

General Exceptions

- 1) Chapter - III (14 to 44)
- 2) Article - 361
There can be no civil or criminal proceedings against Governor or President.
- 3) Section - 108 (BSA)
Burden is on accused that case falls within General Exceptions.
- 4) Section - 106 (Bhartiya Sakshya Adhiniyam)
When a person wishes a court to believe in a particular fact then, burden of proof lies on person who desire the court to believe in it.
- 5) Standard of Proof on Accused to prove that his case falls within general exception is preponderance of probabilities.

General Exceptions

Excusable Acts
(no Mens Rea)

(14, 17) (18) (20) (22) (23, 24)

Justifiable Acts
(Justified Mens Rea)

(15, 16) (19) (33) (34-44)

- Section - 14**
- 1) Mistake of Fact
 - 2) Bound by law
 - 3) Goodfaith
 - 4) Not by mistake of law
- Legal Compulsion

- Section - 17**
- 1) MOF
 - 2) Justified by law
 - 3) goodfaith
 - 4) not by Mol
- Legal Justification

Cases:

- 1) Ovesen V/s Tolson → Tolson was charged with bigamy wherein she is in good faith due to MOF that her husband has died before second marriage was held not liable.
- 2) R V/s Prince, 1875 → Accused abduct a girl below 18 yr and believed she is above 18 years on mere mere appearance was held liable, under S-361 IPC. B V/s Director Public prosecutor overruled R V/s prince, however India follows R V/s prince.

MOL refers to ignorance of law or wrong interpretation of law.

Exceptions of MOL:

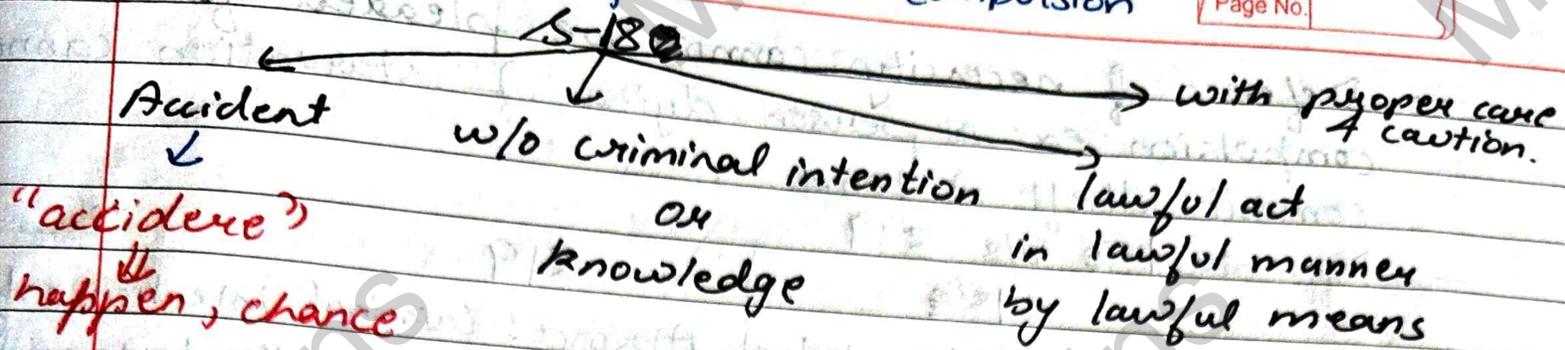
- 1) Judicial Officers (S-15)
 - 2) Person executing order of judicial officers (S-16)
- S-19 defines judges, it includes not only a person officially designated as a judge but also includes a person who is authorised by law to give a definitive judgment. Here, person includes one of a body of person or body of persons.

Case. 1) Rachapudi Subba Rao V/s Advocate General - A judge is exempted not only in those cases in which he proceeds irregularly in the exercise of power which the law gives him, but also in cases where he, in good faith exceeds the jurisdiction and has no lawful powers.

