are objectionable and unlawful.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to grant the application for Temporary Injunction in favour of plaintiff petitioner and grant any other relief or reliefs to which the plaintiff is entitled to in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

#### Schedule

District-----

Mouza-----

Plot No-----

Police station-----

Khatian-----

Measures of Land-----

Butted & Bounded by

On the north by: Tea stall

On the south by: Rahim Bepari

On the east by: Primary school Building

On the west by: Masjid

#### **AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

.....  
Signature of the Deponent

The deponent is known to  
me and identified by me

.....  
Advocate

#### **Written objection (objecting to setting aside rejection of a temporary injunction)**

**When to use:** For the defendant, to oppose the plaintiff's s.151 CPC application to set aside an order that had earlier rejected (for default) the plaintiff's temporary-injunction application, argue alternative remedy (appeal) exists and the s.151 route is not maintainable.

In the court of Senior Civil Judge, 1st Court, Feni

Title Suit No-110 of 2022

A

-----Plaintiff

VERSUS

B

-----Defendant-Petitioners

**In The Matter Of:**

Objection against the application for setting aside the order of rejection of the temporary injunction under Section 151 of the Code of Civil Procedure, 1908.

The humble petition on behalf of the above named Defendant-Petitioner most respectfully-

### **SHEWETH**

1. The petitioner is an innocent person and law abiding citizen.
2. That the Plaintiff 'A' filed suit on 01/02/2022, against his neighbor 'B' in this Learned Court for the declaration of title 'A', which is currently pending.
3. That the plaintiff filed an application for a temporary injunction on 01/02/2022 under R-1, Order-39 of the Code of Civil Procedure, 1908.
4. That on the said date fixed for hearing, neither the plaintiff nor his engaged lawyer appeared before this Hon'ble Court, and as a result, the Hon'ble Court rightly rejected the said application for default.
5. That thereafter few days later, the plaintiff submitted an application under Section 151 of The Code of Civil Procedure, 1908, stating that he could not appear in court on the scheduled date due to illness and requested to set aside the order of dismissal of the temporary injunction application.
6. That the plaintiff's application for a temporary injunction is untenable and liable to be dismissed from a legal standpoint.
7. That the plaintiff's suit and the details of the application for a temporary injunction, including the allegations, are entirely false, fabricated, and baseless.
8. That the original suit is dismissible, the application for a temporary injunction must also be denied.
9. That the rejection of the temporary injunction application is appealable, the application filed under Section 151 is dismissible because alternative remedies are available under the law.
10. That after considering the balance of convenience and inconvenience, it favors the applicant and is against the opposing party.
11. That the matter filed by the applicant is prima facie substantiated.
12. That the other arguments of the applicant's side will be presented before the learned court during the hearing.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to reject the application for setting aside the order of rejection of the temporary injunction under Section 151 of the Code of Civil Procedure, 1908 for the ends of justice. And to pass such other order as deemed fit and proper.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

### **AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

.....  
Signature of the Deponent

The deponent is known to  
me and identified by me

.....  
Advocate

### **Petition for rejection of plaint (suit against government / non-maintainable)**

**When to use:** For the defendant, when the plaint discloses no cause of action or is barred by law (e.g. a dismissed government servant whose remedy lies before the Administrative Tribunal, not the civil court), petition under Order 7 Rule 11 CPC to reject the plaint.

In the court of Senior Civil Judge, 1st Court, Dhaka  
Title Suit No-57 of 2017

Mr. Shawkat

-----Plaintiff

VERSUS

**In The Matter Of:**

A petition for Rejection of Plaintiff under Rule-11, Order-7 of the Code of Civil Procedure, 1908.

The humble petition on behalf of the above named Defendant-Petitioner most respectfully-

**SHWETH**

1. That the plaintiff instituted the suit on 01.02.2017 for declaration under section 42 of the Specific Relief Act, 1877 against defendant petitioner in your learned court.
2. That the suit is pending in this Hon'ble court and today is fixed for submitting written statement on behalf of the defendant.
3. That the plaintiff was a teacher of a Dhaka Government High School and dismissed from his service by the Government order dated on 01.01.2017.
4. That the plaintiff filed a suit for declaration against the order passed by defendant on 01.01.2017 is illegal and not binding upon him.
5. That since the plaintiff is a government service holder, the suit is not maintainable in your learned court.
6. That the plaintiff could bring the suit in the Administrative Tribunal under section of the Administrative Tribunal Act, 1980.
7. That the plaintiff is barred by law and therefore this plaintiff liable to be rejected.
8. That the present petition is bona fide and for ends of justice.
9. That the petitioner would be prejudiced if the prayer for rejection of plaintiff is rejected. For ends of justice this petition be allowed.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to allow the petition for Rejection of Plaintiff for the ends of justice. And to pass such other order as deemed fit and proper.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

**AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
**Signature of the Deponent**

The deponent is known to  
me and identified by me

-----  
Advocate

** Petition for amendment of plaintiff**

**When to use:** When your own client (the plaintiff) needs to correct mistakes or insert omitted facts in an already-filed plaintiff, drafted as an application under Order 6 Rule 17 CPC. A very common "draft a petition for amendment of plaintiff" question.

In The Court of Senior Civil Judge, 1st Court, Dhaka

Title Suit No-57 of 2017

Mr. Shawkat

-----Plaintiff-Petitioner

VERSUS

Mr. Jamal Uddin

-----Defendant-Opposite party

**In The Matter Of:**

A petition for amendment of Plaintiff under Rule-17, Order-6 of the Code of Civil Procedure, 1908.

The humble petition on behalf of the above named Plaintiff-Petitioner most respectfully-

### **SHEWETH**

1. That the plaintiff petitioner instituted the suit on 01.02.2017 for declaration under section 42 of the Specific Relief Act, 1877 against the defendant.
2. That the suit is pending in this Hon'ble court and is fixed for hearing on 01.05.2017.
3. That the learned advocate of the plaintiff petitioner in his honest endeavor to give immediate relief to his client he drafted the plaint in a hurry and as such some mistakes have been committed in the plaint and several omissions were made which need to be corrected and inserted by way of amending the plaint.
4. That the amendment sought for as follows:
  - a) In page No.2, in line 4 of the plaint the digit "12" shall be substituted by the digit "21".
  - b) After paragraph No.5 of the plaint a new paragraph as the following shall be inserted paragraph No. "5A" the plaintiff became owner of the suit land in 1987.
  - c) In page No.8, in line 2 of the plaint the CS Record "774" shall be substituted by the CS Record "775".
5. That the proposed amendment shall not change the nature and character of the suit.
6. That the proposed amendment shall be needed to determine the real questions of controversy.
7. That the proposed amendment shall not be prejudiced to the opposite party.
8. That if the learned court grants the petition, a notice along with proposed amending plaint would be served to the defendant-opposite party.
9. That if the court shall not grant the petition of amendment of plaint, the plaintiff petitioner shall be highly prejudiced.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to allow the petition of amendment and pass an order for the necessary amendment accordingly for the ends of justice. And to pass such other order as deemed fit and proper.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

### **AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
**Signature of the Deponent**

The deponent is known to  
me and identified by me.

