

Question - 1

Date _____

a. Definition

1. Bailable offence
2. Cognizable offence
3. Complaint
4. Inquiry
5. Investigation
6. Non-Cognizable

- b. Describe the classification of criminal courts.
- c. Enumerate the sentences which magistrate may pass.

Question - 2

- a. How is arrest made?
- b. Discuss the circumstances under which a police officer can arrest without warrant?
- c. Give the directions given in the GLST case regarding the power of arrest without warrant under section 54 of the CrPC.



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Question - 3

6. a. "A person can claim bail as of right in case of bailable offences, but the granting of bail is a discretionary power of the court in case of non-bailable offence" - Explain the statement.
- b. Write down the trial process of session court?

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Question - 2

a. Discuss the circumstances under which a Police officer can arrest without warrant.

① Cognizable offence:

- ✓ committed any cognizable offence
- ✓ reasonable complaint has been made
- ✓ credible information has been received
- ✓ reasonable suspicion exists

"In case of arrest under section 54, reasonable suspicion of a police officer must be based on specific fact, not on the vague assumption of that police officer" [Saifuzzaman vs State: 56DLR 324]

② Implement of house breaking:

- ✓ burden of proof lies on that person who has any implement of house breaking.

③ Proclaimed offender:

- ✓ Proclaimed either under this code or by order of the govt.

④ Stolen Property:

⑤ obstructs a police officer

- ✓ obstructs in the execution of duty
- ✓ escape or attempts to escape from lawful custody.



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⑥ Deserter from armed forces:

⑦ Extradition Act

- ✓ Relating to extradition or
- ✓ Fugitive offenders Act
- ✓ Credible information or
- ✓ reasonable suspicion exists

⑧ Released convict:

- ✓ Breach of any rule made under
Section 565(3)

⑨ Arrest on requisition:

- ✓ Requisition received from another
Police officer.

new after ~~police officer shall do themselves~~
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b. Give the directions given in the BLST case regarding the power of arrest without warrant under section 54 of the CrPC.

Introduction:

- ✓ Bangladesh Legal Aid Services Trust (BLAST), Ain D Salish Kendra, Shomnilo Shamajik Andolon and several individuals filed a writ petition in the High Court in 1998 challenging the abuse of police powers to arrest without warrant under section 54 of CrPC and the abuse of powers regarding taking the accused into remand under section 167 of CrPC.
- ✓ The petitioners referred to recent of incident of the killing of a young student ; Rubel , in remand after arrest under section 54 of the CrPC .
- ✓ This significant petition is known as BLAST and others vs Bangladesh and others (section 54 Guidelines case)

Order:

- ✓ HCD initially issued a Rule Nisi in 2003.
- ✓ A set of fifteen guidelines with regard to exercise of powers of arrest and remand
- ✓ Also recommendation of amendments to both sections of CrPC , PC , PA , EA .



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"If any Police officer arrests a person based on reasonable suspicion, he must write down the cause of suspicion. It will not be justifiable to arrest merely based on suspicion of cognizable offence." [BLAST and others vs. BD and others : 55 DLR (HCD) 363]

56 DLR (2004) HCD 324 : Saifuzzaman vs State
"Reasonable suspicion must be specific not vague."

* How is arrest made?

Section 46

- ① The Police officer or other person, authorised to make arrest, may arrest a person to be arrested by word or action.
- ② If they can not take such person under custody by word or action, they shall touch or confine the body of the person to be arrested.
- ③ If such person forcibly resist the endeavor to arrest or attempts to evade the arrest, all necessary means may be used to effect the arrest.
- ④ If necessary death may be caused to such person who is accused of an offence punishable with death or with imprisonment for life.

Question- 3

Date:

Q) "A person can claim bail as of right in case of bailable offence but the granting of bail is a discretionary power of the court in case of non-bailable offence"- Explain the statement.

* Introduction:

Bail is a right of an accused in the legal procedure. The provisions regarding bail have been discussed in the chapter XXXIX named of Bail.

"The provisions regarding bail provided in section 496 and 497 have to be obeyed by all of the courts of the country including HCD and the court of session, which exercise the power of issuing bail in this regard." [7 DLR 9]

* Explanation of the statement:

The statement has been explained in the light of the provisions provided in the section 496 and 497 and some case references are also given in this regard.