2) State of Maharashtra V/s Mervin Hans George, it was held that it is not necessary to publish a law or made known outside India.

→ Mistake of criminal law is no defense while mistake of civil law is a defense which can be pleaded if it is in good faith as held in case of R V/s Tolson.

Circumstantial / Situational Compulsion



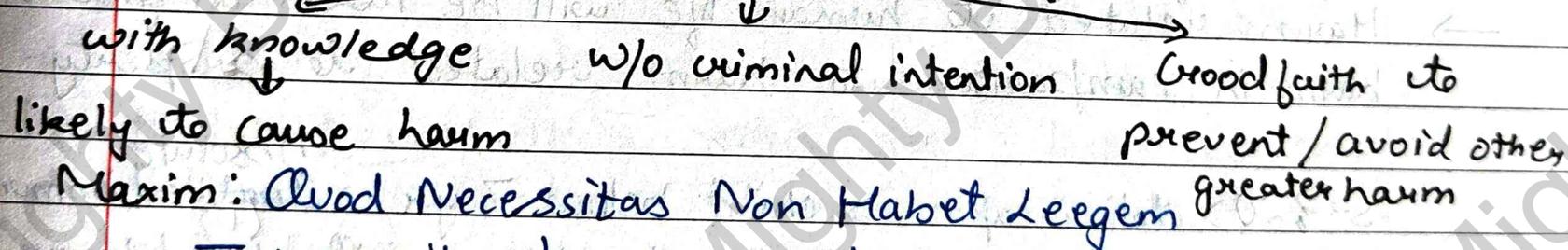
Accident means unintentional and unexpected happening in which human fault does not contribute. The diff. btw accident & misfortune is accident implies injury to another & misfortune implies injury to the other as well as author.

Example: While guarding his maize field at night 'A' in the darkness of night saw some object entering his field. Thinking it to be an animal, he shot an arrow and caused death of a person hiding → ^{Not} Liable

Ex: Accused was beating 'X'. 'W' wife of 'X' intervened with a baby & baby died → Liable as not a lawful act.

Case: Tunda V/s Rex

S-819 (Necessity)



Maxim: Quod Necessitas Non Habet Legem
— necessity knows no laws. (1884)

Doctrine of self preservation - R V/s Dudley & Stephens

- ① Self preservation is not an absolute necessity.
- ② No man has a right to take another's life to preserve his own life, unless it is in private defence.
- ③ There is no necessity that justifies homicide.

Dhanrao Daji's case - the accused put a poison in toddy pot with intention of detecting thief → liable
Can't take defense of S-81.

- Defense of necessity cannot be pleaded for economic compulsion ex: a person dying of starvation cannot commit theft of food

- Diff. btw 180 v/s 819

	180	819
absence	Criminal Intention + knowledge	Absence: Criminal Intention only Here, knowledge is likely to cause harm, but it is not 'held' against him.

Case: Bishambhar v/s Roomal

Ex ① A & B carried in high sea. However, both succeed in catching a plank. 'A' catches hold of it & pushes 'B' when he was trying to catch a plank → Not liable.

② exam) 'A' had a house which was having a courtyard, adjoining to the house there was a playground, so boys used to climb the wall so as to take ball. So, to stop them he put electric wire resulting in death.

Can't take defense

① Harm caused - human life prevented - property

② No Good faith ③ Could have used diff. means

→ Harm related to human life will be taken as greater harm in comparison to harm related to property.

S-20 → doli incapax → child below 7 yr → Absolute Immunity

S-21 → doli capax → above 7 yr below 12 yr → Qualified Immunity
who has not attained sufficient maturity of understanding to judge the nature & consequences of his act.

