

SET 3

1. **PRINCIPLE:** Malice in law means an act done wrongfully, and without reasonable and probable cause, and not, as in common parlance, an act dictated by angry feeling or vindictive motive.

FACTS: Anshuman was a very crazy person and he always did things that would cause harm to the other people. He used to get thrilled after doing such acts. One day he was roaming about when he saw a fishery. He put poison in the fishery so that all fishes may die. He was unaware of who the owner of the fishery was. The owner of the fishery suffered a huge loss and when he came to know that Anshuman had done this deed, he was very furious. He alleged that Anshuman had poisoned the fishery out of malice and he filed a suit against Anshuman to recover damages. Decide.

- A. Anshuman will be liable because he acted out of malice.
- B. Anshuman did not act out of malice because he did not know who the owner of the fishery was.
- C. Anshuman is liable because he poisoned the fishery.
- D. Anshuman will be liable because he acted in a wrongful manner.

Answer- Option (A) is correct. Anshuman had done an act wrongfully. He knew that it would kill the fishes still he did it. And because he did not know who owned the fishery, he was not reasonable in his act to poison fishes without any reason. D is also correct but it is incomplete. C is incorrect because it is not a valid reason.

2. **PRINCIPLE:** If, in the prosecution of a lawful act, an accident, which is purely so, arises, no action can be sustained for an injury arising therefrom.

FACTS: Amit was going home during the Diwali break. Excited as he was to purchase things for people at home, he purchased a sari for his mom and sweets for the family. Then he purchased a lot of firecrackers. He carried the firecrackers to the station and while he was boarding the train, someone pushed him. The firecrackers exploded and hurt Sumit who was standing on the platform. Sumit brought a case against Amit and demanded compensation from him. Decide.

- A. Amit will be liable because it was foreseeable that such a thing can happen if a person is carrying firecrackers.
- B. Amit will be liable because he was carrying firecrackers which is against the rules of the railways.
- C. Amit will not be liable because he did not have any intention to hurt anyone and could not foresee that the firecrackers could burst.
- D. Amit is not liable because someone pushed him and it was an accident.

Answer- Option (A) is correct because one is not supposed to carry such dangerous objects. It is a case of strict liability where there is a dangerous object which escapes and causes damage. Therefore, Amit is strictly liable. B is incorrect because the facts nowhere mention about the rules of railway and also, we are not concerned with it because it is a new thing mentioned in the conclusion. We can't add anything to the facts nor can we question them. This is an important rule. C is incorrect because it is very much foreseeable that if it is a firecracker, it can burst. It does not matter that a person pushed you because at the station, it is not a new thing.

3. **PRINCIPLE:** Harm suffered voluntarily does not constitute a legal injury and is not actionable. This is the principle of *volenti non fit injuria*.

FACTS: Madhuban loved the roses planted in Mr. Tewari's garden and wanted to pluck a few roses for his girlfriend Alka. He therefore climbed the wall of the garden to get to the other side. Mr. Tewari had set up spring guns in his garden so that people did not trespass. But he did not put up any notice of the same because he wanted to teach the trespassers a lesson. Madhuban who did not notice the spring gun was shot by it. He brought a case against Tewari. Decide who is liable.

- A. Madhuban will be liable because he was committing the wrong of trespassing in Tewari's property so it serves him right.
- B. Madhuban will be liable because he consented to any harm that might occur when he goes in Tewari's property as he wanted the roses.
- C. Tewari will be liable because he had put a spring gun to protect the property when he could simply have fenced it.
- D. Tewari will be liable because he failed to put notice that there were spring guns. It is unreasonable and Madhuban could not have consented for it.

Answer- Option (D) is correct. Volenti cannot be taken up as a defence here because it was not suffered voluntarily since Madhuban could not have foreseen the spring guns. It is disproportionate and hence Tewari is liable.

