AILET

# CLAT: Legal Aptitude: Law of Crimes

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## Introduction

Hello CLAT aspirants! This study note deals with the topic Law of Crimes which is a part of your CLAT syllabus.

While going through the note, you will get a basic understanding of what is covered under Law of Crimes, get to know of the topics relevant to be studied for CLAT, the kind of questions asked in the exam and how to go about preparing for the same.

## What is the Law of Crimes

Now, you are supposedly familiar with the word “Crime”. In plain terms, *“crime” is an action (doing something not supposed to be done) or omission (not doing something which is supposed to be done) that is punishable by law.*

Essentially, acting against or deviating from the norms of acceptable behaviour that exist in society constitutes the commission of a “crime”. For any act or omission to be called as a crime, it must necessarily be punishable under some law.

Remember, law is a codified form of logic which also takes into account the threshold/limit of what any society perceives to be acceptable or unacceptable.

Anything which is acceptable in the society will never be prohibited under law so it will never constitute a crime and anything which is unacceptable *may or may not* constitute a crime depending upon whether a law has been made to punish the same.

Accordingly, certain acts which are though unacceptable still do not constitute a crime because the society is tolerant towards them and therefore has not chosen to have a law in place for punishing the carrying of these acts.

For example, **sneezing in public without covering your mouth** is not acceptable but if you do so, it is not a crime because there is no law punishing sneezing in public. No law is there for it only because sneezing in public is of an insignificant nature which the society tolerates to some extent.

(Although people will walk away from you and stop talking to you if you do that!!! ).

On the other hand, the murder of a person is a crime because *firstly*, it is totally unacceptable in the society and *secondly*, **a law has been made punishing the same**.

Law of Crimes, as the name indicates, is **the law governing prevention of crimes and providing a mechanism for punishing those persons who have committed a crime**

It has two parts namely,

(1.) ***Substantive law*** which provides as to what acts or omissions constitute a crime and also fixes punishment for the same depending on how severe the crime is and

(2). ***Procedural law*** which merely details the procedural aspects of catching a person who has supposedly committed a crime and thereafter holding a trial against him in a court of law to determine whether he is guilty or innocent.

In the Indian context, the Substantive law is the **Indian Penal Code, 1860** (**IPC**) which lists out the various crimes punishable in India and the Procedural law is the **Code of Criminal Procedure, 1973** which makes provisions for aspects such as how any suspect should be arrested by police, how the police should conduct investigation of any crime, trial for which particular crime can be conducted by which court etc.

The provisions contained in the IPC and the Code of Criminal Procedure are commonly referred to as “Sections”.

So, now that we have a basic understanding of the Law of Crimes, let us look into the topics relevant to be studied for CLAT.

## Topics relevant for CLAT

This section of the note contains topics which are relevant to be studied for CLAT.

*In some cases, the concerned section prescribing a particular offence under IPC has been mentioned only for reference and you do not need to memorize the section number.*

Just read and understand the concepts given below which are as follows:

### 1. Law of Crimes for CLAT: Mens rea

Mens rea means a guilty mind or *"intention"* to commit a crime. *"Actus non facit reum nisi mens sit rea"* is a fundamental principle of criminal law. It means that an act is not a crime in itself unless done with a guilty mind.

The IPC makes mens rea an essential element of most crimes specified in the Code. For example, Section 321 which talks about voluntarily causing hurt begins with the words *"whoever does any act with the intention of thereby causing hurt to any person……."*.

If you focus on the underlined words, it becomes clear that the intention of causing hurt must exist before it can be said that an act committed by a person has amounted to voluntarily causing hurt.

### 2. Law of Crimes for CLAT: Theft

In simple language, theft means taking away another person's property without their consent. The IPC defines **theft as moving any movable property with the intention of taking away that property out of the possession of any person without the person's consent**

Since it is not possible for a person to move immovable property like land or building without the help of any external force, the definition focuses only on movable property.

Also, note that the definition does not state that one must have taken the property completely out of possession of the concerned person but theft occurs even if the property has been moved only slightly with intent to take it out of possession.

For example, A cuts a tree on Z's ground with the intention of taking it out of possession of Z without Z's consent. Now even if the tree remains on Z's ground after being cut, A will still be held liable for theft because he cut it without Z's consent with the intention of removing it out of Z's possession.

Since the definition uses the words "person" instead of "owner", it will also cover cases where the concerned movable property is under the possession of some person other than owner such as a caretaker.

### 3. Law of Crimes for CLAT: Extortion

In simple terms, extortion means **making threats to another person or forcing them to give up something they have in their possession**.

The IPC defines it, in section 383, as *intentionally* putting any person in fear of any injury to that person or to another and thereby inducing the threatened person (the person who has been put in fear) to deliver any property/valuable security/anything signed or sealed to any person.

For example, A threatens Z to keep Z's child in wrongful confinement unless Z signs an agreement by which Z would be bound to pay some money to A and being pressurized by such threat, Z signs the agreement.

In this case, A has committed the offence of extortion. Here also, note that section 383 uses the word "intentionally" which means that it follows the principle of mens rea explained above.

### 4. Law of Crimes for CLAT: Cheating

In simple terms, **cheating means acting dishonestly to take advantage**.