* In what cases bail to be taken: section-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 PS



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- ✓ OR appears on
- ✓ is brought before a court
- shall be released on bail.

Provided that nothing in this section shall be deemed to affect the provisions of section 107(4) or section 117(3).

"In case of bailable offence, bail is an inevitable right of an accused." [15 DLR (SC) 429]

Ref: Abdu Salam vs State: 41 DLR (1989) HED 78]

- * Bail in case of non bailable offence: section-497
- ① when any person accused of any non bailable offence is
 - ✓ arrested on
 - ✓ detained without warrant
 - ✓ by an OC of a PS or
 - ✓ appears on
 - ✓ is brought before a court
 - ✓ may be released on bail.

But he shall not be so released if there is reasonable grounds for believing that he has been guilty of an offence punishable with

- ✓ death or
- ✓ transportation for life.

Date :

DLR

Provided that the court may release such offender on bail if he is under the age of sixteen years

- ✓ any woman or
- ✓ any sick or ~~DLR~~
- ✓ infirm person.

② If there is no ground for believing that the accused has committed a non-bailable offence, he shall be released on bail.

③ The officer on a court on releasing any person on bail shall record in writing his or its reasons for so doing.

④ After the conclusion of trial and before judgement is delivered if there is reasonable grounds for believing that the accused is not guilty of any such offence, the court shall release the accused if he is in custody on bond without securities for his appearance to hear judgement.

✓ An accused of 55 years of age shall not be released on bail merely considering his age if he is not sick. [19 DLR 38(5c)]



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(b) "Person once convicted or acquitted not to be tried for the same offence again" - Explain.

Introduction:

There is a Latin Principle - "Nemo debet bis
recessari" - meaning NO person shall be
tried once again for the same offence.

According to section - 403

- ① A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted shall not be liable to be tried again for the same offence, nor on the same facts for any other offence while such conviction or acquittal remains in force.
- ② A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235(1).
- ③ A person may be tried afterwards for an offence which is the consequence of that offence for which once he was convicted.

* This section prohibits "double jeopardy".



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Question - 1

Date :

- a. Discuss the provisions regarding the preventive actions of Police in the light of CrPC.

* Introduction :

The preventive actions of Police have been discussed in the chapter - XIII, from section 149 to 153.

* Preventive Actions

① Police to prevent cognizable offence: sec-149

Police to prevent cognizable offence: sec-149
shall prevent such offence to the best of his ability.

② Information of design to commit such offence: sec-150
Information of design to commit such offence: sec-150
shall communicate such offence to the police officer to whom he is subordinate. Shall also prevent officer to whom he is subordinate. Shall also prevent or take cognizance of the commission of such offence.
"whenever, a police officer is informed of any cognizable offence serious in nature, he shall take necessary action to prevent the commission of such offence." [AIR 1926 Lahor 19]

③ Arrest to prevent such offence: sec-151

Arrest to prevent such offence: sec-151
may arrest, without orders from a Magistrate and without a warrant if the offence can not be otherwise prevented.



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"The aim of this section is to empower police to arrest without warrant in order to preventing the commission of an cognizable offence serious in nature. Where the offence is not such serious, this section shall not be applicable."

[AIR 1935 Lahore 340]

④ Prevention of injury to public property : SEC-15²

Prevention of Injury to public property, moveable or immovable or injury of any public landmark or other mark use for navigation.

⑤ Inspection of weights and measures : SEC-15³

✓ If there is reason to believe that within the jurisdiction any weights, measures or instruments for weighing are false, or of that ps may inspect without warrant.

✓ he may seize the same and inform to the magistrate.

b. Enumerate the elements or characteristics of an FIR.

* FIR: Sec-154, PRB-24B

* Elements:

- ① Information of cognizable offence
[Hasib vs state: 59 DLR (2007) 653]
- ② Orally or written
- ③ Reduce to writing
- ④ Signed by the person giving
- ⑤ Read over to the informant
- ⑥ The substances
- ⑦ entered in a book

Relevant under section 145, 157 of EA.



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c. State the provisions regarding the examination of witness by police.

* Introduction: Sec-161, P.R.B-265

* Provisions:

✓ any police officer not below such rank as the Government may prescribe in this behalf may examine orally any person supposed to be acquainted.