-----  
Advocate

### **Objection petition as to amendment of pleadings**

**When to use:** When you act for the *defendant* and want to oppose the plaintiff's application to amend the plaint, drafted as a written objection under Order 6 Rule 17 CPC arguing the amendment is belated, mala fide, and changes the character of the suit.

In the court of Senior Civil Judge, 1st Court, Dhaka

Title Suit No-57 of 2017

Mr. Saiham

-----Plaintiff

VERSUS

Mr. Yusha

-----Defendant-Petitioner

### **In The Matter Of:**

A petition for rejecting the amendment of Plaint under Rule-17, Order-6 of the Code of Civil Procedure, 1908.

The humble petition on behalf of the above named Defendant-Petitioner most respectfully-

### **SHEWETH**

1. That the plaintiff instituted the suit on 01.02.2017 for declaration of title under section 42 of the Specific Relief Act, 1877 against the above defendant petitioner.
2. That the suit is pending in this Hon'ble court and is fixed for hearing on 01.05.2017.
3. That the defendant petitioner replied all the claim made in plaint and denied all claim specifically by submitting written statement duly.
4. That after submitting written statement plaintiff filed an application for amendment of plaint to insert new relief recovery of possession.
5. That the proposed amendment shall delay the trial.
6. That the proposed amendment shall not be needed to determine the real questions of controversy.
7. That the proposed amendment shall be prejudiced to the defendant petitioner.
8. That the plaintiff has malafide intention.
9. That the proposed amendment of plaint filed by the plaintiff that changed the nature and character of the suit property.
10. That if the court allows the petition of amendment of plaint, the defendant petitioner shall be highly prejudiced.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to allow the petition for rejecting the amendment of Plaint and pass an order accordingly for the ends of justice. And to pass such other order as deemed fit and proper.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

### **AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
Signature of the Deponent

The deponent is known to  
me and identified by me

-----  
Advocate

### **Application for attachment before judgment**

**When to use:** In a money suit, when the defendant is about to dispose of or remove property to defeat a likely decree, application under Order 38 Rule 5 CPC to attach that property before judgment.

In the court of Senior Civil Judge, 1st Court, Chittagong  
Money Suit No-57 of 2017

Mr. Sarafat

-----Plaintiff-Petitioner

VERSUS

Mr. Kalam

-----Defendant-Opposite party

### **In The Matter Of:**

A petition for Attachment before Judgment under Rule-5, Order-38 of the Code of Civil Procedure, 1908.

The humble petition on behalf of the above named Plaintiff-Petitioner most respectfully-

### **SHEWETH**

1. That the plaintiff petitioner filed a money suit before the learned against Mr. Kalam being money suit no-19/2017 for taka 20 lac.
2. That the suit is pending in this Hon'ble court and is fixed for hearing on 11.10.2017.

3. That meanwhile petitioner has come to know that defendant is trying to dispose of his only property measuring 5 katha of land in Double Mooring, Chittagong.
4. That the defendant is intending to cause obstruct or delay in the execution of any decree that may be passed against him. That the defendant has a mala fide or dishonest intention to transfer a land.
5. That the defendant has no other property and if schedule property is sold, the plaintiff will suffer irreparable loss.
6. That the plaintiff petitioner has sufficient cause to satisfy the learned court.
7. That if the court shall not grant the petition of Attachment before Judgment, the plaintiff petitioner shall be highly prejudiced.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to allow petition for Attachment before Judgment and pass an order accordingly for the ends of justice.

And to pass such other order as deemed fit and proper.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

#### Schedule

District-----

Mouza-----

Plot No-----

Police station-----

Khatian-----

Measures of Land-----

Butted & Bounded by

On the north by: Tea stall

On the south by: Rahim Bepari

On the east by: Primary school Building

On the west by: Masjid

#### **AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

.....  
Signature of the Deponent

The deponent is known to  
me and identified by me

.....  
Advocate

#### **Petition for rejection of plaint (no legal right / outside scope of s.42 SR Act)**

**When to use:** A second rejection-of-plaint variant, for the defendant where the plaintiff has not had any legal character or right denied (e.g. an unsuccessful recruitment candidate), so the suit does not lie under s.42 of the Specific Relief Act and is barred by law. Order 7 Rule 11 CPC.

In the court of Senior Civil Judge, 1st Court, Dhaka

Title Suit No-83 of 2022

Y

-----Plaintiff

VERSUS

1. Secretary, Ministry of Primary and Mass Education
2. Director General, Department of Primary Education, Ministry of Primary and Mass Education.
3. District Education Officer, Dhaka

-----Defendant-Petitioners

#### **In The Matter Of:**

A petition for Rejection of Plaint under Rule-11, Order-7 of the Code of Civil Procedure, 1908.



The humble petition on behalf of the above named Defendant-Petitioner most respectfully-

### **SHEWETH**

1. That the plaintiff instituted the suit on 01.05.2022 for declaration under section 42 of the Specific Relief Act, 1877 against defendant petitioner in your learned court.
2. That the suit is pending in this Hon'ble court and today is fixed for submitting written statement on behalf of the defendant.
3. That the petitioner despite securing the first position in the recruitment examination held on 01-01-2022 for the post of Assistant Teacher, no one was appointed to the post, and a new recruitment advertisement for the same post was issued, which is illegal.
4. That the petitioner has no legal right has been established.
5. That passing the recruitment examination does not legally imply that the plaintiff has been appointed to the post.
6. That under Section 42 of the Specific Relief Act, the suit cannot proceed as no legal character has been denied.
7. That the claim should be dismissed as it does not fall within the scope of Section 42 of the Specific Relief Act.
8. That the plaint is barred by law and therefore this plaint liable to be rejected.
9. That the present petition is bona fide and for ends of justice.
10. That the petitioner would be prejudiced if the prayer for rejection of plaint is rejected. For ends of justice this petition should be allowed.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to allow the petition for Rejection of Plaint for the ends of justice. And to pass such other order as deemed fit and proper.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

### **AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

.....  
Signature of the Deponent

The deponent is known to  
me and identified by me

.....  
Advocate

### **Application for temporary injunction (suit challenging dismissal / staying a resolution)**

**When to use:** Where a dismissed college teacher has sued under s.42 SR Act challenging the dismissal resolution and seeks to stay its effect pending suit, application for temporary injunction under Order 39 Rule 1 CPC. (The remedy note in the corpus: a temporary injunction against giving effect to the resolution under Order 39 Rule 1 CPC until disposal of the s.42 suit.)

In The Court of Senior Civil Judge, 1st Court, Rangpur

Civil Suit No-57 of 2002

Mr. Shawkat

Son of -----

Vill:-----P.S:-----

District: Rangpur

-----Plaintiff-petitioner

VERSUS

Mr. Jamal Uddin

Principal

Rangpur College, Rangpur

-----Defendant-opposite party

**In The Matter Of:**

An application for temporary injunction under Rule-1, Order-39 of the Code of Civil Procedure, 1908.

