

Short Notes

a) Moveable property/ Immovable property

1. Moveable Property (Section 22):

- 🕒 Moveable property includes any physical/tangible property, except land and things attached to the earth or permanently fastened to something that is attached to the earth.
- 🕒 Examples: Furniture, vehicles, jewelry, etc.

2. Immovable Property:

- 🕒 Immovable property is not explicitly defined in the Penal Code, but it can be understood as the opposite of moveable property.
- 🕒 Immovable property generally refers to land, buildings, and anything that is permanently attached to the land or a building.
- 🕒 Examples: Land, houses, buildings, trees, etc.

The key difference between moveable and immovable property is that moveable property can be physically moved or transported, while immovable property is fixed to the land and cannot be easily moved.

b) Wrongful gain / wrongful restraint

1. Wrongful Gain (Section 23):

- 🕒 Wrongful gain is when a person acquires or retains property through unlawful means, to which they are not legally entitled.
- 🕒 It means gaining something by using illegal or unjust methods.

2. Wrongful Restraint (Section 339):

- 🕒 Wrongful restraint is when a person voluntarily obstructs another person from proceeding in any direction in which they have a right to proceed.
- 🕒 It means unlawfully preventing someone from moving or acting freely.

In simpler terms:

- 🕒 Wrongful gain is unlawfully obtaining or keeping something that does not belong to you.
- 🕒 Wrongful restraint is unlawfully preventing someone from going where they have a right to go or doing what they have a right to do.

The key difference is that wrongful gain involves the unlawful acquisition or retention of property, while wrongful restraint involves the unlawful restriction of a person's freedom of movement or action.

c) Criminal conspiracy

Criminal Conspiracy (Sections 120A and 120B)

Criminal conspiracy refers to when two or more people agree to do an illegal act or to do a legal act by illegal means.

Specifically:

- 🕒 Section 120A defines criminal conspiracy as when two or more people agree to do an illegal act, or to do a legal act by illegal means.
- 🕒 Section 120B states that whoever is a party to a criminal conspiracy can be punished. The punishment depends on whether the conspiracy is to commit an offense punishable with death, life imprisonment or rigorous imprisonment for 2 years or more.
- 🕒 In simpler terms, a criminal conspiracy is when two or more people plan together to break the law, either by agreeing to do something illegal, or by agreeing to do something legal but using unlawful methods.
- 🕒 The key point is that mere agreement itself, even without actually committing the planned offense, is punishable as a criminal conspiracy under the law. The Penal Code aims to penalize such unlawful agreements and plans, even if they are not fully carried out.

d) Public servant

Public Servant (Section 21)

In the Penal Code, a "public servant" refers to a wide range of officials and persons who have certain powers or duties related to the public.

Specifically, Section 21 lists several categories of people who are considered "public servants", including:

- 🕒 Commissioned officers in the military, navy or air force
- 🕒 Judges and other judicial officers
- 🕒 Police officers and other law enforcement officials
- 🕒 Government officials and employees, including revenue officers
- 🕒 Anyone who is legally empowered to perform a public duty

The key point is that a "public servant" is not limited to just government employees, but includes anyone who has an official role or authority related to the public, whether they are appointed by the government or not.

In simpler terms, a public servant is someone who holds a position of power or responsibility that involves serving or representing the interests of the general public, rather than just their own private interests. The definition is broad to cover the wide range of officials and roles that can have an impact on the public through the exercise of their duties and powers.

e) Enhance punishment (Section 75)

Enhanced Punishment (Section 75)

- 🕒 The Penal Code provides for enhanced or increased punishment for certain repeat offenders.
- 🕒 Specifically, Section 75 states that if someone has been previously convicted of an offense punishable under Chapter XII (Offences Against Property) or Chapter XVII (Offences Against

Property) of the Penal Code, and they then commit another such offense, they can be punished more severely.

- ☹ In simpler terms, if a person has already been convicted of a property-related crime like theft or robbery, and they commit another such crime later, they can face a harsher punishment the second time.

The enhanced punishment under Section 75 can be:

- ☹ Imprisonment for life or
- ☹ Imprisonment for up to 10 years

The key point is that the law wants to deter repeat offenders by subjecting them to stricter penalties if they continue to commit similar crimes even after being previously convicted. This is meant to discourage habitual criminal behavior.