✓ bound to answer all the questions relating to such case.

✓ May not answer to that question which would have a tendency to expose him to a criminal charge.

✓ statement may be reduced into writing in separate record.

✓ To gather evidence against the accused.

* If deny to answer the question, this will be offence under section 274 of P.C.

EA. 26
confession to police officer not to be proved.

* This section gives the authority to the investigation officer to examine the witness of a case and record the statement of such witness. [35 DLR 303]

d. Write a short note on arrest by private person.

Date

According to Section - 50,

- ① Any ^{private} person may arrest any person who in his view commits a non bailable and cognizable offence, or any proclaimed offender.
- ② The ^{so} arrested person shall without delay be handed over to the police officer on nearest police station.
- ③ If that person comes under section 54, a police officer shall re-arrest him.
- ④ If that person, reason to believe has committed non cognizable offence and refuse to give his name and residence, then the person shall be brought under section 57.
- ⑤ If there is ^{no} reason to believe that he has committed any crime, he shall be released.

Amrendra Nath vs State

"For a private person to conduct an arrest, the offence must be non-bailable and cognizable"

[AIR 1960 OTI 23]



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Question - 6

Date _____

a. Write down the contents of the order given under section 144 of CrPC?

If a DM, or any other Executive magistrate empowered by the government or the DM to act under this section, finds sufficient ground that any situation may cause obstruction, annoyance, or injury, or risk to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray, then such magistrate may pass an order under the section 144 of CrPC.

Contents:

- ① The order under 144 must be a written order directed to the accused and duly promulgated.
- ② The order may be passed ex parte in cases of emergency or in cases where the circumstances do not admit of the serving in due time.
- ③ The order can be directed towards individuals or the public in general and can include restrictions on certain actions like visiting a particular place, or carrying of arms.
- ④ The order must be absolute and definite in terms not conditional.



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⑤ The order must be enforced to the particular act for which the danger is apprehended.

⑥ The direction of the order must be co-extensive with the emergency.

⑦ The person against whom the order is directed must be specified unless it is directed to the public generally.

⑧ The terms of notice must follow the terms of order in pursuance of which the notice is issued.

* No order shall remain in force for more than two months unless in cases of danger to human life, health, safety or an affray, or a riot,

* The provisions of this section shall not apply to Metropolitan Area.

* If anyone violates 144, he shall be punished with imprisonment which may extend to one month, or with 200 TK fine, or both under sec-188 of PC.

* Madhu Limaye vs state : 1970 AIR (SC) 2486,

"The orders under section 144 are temporary and can not be used as a permanent solution to maintain public order. The orders should be specific, time-bound and should not unduly infringe on citizens' rights."

b. What do you know about the process of land dispute?

Date _____
The process of handling land disputes under CPC primarily involves in the chapter XII, sections 145 to 148.

① Initiation of the Process:

- ✓ When a DM or any EM, empowered by govt. in this behalf, is informed of a land dispute that is likely to lead to a breach of peace, he can initiate the proceedings under section-145.
- ✓ The information may be given by a police report or by any of the parties involved in the dispute.
- ✓ The dispute must be concerning immovable property like land or water. for example - buildings, markets, fisheries, crops, production of land or profits of any such property.

② Preliminary order : 145(2), (1)

- ✓ The magistrate issues a preliminary order directing the parties involved in the dispute to appear before court and submit their written statement regarding their claim of the actual possession of the subject of dispute.
- ✓ This order shall be served in such manner as the summons under CPC.
- ✓ At least one copy of the order shall be published by affixing to some conspicuous place on near to the subject of dispute.



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(3) Inquiry & Evidence collection 145(4)

✓ The magistrate will hear the parties and receive all evidences produced by the parties. The ✓ The inquiry focuses on the actual possession rather than ownership or title.

(4) Retention of the possession: 145(b)

✓ If the magistrate thinks there is legal ground about the possession of the disputed subject under any of the party, he may order in this regard.

(5) Attachment of Property: Sec-146

✓ If the magistrate thinks there is serious threat to public peace, he may attach the disputed property to prevent such situation.

✓ The magistrate shall have the powers to appoint a receiver of that property.

(6) Withdrawal of the attachment: 146(1)

✓ If the magistrate is satisfied that there is no longer any threat to breach the peace, he may withdraw the attachment at any time.