4. **PRINCIPLE:** In cases of volenti non fit injuria, knowledge is not a conclusive defence in itself.

FACTS: Ali is a very dangerous boxer. He has the reputation of someone who can do anything to win a match. He can even hurt people. One day there was a match between Ali and Baba. In the last few seconds of the boxing match, Ali bites off Baba's ear. Decide who is liable and why.

- A. Ali is liable because it is wrong to bite off a person's ear and is against the rules of the game.
- B. Ali is liable because he has acted unreasonably by biting off the ear of his opponent.
- C. Ali is not liable because Baba knew that Ali was a dangerous boxer and still he consented to the match.
- D. Ali is liable because knowledge does not mean consent.

Answer- Option (D) is correct. A and B are wrong as A seems to be preachy and B is not in accordance with the principle. C is incorrect because he never gave consent to his ear being bitten off. It was something beyond even his comprehension. He consented to getting punched in a boxing match and not getting his ear cut by the opponent.

5. **PRINCIPLE:** In cases of volenti non fit injuria, rescue cases are an exception.

FACTS: A horse carriage was being driven by Deepu who was the driver of Aarkee . Deepu stopped at one shop and went inside the shop to purchase something leaving the horses and the carriage onto the middle of the road. Meanwhile some street urchins saw the horse and they started throwing stones at it and the horse bolted. It started moving and it would have hurt a lady very badly but for the intervention of the traffic policeman who was somewhere nearby. He tried to stop the horse but was hurt in the process. In the meantime , Deepu returned back and controlled the horse. The policeman brought a case against Deepu and Aarkee but they argued that he consented to the harm and he did it voluntarily. Decide.

- A. Aarkee is vicariously liable for the act of Deepu because Deepu could have avoided the accident by not being negligent so as to leave the carriage in the middle of the road.
- B. Only Deepu is liable because he stopped in the middle of the road and left the carriage to purchase things without taking care to put them in the roadside.
- C. Aarkee and Deepu are not liable because it was the children who upset the horse and it was unforeseeable that the horses would bolt.
- D. Aarkee and Deepu are not liable because the policeman suffered the harm voluntarily. No one had asked him to intervene.

Answer- Option (A) is correct going by the cardinal rule. B is incorrect because vicarious liability rule also applies. It is a rescue case. And therefore the person who put everyone in the danger is Deepu. Had Deepu not been negligent, then there would have been no need of rescue. That is why in rescue cases, the person injured can claim compensation.

6. **PRINCIPLE:** Every person has a right to defend his own person, property, or possession, against an unlawful harm. But he cannot for this purpose do an act which is harmful to his neighbour.

FACTS: Amrit lives near the coast. One day he saw an extraordinary flood coming upon the land. In order to protect his land, he fenced it, so that it would turn away. This water got diverted into Deepak's land and caused a lot of damage to him. This angered Deepak because had Amrit not done this, his land would have been safe. He files a suit claiming compensation. Decide.

- A. Amrit will be liable because he has diverted the mischief from his land to that of another.
- B. Amrit will be liable because he did a wrongful act causing damages to the plaintiff.
- C. Amrit will not be liable because he just fenced his land and the water got diverted.
- D. Amrit will not be liable because he has a right to defend his own property.

Answer- Option (A) is correct answer. B is also correct but it does not give any proper reasoning. The reasoning given is not close to the principle so we pick the first option. C&D can't be correct. Going by what the principle says, Amit's right to protect his own land from extraordinary floods extends to the doing of anything that is reasonably necessary to save his property, but he cannot do such a thing which has the effect of diverting the water to Deepak's land which is otherwise protected.

7. **PRINCIPLE:** Where two persons are engaged in a joint legal enterprise and the hazards necessarily inherent in its execution are such that it is impossible to determine the appropriate standard of care, then if one of them gets injured in the course of the enterprise, he cannot claim compensation from the other.