The humble petition on behalf of the above named Plaintiff-petitioner most respectfully-

### **SHEWETH**

1. That the plaintiff is the permanent citizen of Bangladesh who is religious educated and law abiding people also.
2. That the plaintiff was a teacher of Rangpur College for 15 years.
3. That the College authority by a resolution dismissed him from service on account of insubordination on 01.02.2002.
4. Thereafter plaintiff Mr. Shawkat has instituted a suit under section 42 of the Specific Relief Act, 1877 in the Court of Senior Civil Judge, Rangpur Challenging the legality of the resolution.
5. That the plaintiff petitioner seeking a temporary injunction on the effect of resolution.
6. That the case is prima facie and arguable.
7. That the plaintiff is bound to suffer irreparable loss and injury if the injunction is not granted at once.
8. That the cause of action of this suit arose under the jurisdiction of this honorable court.
9. That the learned court has pecuniary and territorial jurisdiction.
10. That the activities of the defendant are objectionable and unlawful.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to

(1) Pass an order for temporary injunction.

(2) Pass an order for cost of the suit.

(3) And to pass any other order or orders as the learned court deems fit and proper in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

### **AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
Signature of the Deponent

The deponent is known to me and identified by me.

-----  
Advocate

[Note: the affidavit shown on the matching continuation page numbers its clauses "3." and "4." in the source; reproduced here renumbered 1. and 2. for readability.]

### **Application for restoration under Order 9 Rule 9 (suit dismissed for default)**

**When to use:** When a suit has been dismissed for default because the plaintiff (or his bank/advocate) failed to appear on the hearing date, application under Order 9 Rule 9 CPC to set aside the dismissal and restore the suit, showing sufficient cause (e.g. sudden illness) and that the application is within limitation.

In the court of Joint District Judge and Artha Rin Adalat, 1st Court, Dhaka

Misc. Case No...../2017

Arising out of Money Suit No-57 of 2017

Mr. Rahman

-----Plaintiff-Petitioner

VERSUS

Mr. Kamal

-----Defendant-Opposite party

### **In The Matter Of:**

A petition for setting aside dismissal order under Rule-9, Order-9 of the Code of Civil Procedure, 1908.

The humble petition on behalf of the above named Plaintiff-Petitioner most respectfully-

**SHEWETH**

1. That the plaintiff petitioner filed a money suit before the learned Joint District Judge and Artha Rin Adalat, Dhaka, against Mr. Kamal being money suit no-19/2017 for taka 4,40,400.
2. That the suit is pending in this Hon'ble court and is fixed for hearing on 11.10.2017.
3. That due to the failure of bank to take steps in the suit it was dismissed for default on 11.10.2017.
4. That the plaintiff got severe fever and headache on 10.10.2017 and as such he could not able to appear before court on 11.10.2017.
5. Thereafter the suit was dismissed in default of plaintiff.
6. That the order of dismissal of suit has caused irreparable loss and injure to the plaintiff petitioner.
7. That the application is not barred by limitation.
8. That the plaintiff petitioner has sufficient cause to satisfy the learned court.
9. That if the court shall not grant the petition of setting aside the dismissal order, the plaintiff petitioner shall be highly prejudiced.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to allow petition for setting aside dismissal order and restore the original suit and pass an order accordingly for the ends of justice.

And to pass such other order as deemed fit and proper.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

**AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

.....  
Signature of the Deponent

The deponent is known to  
me and identified by me

.....  
Advocate

*[Note: the closing AFFIDAVIT here is reproduced from the matching restoration continuation page in the corpus.]*

** Application for restoration under Order 9 Rule 9 (variant, title suit, plaintiff fell ill)**

**When to use:** Same Order 9 Rule 9 restoration application, drafted for a title/declaration suit where the plaintiff suddenly fell ill on the peremptory hearing date and the suit was dismissed for default.

In the court of Senior Civil Judge, 1st Court, Dhaka

Misc. Case No...../2017

Arising out of Title Suit No-57 of 2017

Mr. X

-----Plaintiff-Petitioner

VERSUS

Mr. Y

-----Defendant-Opposite party

**In the matter of**

A petition for setting aside dismissal order under Rule-9, Order-9 of the Code of Civil Procedure, 1908.

The humble petition on behalf of the above named Plaintiff-Petitioner most respectfully-

**SHEWETH**

1. That the plaintiff petitioner filed a suit for declaration of title and recovery of khas possession on a plot of land from which he was forcibly dispossessed by Y and his men on 01.02.2017.
  2. That the suit is pending in this Hon'ble court and is fixed for hearing on 11.10.2017.
  3. That on the date of peremptory hearing of the suit X suddenly fell ill and could not take any step when the suit was called on for hearing.
  4. Thereafter the court dismissed the suit for default of plaintiff on 11.10.2017.
  5. That the plaintiff got severe fever and headache on 10.10.2017 and as such he could not able to appear before court on 11.10.2017.
  6. That the application is not barred by limitation.
  7. That the petitioner has sufficient cause to satisfy the learned court.
  8. That if the court shall not grant the petition of setting aside the dismissal order, the petitioner shall be highly prejudiced.
- Wherefore, it is most humbly prayed that your Honour would graciously be pleased to allow petition for setting aside dismissal order and restore the original suit for regular hearing and pass an order accordingly for the ends of justice.
- And to pass such other order as deemed fit and proper.

### Format of Written Statement

**When to use:** When the question asks for the format of a Written Statement (defendant's answer to the plaint under Order 8 CPC), open with the standard preliminary objections, then the para-wise reply and the defendant's real fact, prayer and affidavit.

In The Court of Senior Civil Judge, 1st Court, Dhaka  
Title Suit No-57 of 2017

Mr. Shawkat

-----Plaintiff

VERSUS

Mr. Jamal Uddin

-----Defendant-petitioner

Written Statements on behalf of the defendant.

The defendant states as follows:-

1. That the suit is not maintainable in its present form and manner.
2. That the suit is barred by limitation.
3. That the plaintiff has no cause of action to file the instant suit against defendant.
4. That the plaintiff has filed the above noted suit on false, baseless, vexatious, concocted grounds, as such the same is liable to be dismissed.
5. That the suit is barred by the principles of waiver, estoppel and acquiescence.
6. That the statements/allegations which are not specifically admitted herein bellow shall be deemed to have been denied by the defendant.
7. That the statements made in paragraph nos. 1 to 8 are all matter of records.
8. That the statement made in paragraph No. 9 of the plaint is beyond the knowledge of the defendant and as such defendant has no comment against those statements.

Real Fact on behalf of defendant is in short:

9. That the defendant has got the title over the disputed land by sale deed. He purchased the land from the father of plaintiff in 2002. This land has duly been mutated in the name of defendant. Defendant enjoying this property since 2002.