So in essence, Section 75 allows for enhanced or increased punishments to be imposed on someone who has shown a pattern of committing certain types of property-related offenses.

f) Unlawful assembly

Unlawful Assembly (Section 141)

The Penal Code defines an "unlawful assembly" as a group of five or more people who have gathered with a common unlawful objective.

Specifically, Section 141 states that an assembly of five or more persons is considered an "unlawful assembly" if the common object of the group is:

1. To overawe the government or public servants by using criminal force.
2. To resist the execution of any law or legal process.
3. To commit any mischief or criminal trespass.
4. To use criminal force to take or obtain possession of property.
5. To compel any person to do or not do something by using criminal force.

In simpler terms, an unlawful assembly is a group of people who have come together with the shared goal of engaging in some kind of unlawful or criminal activity, whether it's using force against the authorities, breaking the law, or compelling others to do something illegal.

The key point is that merely being part of such an assembly, even without actively participating in the unlawful acts, can itself be a criminal offense under the Penal Code. So in essence, an unlawful assembly refers to a gathering of people whose collective purpose is to carry out something illegal or disruptive, which the law seeks to prohibit and punish.

2. Under the Bangladesh Penal Code, sections 76 and 77 provide defenses related to acts done by mistake or due to orders of a superior. If a police officer, acting under the orders of a superior, mistakenly arrests the wrong person, can they be held criminally liable for wrongful arrest? How do these sections apply in such a situation? (Section 76, 77)

- ☉ Based on Sections 76 and 77 of the Bangladesh Penal Code, a police officer who mistakenly arrests the wrong person under the orders of a superior would likely not be held criminally liable.
- ☉ Section 76 Act Done by a Person Bound by Law
- ☉ This section states that an act is not an offense if it is done by a person who is legally bound to do it, or who mistakenly believes they are legally bound to do it.
- ☉ In the case of a police officer arresting someone under orders from a superior, the officer would be acting in accordance with their legal duties and powers. Even if the arrest turns out to be a mistake, the officer can be protected from criminal liability under this section.

Section 77 Act of a Judge when Acting Judicially

- ☉ This section provides a defense for acts done by a judge or other judicial officer in the exercise of their legal powers and duties. While a judge may make an erroneous decision, they cannot be criminally liable for it as long as they were acting within their lawful authority.
- ☉ By extension, this principle can apply to other public officials, like police officers, who are carrying out their official functions based on the orders or directives of their superiors.
- ☉ So in the scenario you described, the police officer who mistakenly arrests the wrong person under the orders of their superior would likely be protected from criminal liability under Sections 76 and 77 of the Penal Code. As long as the officer was acting in good faith and within the scope of their legal duties, they should not face criminal punishment for the wrongful arrest.
- ☉ The key is that these sections recognize that public officials cannot be held criminally responsible for honest mistakes made while discharging their lawful responsibilities, as long as they are not acting with criminal intent.

3. What is right of private defense? Give definition. According to the Bangladesh Penal Code sections 96, 97, and 99, what are the limitations and extent of the right of private defense concerning life and property? When does this right begin and end, and are there any circumstances under which this right cannot be exercised? Right of Private Defense (Sections 96-99)

The Penal Code defines the "right of private defense" in Sections 96-99. This refers to the legal right of a person to use reasonable force to defend themselves, their body, or their property against an unlawful act or threat.

Specifically:

- ☉ Section 96 states that nothing is an offense which is done in the exercise of the right of private defense.
- ☉ Section 97 outlines the two main aspects of this right defense of the body, and defense of property.

Limitations and Extent (Sections 99, 100, 103-106)

Section 99 imposes some key limitations on the right of private defense:

- 1) There is no right of defense against acts by public servants acting in good faith under color of their office.
 - 2) There is no right of defense if there is time to seek protection from public authorities.
 - 3) The degree of force used must not exceed what is necessary for the purpose of defense.
- 🕒 Sections 100-101 specify that the right to cause death in defense of the body only applies in cases of very serious threats, like assault likely to cause death or grievous hurt.
 - 🕒 Sections 103-106 further outline the extent and limits of the right to cause death or harm in defense of property.