⑧ Disputes concerning rights of use of immoveable property:

Sec-147

✓ If the magistrate is informed about any dispute concerning the rights of use of such property which is likely to cause a breach of the peace exists, he may make an order to the parties to submit a written statements regarding their claim.

✓ If it appears that such right exists, he may make an order prohibiting any interference with the exercise of such right.

✓ If it appears that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

⑨ Local Inquiry: Section-148

✓ If the magistrate thinks necessary, he may depute any magistrate subordinate to him to make the local inquiry.



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Question - 7

Date: _____

b. Discuss the effect of withdrawal from prosecution?

(a) Introduction :

Section - 494 of CrPC grants the PP the authority to withdraw from the prosecution of a case at any stage before the judgement is pronounced.

(b) Process :

✓ PP has the discretion to withdraw from prosecution if a case

✓ The PP has to receive the prior approval or consent of the court for doing so.

✓ The PP can withdraw from prosecution at any stage of the case before judgement is pronounced.

✓ The withdrawal may be done of any person in respect of any one or more of the offences for which he is tried.

(c) Effect of withdrawal from prosecution :

a. If it is done before a charge has been framed, the accused shall be discharged from the offence or offences.

b. If it is made after the charge has been made, he shall be acquitted in respect of such offence or offences.

AIR 1987 SC 877 → "The withdrawal must be made under the consent of the court, which acts as a safeguard against arbitrary exercise of this power."



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c. what is the inherent power of HCD for the end of justice and secure the process of court?

(i) Introduction:

Section 561A of CrPC deals with the "inherent powers" of the HCD to secure justice.

(ii) Powers →

① Securing the end of justice:

✓ The HCD is empowered to pass any orders necessary to secure justice, especially in cases where there is doubt that the proceedings would result in an unjust outcome.

② Preventing the abuse of legal process:

✓ The HCD can intervene to prevent the abuse or misuse of the process of the lower courts. This includes quashing proceedings that are frivolous, vexatious or instituted with malafide intentions.

③ Correcting judicial errors:

✓ This section allows the HCD to correct judicial errors that might have occurred due to oversight or other reasons during the lower court proceedings.

RP Kapur Vs State of Punjab: AIR 1960 SC 866,

"The HCD, under section 561A, can intervene to quash criminal proceedings, particularly when the proceedings amount to a abuse of the courts process."

b. How is summons served?

a) Summons:

According to section 68 of CPC, chapter VI

- ✓ A summons is a legal document or order issued by a court towards a person to appear before the court at a specific date and time.
- ✓ A summons shall be in writing in duplicate and signed and sealed by the presiding officer of the court issued.

b) Who can serve summons? Sec - 68(2)

- ✓ by a police-officer, or
- ✓ any other person prescribed by government in this behalf, or
- ✓ any officer of the court issuing it, or
- ✓ other public servant.

c) Summons how served? Sec - 69

① Service in person → The summons shall be served personally to the person summoned. It should be delivered or tendered to the person and the signature of the recipient should be obtained as proof of receipt.

② Service to another person → If the person summoned is not found,



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② Service of summons on corporate bodies: See - 69(3)

✓ Service of summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officers of the corporation.

✓ May be served by registered post letter addressed to the chief officer of the corporation in Bangladesh.

③ Service when person summoned cannot be found: See - 70

③ Service when person summoned can not, after

✓ If the person summoned can not, after due diligence, be found, the summons may be served by leaving one of the duplicates with an adult male member of his family residing with him.

✓ take sign of that member on the back of the other duplicate.

④ When service can not be effected as aforesaid ways: See - 71

✓ If the service of summons can not be exercised in the manner provided in section 69, 70, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides.

c. Discuss the provisions regarding the service of summons to the public servant ?

Date :

Section-72 :

✓ When the person summoned is in the active service of the Republic, the court may send the summons to the head of the office in which such person is employed.

✓ The head of the office shall serve the summon in the manner provided in section-69.

✓ The Head of the office shall send a return to the court indicating how the service was effected.

d. How summons is served outside the local limit?

Section-73 :

✓ If a summons is to be served at a place outside the local limits of the court's jurisdiction, it shall be sent to the magistrate within whose local jurisdiction the person summoned resides.

✓ The magistrate receiving the summons is then responsible for serving it as per the prescribed procedures.



