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REGULAR UPDATES!

[Issue No.:49(4) / 2022]

Regular¹ Legal Updates & Points

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¹ . Earlier, it was published as "**Daily** Legal Updates and Points"



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[1]	Word/ Doctrine / Maxims of the Day:
	<p>Actus Reus Non Facit Reum Nisi Mens Sit Rea: This Latin maxim means "an act is not culpable unless the mind is guilty". In other words, an act does not constitute guilt unless done with a guilty intention. Popularly and briefly, this maxim is known as 'mens rea'. As a general rule under <i>traditional criminal law jurisprudence (TCLJ)</i>, someone who acted without mental fault is not liable in criminal law. The rule of strict liability and absolute liability are exceptions to this general rule of <i>mens rea</i>. However, under <i>modern criminal law jurisprudence (MCLJ)</i> 'mens rea' is not the only touchstone for turning the accused guilty of an offence and now the guilt of an accused is being examined on the basis of "CAR (conduct, attendant circumstances, result) Factors". The definition of a crime is thus constructed using only the CAR elements rather than the colorful language of <i>mens rea</i>. <u>On the other hand</u>, in civil law, it is usually not necessary to prove a subjective mental element to establish liability for breach of contract or tort, for example. But if a tort is intentionally committed or a contract is intentionally breached, such intent may increase the scope of liability and the damages payable to the plaintiff.</p>
[2]	<p>Question (?) / Issue for Discussion of the Day: Judicial Legislation is antithetical to the 'doctrine of separation' of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities.</p>
[3]	<p>Law / Bill of the Day: The Unlawful Activities (Prevention) Act, 1967 (UAPA): The Unlawful Activities Prevention Act, commonly known as the UAPA, was passed in the year 1967 on the recommendation of the National Integration Council. The Act consists of total 53 Sections with object to penalise unlawful and terrorist activities of individuals and associations posing threat to the integrity and sovereignty of India. The Act underwent various amendments in the year 1969, 1972, 1986, 2004, 2008, 2013 and 2019. The latest amendment in the year 2019 added the Fourth Schedule and expanded the definition of 'terrorist' to include individuals under Section 35 and Section 36 of the Act. Therefore, an individual may be identified as a terrorist without any judicial scrutiny and even before the commencement of the trial. Section 2 (h) of the UAPA defines the term "property" in a very comprehensive manner. As per Section 2(h) "property" means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents, deeds and instruments in any form including but not limited to electronic or digital, evidencing title to, or interest in, such property or assets by means of bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, cash and bank account including fund, however acquired.</p>



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	<i>This definition needs to be incorporated, mutatis mutandis, under the Transfer of Property Act, 1882.</i>
[4]	<p>Memorable Case Laws:</p> <p>(1) Shreya Singhal Vs. Union of India (AIR 2015 SC 1523): In the year 2012, certain persons were arrested by the Mumbai police for expressing their displeasure at a bandh which was called in by the members of a particular political party in Maharashtra for the incident of stalwart politician's death. The accusation made against the petitioners was that they were involved in posting their comments on the social media i.e. Facebook and liking the comment at the same time which resulted in widespread public protest. The petitioners by the way of Public Interest Litigation, filed the Writ Petition under Article 32 of the Constitution of India claiming that Section 66-A of Information Technology Act, 2000 violates the right of freedom of speech and expression of an individual in digital or internet age. The Hon'ble Supreme Court of India held Section 66-A of the IT Act, 2000 to be violative of freedom of speech and expression as enshrined under Article 19(1) of the Indian Constitution and hence declared it unconstitutional. The Court further held that the restrictions imposed vide the IT Act is not covered under the grounds of reasonable restrictions given under Article 19(2).</p> <p>(2) Triple Talaq Case (2017): This case is formally known as <i>Shayara Bano Vs. Union of India & Ors.</i> The Supreme Court of India declared the practice of <i>Triple Talaq (talaq-e-biddat)</i> as unconstitutional by 3:2 majority (Justices Kurian Joseph, UU Lalit and RF Nariman delivered the majority Judgment while Chief Justice Khehar and Justice Abdul Nazeer dissented). As per this form of Talaq Muslim men unilaterally ended their marriages by uttering the word "talaq" three times without making any provision for maintenance or alimony. On the fulcrum of this judgment, the Muslim Women (Protection of Rights on Marriage) Act, 2019 was passed by the Parliament. As per section 4 this Act, any Muslim husband who pronounces <i>talaq-e-biddat or any other form of instantaneous or irrevocable talaq</i> upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.</p>
[5]	<p>Memorable Points (Cr.P.C.): Memorable points² as to Criminal Procedure Code, 1973 (total 30 points as to Cr.P.C. already covered under previous issues of "Regular Updates") are as under —</p>

². The readers please be informed that total **83 points** (the Indian Penal Code, 1860) , **84 points** (CPC) and **93** (Indian Evidence Act) **memorable points** have been covered under previous issues of "Daily Legal Updates & Points" now known as "**Regular Legal Updates and Points**".