Beginning and Ending of the Right (Sections 102, 105)

- 🕒 The right of private defense begins as soon as a reasonable apprehension of danger arises (Section 102).
- 🕒 It continues as long as such apprehension lasts (Sections 102, 105).
- 🕒 Circumstances Where Right Cannot be Exercised (Section 99)
- 🕒 As mentioned, the right cannot be exercised against acts of public servants acting in good faith (Section 99).
- 🕒 Additionally, there is no right of private defense if there is time to seek protection from public authorities (Section 99).

In summary, the Penal Code recognizes and outlines the right of private defense, but also imposes important limitations to prevent misuse of this right. The extent and duration of the right depend on the nature of the threat and the availability of other legal remedies.

4. Under the Bangladesh Penal Code sections 100 and 103, in what situations does the right of private defense of the body and property extend to causing death? What are the specific circumstances and limitations under which this right can be exercised? Right to Cause Death in Private Defense (Sections 100 and 103)

Under the Bangladesh Penal Code, the right of private defense can extend to causing the death of the assailant in certain grave situations, as outlined in Sections 100 and 103.

Right of Private Defense of the Body (Section 100)

Section 100 states that the right of private defense of the body extends to causing the death of the assailant in the following circumstances:

- 1) If the assault may reasonably cause the apprehension that death will otherwise be the consequence.
- 2) If the assault may reasonably cause the apprehension that grievous hurt will otherwise be the consequence.
- 3) If there is an assault with the intention of committing rape, unnatural lust, kidnapping/abduction, or wrongful confinement.

The key point is that the threat must be serious enough to reasonably cause the fear of death or grievous hurt. The defender is entitled to use fatal force if necessary to prevent these grave consequences.

Right of Private Defense of Property (Section 103)

Section 103 states that the right of private defense of property extends to causing the death of the wrongdoer in the following cases:

- 1) Robbery
- 2) House-breaking by night
- 3) Mischief by fire on a building used as a human dwelling
- 4) Theft, mischief or criminal trespass under circumstances likely to cause death or grievous hurt

Again, the threat to the property must be severe enough to raise a reasonable apprehension of death or grievous hurt. Only then can the defender use lethal force in protection of their property.

Limitations on the Right (Section 99)

However, Section 99 imposes some key limitations on this right:

- 1) There is no right of private defense against acts of public servants acting in good faith.
- 2) The degree of force used must not exceed what is necessary for the purpose of defense.
- 3) The right cannot be exercised if there is time to seek protection from public authorities.

So in summary, the Penal Code allows the right of private defense to extend to causing death, but only in the face of the most serious threats to life and property. Even then, the use of force must be proportionate and necessary, and cannot be applied against lawful acts by public officials.

5. What is abetment? Imagine you are part of a group planning an elaborate heist. One of your team members is responsible for disabling the security system, while your role is to provide tools and resources. However, due to unforeseen circumstances, you were not present when the heist took place, and your absence was noted. Considering sections 109 and 114 of the legal code, discuss whether your absence affects your liability for abetment in the commission of the crime. How do these sections distinguish between presence and absence in determining your culpability?

Abetment (Sections 109 and 114)

Abetment refers to the act of instigating, engaging in a conspiracy, or intentionally aiding the commission of an offense, even if the actual offense is not completed.

In the scenario you described, where you were part of the planning but not physically present during the heist, Sections 109 and 114 of the Bangladesh Penal Code would be relevant in determining your liability for abetment.

Section 109 Punishment of Abetment if the Act Abetted is Committed

This section states that if the act abetted is committed as a consequence of the abetment, and there is no express provision for punishment of the abetment, the abettor shall be punished with the same punishment as the person who committed the offense.

- ☉ The key point here is that your actual presence during the commission of the crime is not necessary for you to be held liable as an abettor. As long as your acts of instigation, conspiracy, or intentional aid contributed to the eventual commission of the offense, you can be punished as an abettor.

Section 114 Abettor Present when Offense is Committed

- ☉ This section further clarifies that if an abettor is present when the offense is committed, they shall be deemed to have committed the offense themselves.
- ☉ However, the converse is not true your absence does not automatically absolve you of abetment liability. As long as the prosecution can prove your role in instigating, conspiring, or intentionally aiding the commission of the crime, you can still be held liable as an abettor under Section 109.
- ☉ So in your scenario, even though you were not physically present during the heist, you may still be liable for abetment under Section 109 if the prosecution can establish that your prior acts of planning, providing resources and enabling the security breach contributed to the eventual commission of the crime.
- ☉ The distinction between presence and absence is more relevant in terms of the presumption of culpability under Section 114. But your overall liability as an abettor is not contingent on your physical presence at the crime scene, as long as the other requirements of Section 109 are met.