Wherefore, it is most humbly prayed that your honour would graciously be pleased to accept the written statements of defendant and pass necessary order or orders as your honour deems fit and proper for the ends of justice.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

### **AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

.....

Signature of the Deponent

The deponent is known to  
me and identified by me

.....  
Advocate

### **Petition for transfer of suit under section 24 CPC**

**When to use:** Where two suits over the same property, between the same parties, on the same cause of action are pending in different courts, and you want them tried together to avoid conflicting decisions, application under s.24 CPC to transfer and consolidate for analogous hearing. **Note (from corpus):** Section 22 enables a defendant to apply for transfer of a suit, while section 24 empowers certain courts to transfer any suit, appeal or other proceeding either on an application made by any party or by the court *suo motu*. Section 24 is much wider than section 22; it can be invoked by any party to a suit, appeal or other proceeding, or even by the court of its own motion.

In the Court of District Judge, Dhaka  
Transfer Misc. Case No...../2017  
Arising out of Title Suit No-57 of 2017

Mr. Shawkat

-----Plaintiff-Petitioner

VERSUS

Mr. Jamal Uddin

-----Defendant-Opposite party

#### **In the matter of**

A petition for Transfer of the Title suit No.57/2017 instituted in Senior Civil Judge, 1st Court, Dhaka to Senior Civil Judge, 2nd Court, Dhaka under section 24 of the Code of Civil Procedure, 1908 for analogous hearing.

The humble petition on behalf of the above named Plaintiff-Petitioner most respectfully-

#### **S H E W E T H**

1. That the plaintiff instituted title suit No.57/2017 on 01.02.2017 for declaration of title in the Court of 1st Senior Civil Judge, Dhaka under section 42 of the Specific Relief Act, 1877 against the above defendant.
2. That thereafter defendant opposite party instituted counter title suit No.60/2017 on 01.03.2017 for declaration of title along with a prayer for partition in the Court of 2nd Senior Civil Judge, Dhaka against the above plaintiff petitioner.
3. That the both aforesaid suits have been filed for the same title and between the same parties with same cause of action.
4. That the both aforesaid suits are pending before the learned court respectively.
5. That since the same nature of suits between the same parties, different results may come from them if they are tried in different courts.
6. That the parties may suffer physically and pecuniary if the aforesaid suits are tried in different courts.
7. That for ends of justice these two suits should be tried in the same competent court for avoiding miscarriage of justice.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to,

- a) pass an order to stop the proceeding of the Title suit No. 60/2017 of the Court of 2nd Senior Civil Judge, Dhaka and
- b) transfer the Title suit No.60/2017 in the Court of 1st Senior Civil Judge, Dhaka.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

#### **AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

.....  
Signature of the Deponent

The deponent is known to me and identified by me

.....  
Advocate

## Memorandum of Appeal

**When to use:** When the trial court has dismissed the suit on contest and the aggrieved plaintiff wants to appeal, a Memorandum of Appeal (under s.96 / Order 41 CPC) setting out the grounds on which the impugned judgment and decree is challenged, with the advocate's certificate.

In the Court of District Judge, Dhaka

Title Appeal No. ---- of 2015

Arising out of Title Suit No. 133 of 2010

### **IN THE MATTER OF:**

1. Belal Hossain  
2. Abdus Sobahan,  
all are son of Md. X Uddin  
Vill- Savar, Upzila- Savar, District- Dhaka

----- Plaintiff-Appellant(s)

Versus

Noor Nabi,  
Son of Mr. Y  
Vill- East Chandpur, Post- Chandpur, Upzila- Dhamrai, District- Dhaka.

-----Defendant-Respondent

**Appeal valued at taka 2,00,000/-**

**Suit Valued at taka 2,00,000/-**

Being aggrieved by and dissatisfied with the judgment and decree dated 20/2/2012 passed in Civil Suit No.133 of 2010 dismissing the suit on contest by Civil Judge, Savar, Dhaka, the humble plaintiff-appellants beg to prefer this Memorandum of Appeal before this Hon'ble Court on the following amongst other-

### **GROUND S**

- i. For that the learned trial court failed to appreciate those title deeds and documents relating to suit land and concluded that the documents had not formally been proved and did not bear proof of title of the appellants-plaintiffs.
- ii. For that the learned court below failed to consider those DCR, receipts of land taxes and mutation khatian which bears the proof of documentary possession of the suit land for the appellants.
- iii. For that the learned court below wrongly held that the witnesses produced for the appellants are not independent and disbelieved them saying the witnesses are relatives of the appellants.
- iv. For that the learned trial court wrongly held that the title deeds and documents are not genuine of the appellants and they have no possession over the suit land and thus dismissed the suit which is not tenable in the eye of law.
- v. For that the learned court below passed a capricious, arbitrary, and whimsical decision regarding the title to and possession over the suit land which caused miscarriage of justice and wants to be interfered.

Wherefore, it is prayed to the learned court that you would be kind enough to admit the appeal, notify the respondent, call for the record and after hearing both the parties reverse the impugned judgment and order passed by the trial court and/or pass such order or further orders as to your honour deems fit and proper.

AND

Pending disposal of this appeal stay all the proceedings of the suit until disposal of this appeal.

Certificate

This is to certify that grounds set-forth above are in my consideration good grounds for this memorandum of appeal and I undertake to stand by those grounds at the time of hearing.

Signature of the Advocate

## Revision petition (against rejection of an amendment application)

**When to use:** Where a non-appealable interlocutory order of a subordinate court (here, rejection of an application to amend the plaint) is challenged as illegal/without jurisdiction, Civil Revision under s.115 CPC asking the higher court to set aside the order.

In the Court of District Judge, Dhaka

Civil Revision No.----of 2015

Arising out of Original Suit No. 234 of 2011



**IN THE MATTER OF:**

Application under section 115(2) of the CPC, 1908

AND

**IN THE MATTER OF:**

Khairul Islam

Son of Mr. X

..... Petitioner

Versus

Hannan Ali

Son of Mr. Y

..... Opposite party

AND

**IN THE MATTER OF:**

Judgment and Order dated 20/3/2015 passed by the learned Civil Judge in Civil Suit No. 234 of 2011 rejecting the application for amendment of the plaint the petitioner preferred this application.

**Application valued at Tk.1,00,000/-**

**Suit valued at Tk. 1,00,000/-**

The petitioner named above states as under:

1. That the petitioner brought a suit for declaration of title to the suit land. The plaint inadvertently fails to mention some facts which are necessary to give correct decision by the Court in the suit.
2. That the plaintiff-petitioner filed an application with a prayer for amendment of plaint by inserting those facts but the learned court below rejected the petition stating that the insertion will change the nature and character of the suit.
3. That the plaintiff-petitioner has been facing irreparable loss for rejection of the amendment petition without which insertion in the plaint there is no chance to win the suit.
4. That being aggrieved by and dissatisfied with the order dated 20/3/2015 passed in Civil Suit No. 234 of 2011 rejecting the application for amendment of the plaint the petitioner preferred this application to your honour on the following, among other,

**GROUNDS**

- I. For that the order rejecting the application for amendment of plaint was arbitrary and capricious on the part of the learned Civil Judge.
- II. For that the order of rejection was not based on reasoning because the learned Judge failed to show any reason why he rejected that.
- III. For that the learned Judge nowhere in the order said how the amendment will change the nature and character of the suit.