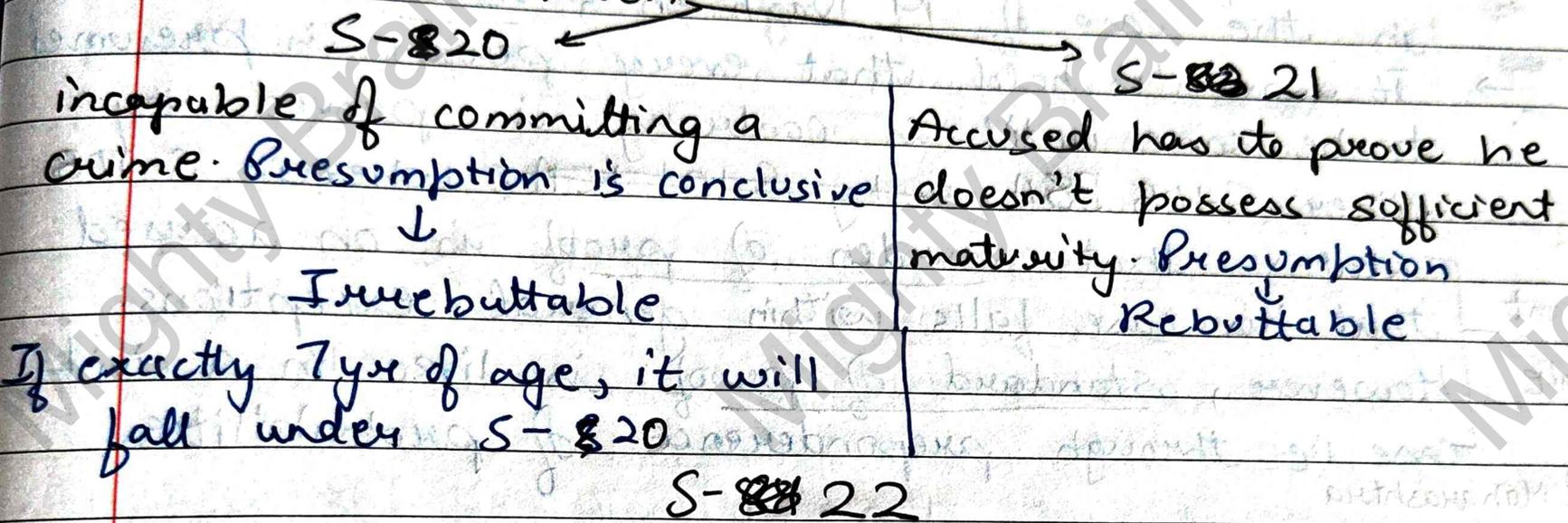
- Prosecution has to prove that child caused actus reus with mens rea and he had sufficient maturity to understand the nature & consequence of his act.

Case: Ulla Mahapatra v/s Kingi, wherein boy of 11 yr threaten to kill & actually killed a person, was held liable.

Test for Qualified Immunity

- a) Nature of the act done
 - b) Subsequent Conduct of Offender
 - c) Demeanour and Appearance of the offender.
- * Is he carrying weapon, his age etc.

A-15(3) → Allows state to make laws for women and children



S-22

Furiosus Nulla Voluntas :- a madman is man is punished by his own madness alone

S-22 provides "nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing?"

- a) Nature of the act
- b) That he is doing what is either wrong or contrary to law.

Medical insanity is different from legal insanity. The phrase "reason of unsoundness of mind" in S-84 refer to medical unsoundness which refer to disease of mind in which a person is incapable of taking rational decision. Every person who is suffering mental disease is not ipso facto exempted from criminal liability.

Legal unsoundness can be proved by proving that due to medical unsoundness the accused was incapable of knowing the nature of the act or what he was doing was contrary to law. This legal unsoundness must be at the time of the commission of the offence as seen in the case of M'Naghten, 1843

→ It was also held that every person is presumed to be sane until it is contrary is proved by either S-108 BBA or by ~~S-101 IFA~~. wherein S-108

Srikant
Bhosale
v/s
State of Maharashtra

states that burden of proof is on accused that his case falls within general exceptions. However, standard of proof is like in a civil case i.e through preponderance of probabilities.