6. What is unlawful assembly? You and a group of friends have gathered to protest against a new policy in your town. As the crowd grows, tensions rise, and the protest turns unruly. The police arrive and disperse the assembly, charging several participants under sections 143, 144, and 145 of the legal code related to unlawful assembly. How do these sections differentiate between a lawful gathering and an unlawful assembly, and what specific actions or circumstances could escalate the situation to trigger charges under each section? Discuss the potential legal consequences for individuals involved in such an assembly. (Sections 143, 144, and 145)

The Bangladesh Penal Code defines an "unlawful assembly" in Section 141 as a gathering of five or more people with the common objective of:

- 1) Overawing the government or public servants by using criminal force.
 - 2) Resisting the execution of any law or legal process.
 - 3) Committing mischief or criminal trespass.
 - 4) Using criminal force to take or obtain possession of property.
 - 5) Compelling any person to do or not do something by using criminal force.
- ☉ Sections 143, 144, and 145 then outline the offenses and punishments related to participating in such an unlawful assembly.
 - ☉ Section 143 Punishment for Being a Member of an Unlawful Assembly
 - ☉ This section states that simply being a member of an unlawful assembly is punishable with imprisonment up to 6 months, a fine, or both.
 - ☉ Section 144 Joining Unlawful Assembly Armed with Deadly Weapon

- ☛ If members of the unlawful assembly are armed with deadly weapons, the punishment is imprisonment up to 2 years, a fine, or both.
- ☛ Section 145 Joining or Continuing in Unlawful Assembly After It Has Been Commanded to Disperse
- ☛ If the assembly continues even after the police have ordered it to disperse, the participants can be imprisoned up to 2 years, fined, or both.

So the key distinction is that a lawful gathering can cross the line into an "unlawful assembly" based on the common objective and actions of the crowd, even if the initial gathering was peaceful. Factors like the use of force, defiance of police orders, and possession of weapons can all escalate a protest into an unlawful assembly.

- ☛ In your scenario, if the protest turned unruly, with the crowd using force, resisting police, or potentially committing crimes, the police could invoke these sections to disperse the assembly and charge the participants. The severity of the charges would depend on the specific actions and level of violence/defiance displayed by the crowd.
- ☛ The potential consequences range from 6 months imprisonment for simply being a member, up to 2 years imprisonment for continuing the assembly after police orders, or for being armed. So the Penal Code aims to provide a legal framework to maintain public order, while also allowing for legitimate protests and gatherings, as long as they remain peaceful and lawful.

7. Sections 171, 178, and 179 of the Bangladesh Penal Code deal with offenses related to contempt of the lawful authority of public servants.(Section 171, 178, 179)

Section 171 Personating a Public Servant

- ☛ This section prohibits anyone who does not belong to a certain class of public servants from wearing the garb or carrying the token used by that class, with the intention of making others believe they are a public servant. The punishment is imprisonment up to 3 months, fine up to 200 taka, or both.

Section 178 Refusing Oath or Affirmation When Duly Required by Public Servant

- ☛ This section states that whoever refuses to be bound by an oath or affirmation when legally required to do so by a public servant, shall be punished with simple imprisonment up to 6 months, fine up to 1000 taka, or both.
- ☛ The key point is that the public servant must be legally competent to demand the oath or affirmation.

Section 179 Refusing to Answer Public Servant Authorized to Question

- ☛ This section punishes whoever, being legally bound to state the truth to a public servant exercising their legal powers, refuses to answer any question asked by that public servant. The punishment is simple imprisonment up to 6 months, fine up to 1000 taka, or both.
- ☛ Again, the public servant must be legally authorized to ask the questions in order for this offense to apply.
- ☛ The common thread in these sections is the need to maintain respect for and cooperation with the lawful authority of public servants carrying out their official duties. Obstructing,

impersonating, or refusing to comply with their legitimate actions is considered an offense under the Penal Code.