Wherefore, it is humbly prayed that your honour would graciously be pleased to admit this application, notify the Opposite Party, call for the record and after hearing both the parties and causes, if any, shown by the Opposite Party pass an order by setting aside the rejection order and allowing the amendment of plaint and ensure justice to the petitioner.

AND

Pending disposal of this application stay all further proceedings of the suit.

**AFFIDAVIT**

I,-----, son of late ----- and -----, village-----, Police Station-----, District-----, aged -----years by faith-Muslim, by profession-----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

.....

Signature of the Deponent

The deponent is known to me and identified by me

.....

Advocate

**🔥 Plaintiff for recovery of possession & declaration of title (§§ 8 and 42)**

**When to use:** Client was in possession by inheritance (or otherwise) and has been *dispossessed* by a land-grabber claiming a false purchase. He wants both the land back **and** a declaration that he is the owner. Asked as "draft a plaintiff for recovery of possession and declaration of title" / "A was dispossessed, what suit, draft the plaintiff." This fact-pattern recurs almost verbatim; the model plaintiff below is the template, with the common fact-variants noted after it.

In The Court of Civil Judge, 1st Court, Dhaka

Title Suit No ----- of 2006

Mr. Rafiq

Son of ----

32/1, Road No-10, Dhanmondi

P.S: Dhanmondi, District: Dhaka

----- Plaintiff

VERSUS

Mr. Jalil

Son of -----

35/1, Road No-10, Dhanmondi

P.S: Dhanmondi, District: Dhaka

----- Defendant

**In The Matter Of:**

A suit for recovery of possession of immovable property and declaration of title under sections 8 and 42 of the Specific Relief Act, 1877.

**Suit Valued at Tk. 2,00,000/-**

The humble petition on behalf of the above named plaintiff most respectfully,

**SHEWETH**

1. That the plaintiff is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
2. That on the other hand the defendant is a miscreant, and law avoiding citizen of Bangladesh.
3. That the 'Rafiq' owned and possessed a piece of land by way of inheritance since the death of his father on 26.05.1998.
4. That the defendant 'Jalil', a local notorious land grabber dispossessed plaintiff from the land on 02.01.2006.
5. That the defendant plead that he had just purchased it from co-sharer of plaintiff and during the recent land survey operation, the land has rightly been recorded in the name of Jalil which is absolutely false.
6. That the defendant claim ownership over the disputed land.
7. That the schedule property originally belonged to plaintiff's father and his name was correctly recorded in C.S. Khatian.
8. That thereafter plaintiff inherit the schedule property after his father death.
9. That the plaintiff enjoying the property since 26.05.1998 without interruption.
10. That the cause of action for the suit arose on 02.01.2006 when the defendant dispossessed plaintiff.
11. That the defendant dispossessed the plaintiff without following lawful manner.
12. That the learned court has a jurisdiction to try this suit.
13. That the suit is not barred by law.
14. That the suit is not barred by limitation.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to pass a decree for recovery of possession and a decree for declaration of title in favour of plaintiff and grant any other relief or reliefs to which the plaintiff is entitled to in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

**Schedule**

District ----- Police station -----

Mouza ----- Khatian -----

Plot No ----- Measures of Land -----

Butted & Bounded by

On the north by: Tea stall

On the south by: Rahim Bepari

On the east by: Primary school Building

On the west by: Masjid

**AFFIDAVIT**

I, -----, son of late ----- and -----, village -----, Police Station -----, District -----, aged ----- years by faith-Muslim, by profession -----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows;

1. That I am the plaintiff of this suit and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
Signature of the Deponent

The deponent is known to me and identified by me.

-----  
Advocate

**Same template, other fact-patterns in the corpus** (cause-title and dates change; the SHEWETH/prayer/schedule/affidavit are identical to the above):

- **A v B** (pp. 240–243): plaintiff 'A', defendant 'B'; dispossessed **26.05.2006**; false plea "purchased from co-sharer of plaintiff". Suit Valued Tk. 2,00,000/-.

- **Jalil v Kamal** (p. 238–239): plaintiff Jalil, defendant Kamal; dispossessed **26.05.2007**; false plea "purchased from Helal Uddin, uncle of plaintiff". Title Suit of 2007. Suit Valued Tk. 2,00,000/-.

### **Plaint for cancellation / declaration that a document is not binding (§ 42)**

**When to use:** A document (here, a wrong record-of-rights / khatian entry obtained by a hostile neighbour during a survey) clouds the client's title; he sues for a declaration that the document is **not binding** on him. Asked as "draft a plaint for declaration that the document in question is not binding." (Cancellation-of-instrument fact-patterns are pleaded under § 39 of the Act; this corpus frames the relief under § 42 as a declaration that the instrument is not binding, reproduced as printed.)

In The Court of Civil Judge, 1st Court, Dhaka

Civil Suit No ----- of 2011

Mr. Rashid  
Son of ----  
32/1, Road No-10, Baddah  
PS: Gulshan, District: Dhaka

----- Plaintiff

VERSUS

Mr. Jamal  
Son of -----  
35/1, Road No-10, Baddah  
PS: Gulshan, District: Dhaka

----- Defendant

#### **In The Matter Of:**

A suit for declaration under section 42 of the Specific Relief Act, 1877 that the document in question is not binding upon him.

**Suit Valued at Tk. 2,00,000/-**

The humble petition on behalf of the above named plaintiff most respectfully,

### **SHEWETH**

1. That the plaintiff is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
2. That on the other hand the defendant is a miscreant, and law avoiding citizen of Bangladesh.
3. That the plaintiff Rashid is the owner-in-possession of a piece of land situated at 76 Badda, P.S. Gulshan, District Dhaka.
4. That during the last survey operation the land has been wrongly recorded in the name of Rashid's neighbor Jamal.
5. That the defendant Jamal is hostile to Rashid for various reasons.
6. That the plaintiff came to know during the last survey operation that Jamal has recorded the land of Rashid in the name of him intentionally on 01.02.2011.
7. That the defendant is greedy, covetous and fraudulent person, he wants to grab the suit land.
8. That the suit is not barred by limitation.
9. That the plaintiff will suffer irreparable loss, if the court does not pass an order in favour of plaintiff.
10. That the cause of action for the suit arose on 01.02.2011 when the defendant refused to register the sale deed.
11. That the learned court has a jurisdiction to try this suit.