- A crime cannot be excused by its own atrocity: ~~it~~ - a brutal way of committing a crime cannot be itself be an indicator of unsoundness of mind.
- Lack of motive or trifling matter or a mere loss of self control does not ipso facto gives the defense of S-84.
- Chapter - 25 CrPc gives procedure for trial of a person of Unsound mind. (S-330, 328 CrPc).

- (1) Lakshmi v/s State: Capacity to know a thing is quite different from a what a person knows i.e he should be incapable of knowing what is right or wrong.
- (2) Dayabhai Thakkar v/s State of Gujarat
- (3) Queen Empress v/s KM Shah

23

Intoxication

S-~~23~~ provides "nothing is an offence which is done by a person who, at the time of doing it, by reason of intoxication, incapable of knowing

- a) The nature of the act
- b) That he is doing what is either wrong or contrary to law.
- c) The thing which intoxicated him was administered to him w/o his knowledge or against his will

↓
Ignorant of the fact

↓
forced / coerced

Director of Public Prosecution v/s Beard (1920), it was held mere fact that an intoxicant was administered to him by another person w/o his knowledge or against his will, does not qualify him for exemption under this section. It must also be proved that he lost his ability to understand nature of the act due to such intoxication.

S-~~23~~ 24

- a) An act done is not an offence unless done with a particular knowledge or intent.
- b) A person who does the act in a state of intoxication shall be liable to be dealt with as if he had knowledge as he would have had if he had not been intoxicated.
- c) Unless the thing which intoxicated him was administered to him w/o his knowledge or against his will.

Basdev v/s State of Pepsu - Court will only presume the existence of knowledge and not intention as mens rea.

- This presumption of knowledge is a rebuttable presumption

BOP is on **accused** by that due to intoxication he had become incapable of ^{having} that particular knowledge which he is presumed to have.

Also, **SOP** is beyond reasonable doubt.

Tests-23 → insanity produced by drunkenness is a defence under S-84.

for **Foreseeability Test** - If a person in a ordinary circumstances loses control under the influence of an intoxicating substance and is not able to think clearly, it means a person will most definitely lose self-control over his mind under the influence of an intoxicating substance in future too and then if person voluntarily chooses to get intoxicated & act negligently, then a person should not claim the defence of S intoxication. This shows that the person had the intent to lose control and act negligently.

McNaughten Rule

- insanity
- a) Every man is presumed to be **sane** and to possess sufficient degree of reason until contrary is proved.
 - b) To claim insanity as a defence, it must be proved at the time of committing the act the accused acted out of insanity.
 - c) If accused was conscious about the nature of the act or it the act is wrong or contrary to law, then he would be punishable.

Wild Beast Test → R v/s Arnold
(Can't distinguish btw good & evil)