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Question 9

a. Discuss the provisions regarding appeal in case of acquittal and appeal against inadequacy of sentence?

b. Appeal in case of acquittal : Sec- 417

① Victim's Appeal → The victim or complainant of a proceeding or their legal representatives can appeal against a acquittal, if they believe that justice has not been adequately served.

② State's Appeal → The state, represented by the PP, can appeal against an acquittal if it believes that the acquittal was not justified or if there was an error in the judicial process.

③ In which courts to appeal :

- ✓ to the HCD if the acquittal is passed by any court of session.
- ✓ to the court of session, if the order of acquittal is passed by any magistrate.

④ time limit of the appeal : 417(3)

- ✓ upto sixty days from the date of the order of acquittal.

⇒ Appeal against inadequacy of Sentence <sup>sec-
417A</sup>

① The Government

Section - 417A deals with the procedure for filing an appeal against a conviction or sentence which is considered to be inadequate.

① The Government's Appeal → The Government may direct the PP to present an appeal to the HCD against the sentence awarded by any court, on the ground of its inadequacy.

② Complainant's Appeal → A complainant may present an appeal to the Appellate court against the sentence awarded by any court, on the ground of its inadequacy.

③ Time limit → upto sixty days from the date of conviction.

- * The appeal must be in writing and include grounds of appeal and any supporting documents.
- ✓ After receiving an appeal on this ground, the Appellant court shall issue show cause to the accused.

b. Discuss the special Rules of Evidence?

Chapter XLII, Sections - 509 to 512

Date: _____

① Deposition of medical witness : sec- 509

✓ The deposition of a civil surgeon or other medical witness, taken and attested by a magistrate in the presence of the accused can be used as evidence in a legal proceeding, although the deponent is not called as a witness.

✓ The court has the discretion to summon and examine such deponent about the deposition, if it thinks fit.

② Report of Post mortem examination : sec- 509 A

E-32
PRB-299
MAY/13/06

✓ A post mortem examination report prepared by civil surgeon or the medical officer may be used as evidence.

✓ In this case, such officer need not appear before court if he is dead, or is incapable of giving evidence, or his presence is unreasonable.

③ Report of chemical Examiner, senologist etc : sec- 510

E-45
PRB-490
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✓ A report, made for the purpose of any legal proceeding under this code, made by any chemical Examiner, Assistant chemical Examiner, senologist, handwriting expert, finger print expert or firearms expert may be used as evidence in such proceeding without calling them as a witness in the court.



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④ Evidence of formal character on affidavit: ^{sec} 510A

- ✓ The evidence of any person whose evidence is of a formal character may be given by affidavit in a proceeding.
- ✓ On the application of the prosecution or the accused, the court may call such person to appear before court for examination.

⑤ Previous conviction or acquittal how proved: ^{sec-511}

- ✓ A previous conviction or acquittal may be proved in any inquiry or trial or other proceeding.
- ✓ Certified copy of such conviction or acquittal from competent authority may be produced before court in this regard.

⑥ Record of evidence in absence of accused: ^{sec-512}

- ✓ If the accused has absconded and there is no immediate prospect of arresting him, the court may examine witnesses in the absence of such accused.

* Pritam Singh vs State of Punjab: AIR 1956 SC 415

"Evidence recorded in the absence of the accused can be used against him when he is later apprehended or surrenders, ensuring that justice is not delayed due to the accused's deliberate evasion of the trial."

a. Habeas corpus

- ✓ Habeas corpus meaning "Produce the body" is a legal remedy used to challenge unlawful detention or imprisonment.
- ✓ This is an immense power of High court Division given under section 491
- ✓ According to this section, The HCD may, whenever it thinks fit, direct —
 - a. that a person within its jurisdiction be brought before the court to be dealt with according to the law.
 - b. to release a person who is being illegally or improperly detained in public or private custody.
 - c. that a prisoner in any jail within its jurisdiction be brought before the court to examine as a witness.
 - d. that a prisoner detained as aforesaid be brought before a court martial or any commissioners for trial or examination in a pending matter.
 - e. that a prisoner be transferred from one place of custody to another for trial.
- * The supreme court may, time to time, frame rules to regulate the procedure in cases under this section.
- * The principle is to ensure that no person is deprived of their liberty without legal justification.



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