- (1) Section _____ Cr.P.C., 1973 deals with the procedure when investigation cannot be completed in twenty-four hours—**Section 167**
- (2) The Magistrate to whom an accused person is forwarded under Section 167 may, *whether he has or has not jurisdiction* to try the case, from time to time, authorise the detention of the accused in police custody as such Magistrate thinks fit, for a term not exceeding _____ days in the whole—**Fifteen Days**. (Refer Section 167 of the Cr. P.C.)
- (3) The nearest Magistrate may allow detention in police custody upto _____ days—**Fifteen Days**. (Refer Section 167 of the Cr. P.C.)
- (4) The Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody for a total period exceeding _____ days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years—**90 Days** (Refer Section 167 of the Cr. P.C.)
- (5) The Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody for a total period exceeding _____ days, where the investigation relates to an offence other than offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years—**60 Days** (Refer Section 167 of the Cr. P.C.)

[6] **Memorable Points (Misc.):** Memorable points under Indian Constitution and various miscellaneous important Acts are as under (total **400 points already covered under previous issues of "Daily Updates"**)—

- (1) **Constitution of India, 1950:** Article _____ of the Constitution of India deals with the admission or establishment of new States—**Article 2**.
- (2) **Code of Civil Procedure:** Suit as to public nuisances and other wrongful acts affecting the public may be instituted by whom? —**Either by the Advocate-General or with the leave of the Court, by two or more persons**, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act. (Refer Section 91 of CPC.)
- (3) **Indian Evidence Act, 1872:** The Indian Evidence Act, 1872 does enable any person to give evidence of a fact which he is *disentitled* to prove by any provision of the law for the time being in force relating to Civil Procedure—**True** (Refer Section 5 of the Indian Evidence Act, 1872)



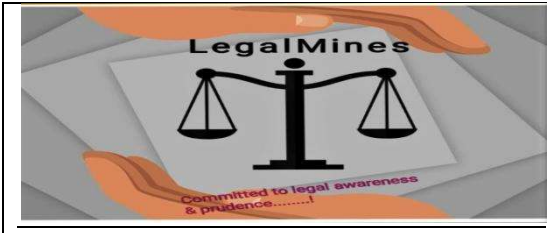
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	<p>(4) Indian Penal Code, 1860: True / False: A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. Here A has committed offence of murder—False (Refer Illustration No.(c) to Section 92 of the IPC, 1860)</p> <p>(5) Transfer of Property Act, 1882: True / False: A person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it—True (Refer Section 3 of the TPA, 1882)</p> <p>(6) Indian Contract Act, 1872: An agreement to do an act impossible in itself is _____—Void (Refer Section 56 of the ICA, 1872)</p> <p>(7) Partnership Act, 1932: As per Section ____ of the Partnership Act, 1932, when minor is admitted to the benefit of the firm, his share is liable for the acts of the firm but the minor is not personally liable for any such act—Section 30</p> <p>(8) Sale of Goods Act, 1930: Section ____ of the Sale of Goods Act, 1930 defines the terms 'condition' and 'warranty'—Section 12.</p> <p>(9) Specific Relief Act, 1963: Section ____ of the SRA, 1963 talks about the equity between the parties when a contract is adjudged to be rescinded—Section 30</p> <p>(10) Negotiable Instrument Act, 1881: True / False: The maturity of a promissory note or bill of exchange is the date at which it falls due—True (Refer Section 22 of the NI Act, 1881)</p>
<p>[7]</p>	<p>G. K. / Current Affairs:</p> <p>(1) 1st Judges Case (1981) is formally known as—S.P. Gupta Vs. UoI (1981)</p> <p>(2) 2nd Judges Case (1983) is formally known as—S.C.O.R.A. v. UoI (1983)</p> <p>(3) 3rd Judges Case (1998) is formally known as—In Re: Under Article 143(1) of the Constitution of India</p> <p>(4) 4th Judges Case (2015) is formally known as— Supreme Court Advocate on Record Association Vs UoI (2015)</p> <p>(5) Which Constitutional Amendment was challenged in the fourth judges case (2015)?—99th Constitutional Amendment, 2014.</p>



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Thanking You!

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