- ☉ The punishments, being relatively minor, reflect the intent to ensure compliance with public servants rather than to impose harsh penalties. The focus is on preserving the rule of law and the ability of officials to effectively discharge their responsibilities.

8. Write down the Offenses of Public servant. What public servant can do what cannot do? (Section 168). What is the crime of cheating by wearing the clothes of other forces? Offenses by Public Servants (Sections 166-171)

The Bangladesh Penal Code outlines several offenses that can be committed by public servants in the course of their duties:

1. Section 166 Public Servant Disobeying Law, with Intent to Cause Injury

- ☉ A public servant who knowingly disobeys the law in a way that is likely to cause injury to any person can be punished with simple imprisonment up to 1 year, fine, or both.

2. Section 167 Public Servants Framing an Incorrect Document

- ☉ A public servant who frames or translates an official document in a way they know to be incorrect, with the intent to cause injury, can be punished with imprisonment up to 3 years, fine, or both.

3. Section 168 Public Servants Unlawfully Engaging in Trade

- ☉ A public servant who is legally bound not to engage in trade, but does so, can be punished with simple imprisonment up to 1 year, fine, or both.

4. Section 169 Public Servants Unlawfully Buying or Bidding for Property

- ☉ A public servant who purchases or bids on property they are legally prohibited from acquiring can be punished with simple imprisonment up to 2 years, fine, or both, and the property may be confiscated.

5. Section 170 Personating a Public Servant

- ☉ Anyone who pretends to hold a public office they do not actually hold, or falsely impersonates a public servant, can be punished with imprisonment up to 2 years, fine, or both.
- ☉ The key point is that public servants are held to a higher standard of conduct. They are expected to faithfully discharge their duties in accordance with the law. Any abuse of their position or authority for personal gain or to cause harm can result in criminal liability under the Penal Code.

Impersonating Other Forces (Section 140)

- ☉ Section 140 specifically prohibits anyone who is not a soldier, sailor or airman in the military, naval or air forces of Bangladesh from wearing the garb or carrying the token used by such personnel.
- ☉ The punishment is imprisonment up to 3 months, fine up to 500 taka, or both.

- ☛ The rationale behind this offense is to prevent the unauthorized use of official uniforms and insignia, which could be used to impersonate legitimate authorities and undermine public order or security. It is a form of criminal personation targeted at safeguarding the integrity of the armed forces.

So in summary, the Penal Code places strict restrictions on the conduct of public servants and the impersonation of official roles, in order to maintain the rule of law and public trust in government institutions.

9. What is public nuisance? (Section 268) Discuss about the public nuisance chapter specially important sections. Public Nuisance (Section 268)

The Bangladesh Penal Code defines a "public nuisance" in Section 268 as any act or illegal omission that causes:

- 1) Common injury, danger, or annoyance to the public or people in the vicinity.
- 2) Injury, obstruction, danger, or annoyance to people who have occasion to use a public right.

Essentially, a public nuisance is an unlawful act or neglect that negatively impacts the general public, rather than just affecting specific individuals.

Some important sections in the "Offences Affecting the Public Health, Safety, Convenience, Decency and Morals" chapter include:

Section 269 Negligent Act Likely to Spread Infection of Disease Dangerous to Life

- ☛ This punishes whoever negligently does an act likely to spread a dangerous disease, with up to 6 months imprisonment, fine, or both.

Section 277 Fouling Water of Public Spring or Reservoir

- ☛ Voluntarily corrupting or fouling public water sources can result in up to 3 months imprisonment, fine up to 500 taka, or both.

Section 290 Punishment for Public Nuisance in Cases Not Otherwise Provided For

- ☛ If an act constitutes a public nuisance but is not specifically covered by other sections, the offender can be punished with a fine up to 200 taka.

Section 291 Continuance of Nuisance after Injunction to Discontinue

- ☛ Whoever repeats or continues a public nuisance after being ordered by a public servant to stop, can be punished with up to 6 months simple imprisonment, fine, or both.

The key aspect of public nuisance is that the act or omission must affect the general public, rather than just individuals. The Penal Code aims to maintain public health, safety, and order by criminalizing such behaviors that compromise the collective wellbeing.

The punishment range reflects the intent to deter and stop nuisances, rather than impose harsh sentences. The focus is on preventing and remedying public harms through the legal system.