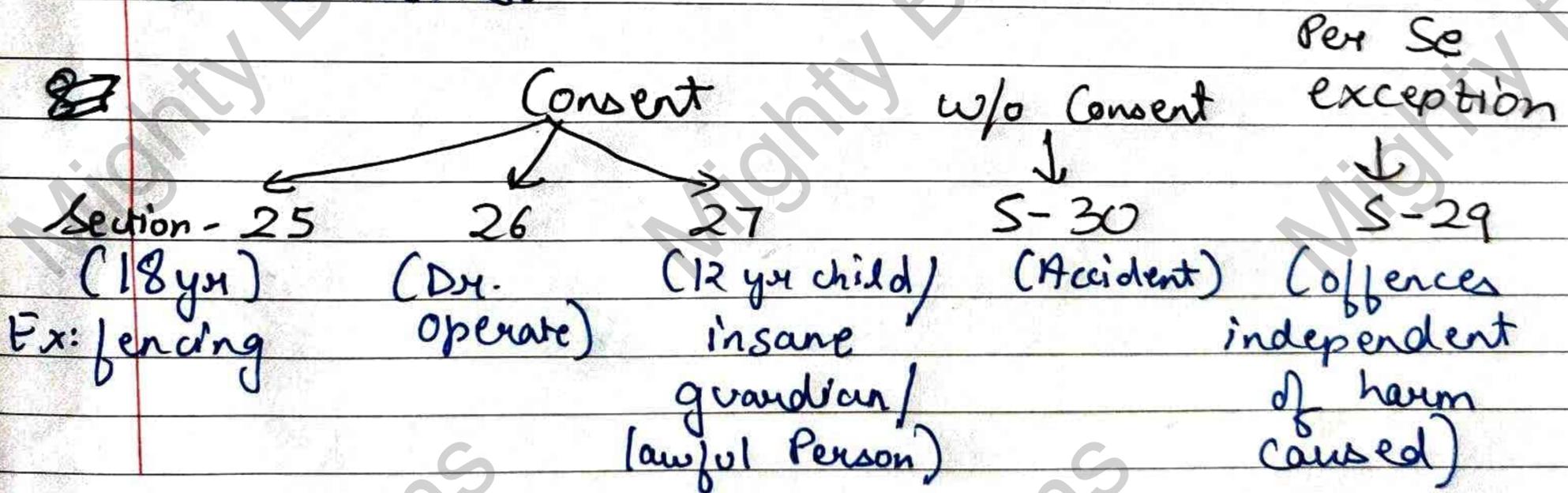
Insane Delusion Test → Hadfield's case

Consent

(S-25 to S-27) and S-30 lays down circumstances where consent may be pleaded as a defence against offence of human body and property.

The law related to Consent is based on maxim "Volenti Non-Fit Injuria" i.e. he who consents suffers no harm

- Man is best judge of himself and no man will consent to what he considers injurious to his interest.



S-28 provides that it should be proved in order to mitigate the liability that the victim has consented to suffer wrong or injury freely.

The consent should not be given by:

- a) A man under fear of injury or under misconception of fact and if the person doing the act knows or has reason to believe that the consent was given in consequence of such fear or misconception of fact.
- b) Consent of child i.e. a child under 12 years of age
- c) Consent of insane person i.e. by a person from unsoundness of mind or intoxication is unable to understand the nature and consequences to which he had given his consent.

→ Consent can be express or implied.

→ Consent for sexual intercourse obtained on a promise to marry in future & its failure by accused cannot be misconception of fact unless from the very inception the accused never really wanted to marry the girl.

Section- 25

- a) Act should not be intended to cause death / G.H.
- b) It should not be known by the doer to be likely to cause death / G.H.

- c) The harm caused to a person is with his express or implied consent.
- d) The person who give consent is above 18 yrs of age

→ Consent to suffer harm is applicable only to offences of personal nature and not against offences which are grave & public in nature.

Ex: offences against State

- There can be no consent to suffer harm in case of industrial accidents. For ex: no worker can consent to work in hazardous industry.
- If a person request another to kill him, he will be guilty as he would have both intention and knowledge.

Section - 26, 27 and 30

~~S 26, 27, and 30~~ It extends protection in those cases only where the harm is caused in goodfaith during the course of doing an act for the benefit of consenting party.

- S-~~26~~²⁶ → Good faith
- w/o any intention to cause death
 - w/o knowledge as to likely to cause death
 - Express / Implied Consent to suffer harm
 - Benefit of victim

- S-27 ~~S 27~~ → Goodfaith
- ↳ Benefit of person under 12 yr / Unsound mind
 - ↳ with consent
- ⇒ Lawful guardian Lawful change of that person

S-30 → Goodfaith / Benefit of person .

S-30 → w/o person's consent

or

impossible for that person to signify consent

or

incapable of giving consent

→ No Guardian / lawful charge of that person
from whom it is possible to obtain consent in time