FACTS: Ankit was a pillion passenger aged 18. He encouraged his friend Raman aged 16 to drive recklessly and dangerously. Both of them had been drinking together before this. They were driving at a very high speed and the bike met with an accident leading to the death of Raman who was the driver. And Ankit suffered serious injuries. Later Ankit made a claim for compensation against the representative's of Raman in negligence. Decide.

- A. Ankit is likely to succeed because he can take the defence of being inebriated.
- B. Ankit is likely to succeed because he got injured because of the negligence of Raman.
- C. Ankit is not likely to succeed because Raman was a minor at that time.
- D. Ankit is not likely to succeed because he was engaged in an unlawful act of drinking and driving and he was participating actively in the negligent act in which the standard of care is difficult to determine.

Answer- Option (D) is the correct answer and is self-explanatory. A is incorrect because being inebriated voluntarily is not a defence. B is incorrect because he himself was participating in the act. Therefore, it is very difficult to determine the standard of care in this situation. C is incorrect because in tort law even children can be sued.

8. **PRINCIPLE:** Nothing is a wrong of which a person of ordinary sense and temper would not complain. This maxim does not apply when there is an injury to a legal right.

FACTS: A has a pond with a lot of fishes in it. B casts and draws a net in water where A has the exclusive right of fishing. In this process B is not able to catch any fish. When A sees this, he brings a suit against B. Decide.

- A. A will succeed because the pond belongs to him and he owns the fishes in it.
- B. A will succeed because he has the exclusive right of fishing in that pond and B has violated his legal right.
- C. A will not succeed because B has not caught any fishes and therefore no damage has occurred.
- D. A will not succeed because it is a trifle.

Answer- Option (B) is correct because whether or not any fish has been caught, B has wronged A. This makes B liable because if A does not do anything about it and the act is repeated, it would tend to establish a claim or right to fish in that water.

9. **PRINCIPLE:** Master is liable for the wrongful acts of the servant caused during the course of employment.

FACTS: Vivek who worked for Vinod was driving back from the airport after dropping him at the airport. Vinod had asked him not to give a lift to anyone and to go back straight to home. While Vivek was driving back, he saw his girlfriend Vibha waiting for a taxi. He picked her up and while they were driving back, there was an accident and Vibha got injured. She brought a case against Vinod for damages. Decide.

- A. Vinod is not liable because Vivek was not acting during the course of employment when the accident occurred.
- B. Vinod is not liable because Vivek did not listen to the instructions given by Vinod and stopped inspite of strict instructions given by him.
- C. Vinod is not liable because it was Vibha's fault to take a lift and she had done it out of her own will.
- D. Vinod is liable vicariously for the acts of Vivek .

Answer- Option (D) is the correct answer. The principle of vicarious liability comes into play here. Vivek was acting in the course of employment and it does not matter and it does not affect the claim that Vinod had given strict instructions to not stop in between and not to give a lift in between. What matters is a wrongful act committed during the course of employment.

10. **PRINCIPLE:** A damage or injury caused by a tortuous act of the defendant will not qualify for damages if it is too remote.

FACTS: Yashi and Manshi were sitting by the window and eating an ice-cream. When the last bit was left, they started fighting and it went out of the window and fell down on the head of Raju, who panicked suddenly on the sensation of something very cold on his head. He lost control of his cycle and crashed into Amish who fell down and broke his bones. Later, Amish brought a case against Raju, Yashi and Manshi. Decide if they will be liable.

- A. Only Raju will be liable because he was the one who banged into Amish.
- B. Only Yashi and Manshi will be liable because they only caused the cycle to crash into Amish.
- C. All three of them will be liable because all of them lead to Amish getting injured.
- D. None of them will be liable because it was unforeseeable that so much could happen by just the ice-cream falling.

Answer- Option (D) is correct because it was a remote consequence that an accident occurred. Yashi and Manshi could never have foreseen this. It is also quite remote a possibility from the point of view of a reasonable person.