12. That the suit is not barred by law.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to pass a decree of declaration in favour of plaintiff that the document in question is not binding upon him and grant any other relief or reliefs to which the plaintiff is entitled to in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

#### **Schedule**

District ----- Police station -----  
Mouza ----- Khatian -----  
Plot No ----- Measures of Land -----

Butted & Bounded by  
On the north by: Tea stall  
On the south by: Rahim Bepari  
On the east by: Primary school Building  
On the west by: Masjid

#### **AFFIDAVIT**

I, -----, son of late ----- and -----, village -----, Police Station -----, District -----, aged ----- years by faith-Muslim, by profession -----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows;

1. That I am the plaintiff of this suit and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
Signature of the Deponent

The deponent is known to me and identified by me.

-----  
Advocate

#### **Plaint for declaration of title, forged-hiba variant (Z's remedy, § 42)**

**When to use:** The specific exam problem (Bar Exam-2023): "Father F makes a hiba of 5 decimals out of his 11 decimals (worth Tk. 33 lac) to his son Z. After F's death, the other sons X and Y claim the hiba was forged and that Z got no title. Draft a plaint for Z and mention the relevant law." Z sues for a declaration that the deed of hiba is valid and that he has acquired good title to the 5 decimals. Pleaded under § 42 of the Specific Relief Act, 1877.

In The Court of Civil Judge, 1st Court, Dhaka

Civil Suit No ----- of 2023

Z

Son of ----

Village: ---- P.S: ---- District: -----

----- Plaintiff

VERSUS

1. X

Son of 'F'

Village: ---- P.S: ---- District: -----

2. Y

Son of 'F'

Village: ---- P.S: ---- District: -----

----- Defendants

#### **In The Matter Of:**

A suit for declaration under section 42 of the Specific Relief Act, 1877.

**Suit Valued at Tk. 15,00,000/-**

The humble petition on behalf of the above named plaintiff most respectfully,

#### **SHEWETH**

1. The plaintiff is a simple and law-abiding person who is a permanent resident of Bangladesh.
2. That the defendants are politically powerful and are known for using their influence to occupy others' land.
3. That the plaintiff's father, F, was the owner of 11 decimals of undivided land worth Tk. 33 lac.

4. That during his lifetime, F executed a deed of hiba (gift) on ----- in favor of the plaintiff, Z, for 5 decimals of the aforesaid land, which was duly registered in accordance with the law.
5. That the plaintiff has been in peaceful and uninterrupted possession of the 5 decimals of land described in the deed of hiba since the execution of the deed.
6. That on -----, F passed away, leaving behind the plaintiff and the defendants, X and Y, as his legal heirs.
7. That after the death of F, the defendants, X and Y, claimed that the deed of hiba was forged and that the plaintiff did not acquire title to the land included in the deed.
8. That the defendants have no right, title, or interest in the 5 decimals of land gifted to the plaintiff, and their claims are false, baseless, and made with malafide intention to harass the plaintiff and deprive him of his rightful property.
9. That the plaintiff seeks a declaration from this Honorable Court that the deed of hiba executed by F in favor of the plaintiff is valid, genuine, and that the plaintiff has acquired a valid title to the 5 decimals of land described in the deed.
10. That declaratory suit is maintainable on behalf of the plaintiff.
11. That the suit is not barred by limitation.
12. That the learned court has a jurisdiction to try this suit.
13. That the suit is not barred by law.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to pass a decree for declaration of title and grant any other relief or reliefs to which the plaintiff is entitled to in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

#### **Schedule**

District ----- Police station -----  
 Mouza ----- Khatian -----  
 Plot No ----- Measures of Land -----

Butted & Bounded by  
 On the north by: Tea stall  
 On the south by: Rahim Bepari  
 On the east by: Primary school Building  
 On the west by: Masjid

#### **AFFIDAVIT**

I, -----, son of late ----- and -----, village -----, Police Station -----, District -----, aged ----- years by faith-Muslim, by profession -----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows;

1. That I am the plaintiff of this suit and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
Signature of the Deponent

The deponent is known to me and identified by me.

-----  
 Advocate

#### **Plaint for specific performance of contract (§ 12)**

**When to use:** Buyer paid earnest money (and is ready to pay the balance) under a contract / *bainapatra* for sale of land, the seller takes the money but refuses to execute and register the sale deed. Client wants the contract *enforced* (the deed executed), not just damages. Asked as "buyer can file a suit for specific performance, draft the plaint." The fullest version (Jafar v Sadeq, pp. 269–270, with the *bainapatra* and three-year stipulation) is below; a shorter template (pp. 266 etc., B v A) appears on the same facts.

In The Court of Civil Judge, 1st Court, Dhaka

Civil Suit No ----- of 2006

[Plaintiff: Jafar, full address block incomplete, missing page(s)]

VERSUS

Mr. Jafar [as printed, running name on continuation page]

Son of -----

35/1, Road No-10, Dhanmondi

P.S: Dhanmondi, District: Dhaka

----- Defendant

**In The Matter Of:**

A suit for specific performance under sections 12 of the Specific Relief Act, 1877.

**Suit Valued at Tk. 1,50,000/-**

The humble petition on behalf of the above named plaintiff most respectfully,

**SHEWETH**

1. That the plaintiff is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
2. That on the other hand the defendant is a miscreant, and law avoiding citizen of Bangladesh.
3. That the plaintiff Jafar entered into an agreement with Sadeq on 30th of June, 2003 for sale of 50 decimals of land at Tk. 1,50,000.00 only accepting Tk. 50,000.00 from Sadeq in presence of witnesses, as earnest money in the same sitting Jafar executed a bainapatra in favour of Sadeq.
4. That it was stipulated in contract that on receipt of the balance consideration money Jafar would execute and register a sale deed in favour of Sadeq in respect of the suit land within three years.
5. That the plaintiff tendered the rest of the consideration of the contract on 01.02.2006.
6. That the plaintiff requested Jafar to execute and register the promised sale deed but Jafar consumed time on different pleas and eventually refused to execute and register the promised sale deed on 01.03.2006.
7. That the defendant agreed to sell his land to plaintiff. Defendant promised that after having the entire consideration of the contract, he will register the sale deed.
8. That the suit is not barred by limitation.
9. That the plaintiff will suffer irreparable loss, if the court does not pass an order in favour of plaintiff.
10. That the cause of action for the suit arose on 01.03.2006 when the defendant refused to register the sale deed.
11. That the learned court has a jurisdiction to try this suit.
12. That the suit is not barred by law.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to pass a decree for specific performance of a contract in favour of plaintiff and grant any other relief or reliefs to which the plaintiff is entitled to in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

**AFFIDAVIT**

I, -----, son of late ----- and -----, village -----, Police Station -----, District -----, aged ----- years by faith-Muslim, by profession -----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows;

1. That I am the plaintiff of this suit and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
**Signature of the Deponent**

The deponent is known to me and identified by me.

-----  
Advocate

*Note: the parties Jafar/Sadeq are transposed between the cause-title and the body on the surviving pages (the body pleads Jafar as the seller who refused). Reproduced as printed; resolve "plaintiff/defendant" by the facts (Sadeq the buyer is the plaintiff seeking performance).*

 **Plaint for recovery of possession (§ 9, dispossession without consent)**

**When to use:** Client was in *settled possession* (often without a title deed) and was dispossessed otherwise than in due course of law within **six months**. Bare possessory suit under § 9, title is **not** in issue; the only prayer is recovery of possession. Typical fact-pattern: a poor person in possession of a few decimals with no deed, ousted by a powerful neighbour.

In The Court of Civil Judge, 1st Court, Dhaka

Civil Suit No ----- of 2002

Mr. Rahima [as printed]

Son of ----

32/1, Road No-10, Dhanmondi

PS: Dhanmondi, District: Dhaka

----- Plaintiff

VERSUS

Mr. Akber Ali

Son of -----



**In The Matter Of:**

A suit for recovery of possession of immovable property under sections 9 of the Specific Relief Act, 1877.

**Suit Valued at Tk. 2,00,000/-**

The humble petition on behalf of the above named plaintiff most respectfully,

**SHEWETH**

1. That the plaintiff is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
2. That on the other hand the defendant is a miscreant, and law avoiding citizen of Bangladesh.
3. That Rahima, a poor lady was in possession of 4 decimals of land but had no title deed for the same.
4. That the defendant 'Akber Ali', a local notorious land grabber dispossessed plaintiff from the land.
5. Akbar Ali, a rich and powerful neighbor of Rahima dispossessed plaintiff on 10th January 2002 on the plea that he had purchased the land from its real owner.
6. That the defendant claim ownership over the disputed land.
7. That the plaintiff enjoying the property since 26.05.1998 without interruption.
8. That the plaintiff was in actual physical possession.
9. That the suit is not barred by limitation.
10. That the cause of action for the suit arose on 10.01.2002 when the defendant dispossessed plaintiff.
11. That the defendant dispossessed the plaintiff without following lawful manner.
12. That the learned court has a jurisdiction to try this suit.
13. That the suit is not barred by law.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to pass a decree for recovery of possession in favour of plaintiff and grant any other relief or reliefs to which the plaintiff is entitled to in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

**Schedule**

District ----- Police station -----  
Mouza ----- Khatian -----  
Plot No ----- Measures of Land -----

Butted & Bounded by  
On the north by: Tea stall  
On the south by: Rahim Bepari  
On the east by: Primary school Building  
On the west by: Masjid

**AFFIDAVIT**

I, -----, son of late ----- and -----, village -----, Police Station -----, District -----, aged ----- years by faith-Muslim, by profession -----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows;

1. That I am the plaintiff of this suit and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
**Signature of the Deponent**

The deponent is known to me and identified by me.

-----  
Advocate

 **Plaint for declaration of title & permanent injunction (§§ 42 and 54)**

**When to use:** Client owns and possesses land by inheritance; a land-grabber claims title and *threatens to dispossess* him (but has not yet succeeded). Client wants a declaration of his title **plus** a permanent injunction restraining the defendant from disturbing his possession. The classic "declaration of title and permanent injunction" plaint.

In The Court of Civil Judge, 1st Court, Dhaka

Title Suit No ----- of 2017

Mr. A  
Son of ----  
32/1, Road No-10, Dhanmondi  
P.S: Dhanmondi, District: Dhaka

----- Plaintiff

VERSUS

Mr. B  
Son of -----  
35/1, Road No-10, Dhanmondi  
P.S: Dhanmondi, District: Dhaka

----- Defendant

**In The Matter Of:**

A suit for declaration of title and permanent injunction under sections 42 and 54 of the Specific Relief Act, 1877.

**Suit Valued at Tk. 2,00,000/-**

The humble petition on behalf of the above named plaintiff most respectfully,

**SHEWETH**

1. That the plaintiff is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
2. That on the other hand the defendant is a miscreant, and law avoiding citizen of Bangladesh.
3. That the Plaintiff 'A' owned and possessed a piece of land by way of inheritance since the death of his father on 26.05.1998.
4. That the defendant 'B', a local notorious land grabber is trying to dispossess plaintiff from the land.
5. That the defendant plead that uncle of plaintiff, gifted the disputed land to him, which is absolutely false.
6. That the defendant claim ownership over the disputed land.
7. That the schedule property originally belonged to plaintiff's father and his name was correctly recorded in C.S. Khatian.
8. That thereafter plaintiff inherit the schedule property after his father death.
9. That the plaintiff enjoying the property since 26.05.1998 without interruption.
10. That the cause of action for the suit arose on 25.05.2017 when the defendant claimed the title over the land and threatened to dispossess the plaintiff from the disputed land.
11. That the plaintiff is bound to suffer irreparable loss and injury if the permanent injunction is not granted at once.
12. That the cause of action of this suit arose under the jurisdiction of this honorable court.
13. That the suit is not barred by law.
14. That the case is prima facie and arguable.
15. That the activities of the defendant are objectionable and unlawful.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to pass a decree for declaration of title and permanent injunction in favour of plaintiff and grant any other relief or reliefs to which the plaintiff is entitled to in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

**Schedule**

District ----- Police station -----  
Mouza ----- Khatian -----  
Plot No ----- Measures of Land -----

Butted & Bounded by  
On the north by: Tea stall  
On the south by: Rahim Bepari  
On the east by: Primary school Building  
On the west by: Masjid

**AFFIDAVIT**

I, -----, son of late ----- and -----, village -----, Police Station -----, District -----, aged ----- years by faith-Muslim, by profession -----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows;

1. That I am the plaintiff of this suit and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
**Signature of the Deponent**

The deponent is known to me and identified by me.

### **Plaint for mandatory injunction (§ 55, RAJUK boundary-wall obstruction)**

**When to use:** The recurring exam problem (Bar Exam, 8 June 2012 / 29 Feb 2008 / 2002 / 2001 / 2000): "A neighbour builds his boundary wall on the eastern side of your client's house without keeping the space required by RAJUK and raises it so high that it obstructs the client's light and air. What remedy, under what provision, and draft a plaint." Remedy = **mandatory injunction under § 55** to compel removal of the offending wall (this is the §55 illustration of obstructed light and air). Often paired with a prayer for a permanent injunction.

In The Court of Civil Judge, 1st Court, Dhaka

Civil Suit No ----- of 2012

Mr. Rashid  
Son of ----  
32/1, Road No-10, Baddah  
P.S: Gulshan, District: Dhaka

----- Plaintiff

VERSUS

Mr. 'Jamal'  
Son of -----  
35/1, Road No-10, Baddah  
P.S: Gulshan, District: Dhaka

----- Defendant

#### **In The Matter Of:**

A suit for mandatory injunction under section 55 of the Specific Relief Act, 1877.

**Suit Valued at Tk. 10,000/-**

The humble petition on behalf of the above named plaintiff most respectfully,

#### **S H E W E T H**

1. That the plaintiff is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
2. That on the other hand the defendant is a miscreant, and law avoiding citizen of Bangladesh.
3. That the plaintiff is absolute owner of the scheduled-A Property whereas the defendant is owner of the scheduled-B Property.
4. That the defendant who is also a neighbour of the plaintiff.
5. That the defendant has built his boundary wall on the eastern side of the plaintiff's house without keeping the necessary space as required by the RAJUK.
6. That the defendant has raised his wall so high that it obstructs plaintiff's light and air.
7. That the plaintiff and his family members have been suffering mentally and physically because of unhygienic light and air.
8. That the notice was served to the defendant; the defendant did not pay heed to the notice.
9. That it is highly and emergency needed to remove the extra wall boundary immediately which is built by the defendant violating the rules of RAJUK.
10. That the plaintiff is bound to suffer irreparable loss and injury if the mandatory injunction is not granted at once.
11. That the cause of action of this suit arose under the jurisdiction of this honorable court.
12. That the learned court has pecuniary and territorial jurisdiction.
13. That the activities of the defendant are objectionable and unlawful.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to,

- (1) Pass a decree of mandatory injunction to remove the extra height wall made by defendant and also pass a decree of permanent injunction in favour of the plaintiff.
- (2) Pass an order for cost of the suit.
- (3) And to pass any other order or orders as the learned court deems fit and proper in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

#### **Schedule-A**

District ----- Police station -----  
Mouza ----- Khatian -----  
Plot No ----- Measures of Land -----  
Butted & Bounded by  
On the north by: Tea stall  
On the south by: Rahim Bepari

On the east by: Primary school Building  
On the west by: Masjid

#### **Schedule-B**

District ----- Police station -----  
Mouza ----- Khatian -----  
Plot No ----- Measures of Land -----  
Butted & Bounded by  
On the north by: Tea stall  
On the south by: Rahim Bepari  
On the east by: Primary school Building  
On the west by: Masjid

#### **AFFIDAVIT**

I, -----, son of late ----- and -----, village -----, Police Station -----, District -----, aged ----- years by faith-Muslim, by profession -----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows;

1. That I am the plaintiff of this suit and well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made above are true to the best of my knowledge and belief.

-----  
Signature of the Deponent

The deponent is known to me and identified by me.

-----  
Advocate

#### **Suit / plaint for injunction to enforce a negative agreement (§ 57)**

**When to use:** The performer / employee fact-pattern: a singer (Bina) contracts to sing exclusively for a charity show in aid of the Private Law College, takes an advance, then announces she will instead sing at a rival programme (BTV) on the same day. § 57 lets the court, though it cannot compel the affirmative act (to sing for the college), **injoin the breach of the negative stipulation** (not to sing elsewhere). Asked as "what remedy / draft a suit for injunction to enforce the negative agreement under § 57." *Assembly note: the cause-title and the SHEWETH/prayer were photographed on separate, non-adjacent pages. The cause-title below is from p. 330 ('In The Matter Of: line was cut off there); the body is the § 57 page numbered '[33]' (a stray/mis-numbered leaf in the SR run). They are the same draft, Private Law College (Farhan, Principal) v Bina & the DG, BTV.*

In The Court of Civil Judge, 1st Court, Dhaka

Civil Suit No ----- of 2003

Mr. Farhan  
Principal  
Private Law College, Dhaka

----- Plaintiff

VERSUS

1. Bina  
Daughter of -----  
35/1, Road No-10, Baddah  
PS: Gulshan, District: Dhaka

2. Mr. Rahman  
Director General  
BTV, Rampura

----- Defendant

#### **In The Matter Of:**

A suit for injunction to perform negative agreement under section 57 of the Specific Relief Act, 1877.

#### **Suit Valued at Tk. 50,000/-**

The humble petition on behalf of the above named plaintiff most respectfully,

#### **SHEWETH**

1. That the defendant Bina enters into a contract to sign [sing] for a charity show for one week in aid of Private Law College in Dhaka.
2. That the show is scheduled to be held on 1st November, 2003. She also took an advance of taka 25,000/- from the college.

3. Thereafter the principal receive a letter on 5th October, 2003 that she cannot perform because she got offer to sing at BTV's special sponsorship program on same day.
4. That the case is prima facie and arguable.
5. That the plaintiff is bound to suffer irreparable loss and injury if the injunction is not granted at once.
6. That the cause of action of this suit arose under the jurisdiction of this honorable court.
7. That the learned court has pecuniary and territorial jurisdiction.
8. That the activities of the defendant are objectionable and unlawful.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to,

- (1) Pass a decree for injunction to perform negative agreement.
- (2) Pass an order for cost of the suit.
- (3) And to pass any other order or orders as the learned court deems fit and proper in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.

#### **AFFIDAVIT (p. 337)**

I, -----, son of late ----- and -----, village -----, Police Station -----, District -----, aged ----- years by faith-Muslim, by profession -----, by nationality-Bangladeshi do hereby solemnly affirm and say as follows;

1. That I am the petitioner of this application and well acquainted with the facts and circumstances of the case and competent to swear this affidavit. [as printed numbered 3]
2. That the statements made above are true to the best of my knowledge and belief. [as printed numbered 4]

.....  
Signature of the Deponent

The deponent is known to me and identified by me.

.....  
Advocate

#### **Petition for temporary injunction restraining the defendant (§§ 52–54 SR, read with the dismissed-teacher fact-pattern)**

**When to use:** Client (a college teacher, Mr. Shawkat) is dismissed by a college resolution and has filed a § 42 declaratory suit challenging it; pending the suit he wants the resolution *stayed*, a temporary injunction restraining the college from giving effect to the dismissal. The substantive prayer below is from the SR run (p. 336); in practice the interlocutory application is moved under Order 39 rule 1 CPC (the CPC-side cause-title for the same problem, Shawkat v Principal, Rangpur College, Civil Suit 57/2002, appears separately in the corpus).

#### **SHEWETH**

1. That the plaintiff is the permanent citizen of Bangladesh who is religious, educated and law abiding people also.
2. That the plaintiff was a teacher of Rangpur College for 15 years.
3. That the College authority by a resolution dismissed him from service on account of insubordination on 01.02.2002.
4. Thereafter plaintiff Mr. Shawkat has instituted a suit under section 42 of the Specific Relief Act, 1877 in the Court of Senior Civil Judge, Rangpur challenging the legality of the resolution.
5. That the plaintiff petitioner seeking a temporary injunction on the effect of resolution.
6. That the case is prima facie and arguable.
7. That the plaintiff is bound to suffer irreparable loss and injury if the injunction is not granted at once.
8. That the cause of action of this suit arose under the jurisdiction of this honorable court.
9. That the learned court has pecuniary and territorial jurisdiction.
10. That the activities of the defendant are objectionable and unlawful.

Wherefore, it is most humbly prayed that your Honour would graciously be pleased to,

- (1) Pass an order for temporary injunction.
- (2) Pass an order for cost of the suit.
- (3) And to pass any other order or orders as the learned court deems fit and proper in law and equity.

And for this act of kindness, the applicant, as in duty bound shall ever pray.