Section 415 of IPC defines cheating as deceiving any person and fraudulently/dishonestly inducing them to either

- deliver any property to any person, or
- give consent to the effect that any person will retain any property belonging to the deceived person or
- do or omit (meaning not do) anything which the deceived person would otherwise not do or omit where such doing or omission is likely to cause damage or harm to the person physically or mentally or damage or harm such person's property.

For example, A deceives Z,  a money-lender, to lend him some money by pledging as diamonds, certain articles which A knows are not diamonds. In this case, A has committed the offence of cheating.

So, as per IPC, cheating means fraudulent or dishonest inducement by any person to deceive another person into doing either of the acts mentioned in (a), (b) and (c) above in this sub-section.

### 5. Law of Crimes for CLAT: Criminal conspiracy: Act done by several persons

Section 34 of the IPC lays down the principle of joint criminal liability.

It is worded in simple English and states that "***when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone***".

In other words, it means that if two or more persons intentionally commit a crime jointly (meaning together), it is the same as if each of such persons had individually committed the crime.

For example, in the case of *Barendra Kumar Ghosh v. King-Emperor*, decided by Privy Council in the year 1925, 3 persons tried to commit robbery in a post office and killed the postmaster when he did not give them money on demand.

All 3 persons ran away without taking the money and were tried for offence of murder. During the trial, one of the accused pleaded that he was not guilty of murder as he was only standing on guard outside the post office where the postmaster was killed and had no intention of killing the victim.

However, the concerned trial court held that since the killing took place as a result of the "common intention" of all 3 accused persons, this plea of standing on guard outside could not be accepted and the accused making such plea was also held guilty of murder even though he had not personally fired the pistol which caused the death of postmaster.

In the appeal against the judgment given by the trial court, the concerned High Court and Privy Council also took the same view as the trial court and held all 3 accused guilty of murder.

*Note: you do not have to remember the name of this case but it is only referred here for understanding the concept of joint criminal liability provided under section 34*

### 6. Law of Crimes for CLAT: Kidnapping

In a layman's terms, kidnapping means **forcibly taking away and detaining a person without his/her consent**.

The IPC classifies kidnapping into two kinds-

1. kidnapping from India and
2. kidnapping from lawful guardianship and defines both these types.

In CLAT, questions are often asked on kidnapping from lawful guardianship. Section 361 of the IPC defines kidnapping from lawful guardianship to mean taking away a minor person who is

under **16 years of age** (in case of male) or under **18 years of age** (in case of female) or taking away any person of unsound mind out of the lawful custody of such minor/unsound person's lawful guardian.

The section also defines the term "lawful guardian" to mean any person lawfully entrusted (meaning kept in charge of or made responsible for) the care or custody of such minor or person of unsound mind who is being kidnapped.

So, kidnapping will include not only parents of a child but any other person who is lawfully acting as guardian of the child for a temporary period or forever.

### 7. Law of Crimes for CLAT: Attempt to commit offences

The IPC not only makes offences punishable but even the attempt to commit any offence which is punishable under IPC is also made an offence under section 511 of IPC.

So, merely attempting to commit an offence is also punishable under IPC even if the attempt fails and no offence is actually committed due to such failure.

For example, A is a pickpocket who tries to steal money from the pocket of Z's pants which later turns out to be empty. Even though A could not actually steal any money because the pocket was empty, A will be guilty of attempting to steal and liable to punishment accordingly.

Generally, for most of the offences defined under the IPC, the punishment for attempting to commit a particular offence is provided in the same section which provides punishment for actually committing the offence or is provided in a separate section. In all other cases, punishment is computed as per section 511.

### 8. Law of Crimes for CLAT: Assault

In layman's terms, **assault means physically attacking another person**. The IPC defines assault in **Section 351** as making any gestures or any kind of preparation with the *intention or knowledge* that such gestures or preparation *are likely* to make any person present nearby to apprehend use of criminal force by the person who makes the gestures or preparation.

For example, A shakes his fist at Z knowing it to be likely that by shaking his fist, he will cause Z to believe that A is going to hit Z. In this case, A has committed assault.

Note that the section does not actually require that the person to whom gestures/preparation were made must have actually gotten threatened about the possible use of force before it can be concluded that assault has been committed.

The likelihood is the key focus in the provision hence merely making gestures or preparation *with the intention* of causing apprehension of use of force *or with the knowledge* that such gestures or preparation are likely to cause apprehension of use of force will constitute assault.

### 9. Law of Crimes for CLAT: Private defence

The IPC gives the right of private defence which means that certain acts done in order to defend oneself shall not constitute an offence. This right is given in section 96 of IPC which states that no act which is done in the exercise of right of private defence will be considered as an offence

What constitutes the right of private defence is defined in section 97 of IPC which states that a person has a right to defend

(a) his/her own body and the body of any other person against offences affecting human body and

(b) movable/immovable property belonging to him/her or any other person against the offences of theft, robbery, mischief or criminal trespass or the attempt to commit any of these offences.

Offences affecting human body referred in point (a) here include murder, assault, kidnapping, rape etc.

It is important to remember that the right of private defence has to be exercised reasonably and hence force used by the victim who chooses to exercise the right of private defence to save himself/herself from an imminent threat must be proportional to the force used by the perpetrator of the threat/attack.

For example, suppose A is chasing B, a thief who has stolen A’s wallet. Now, A has a right to chase and catch hold of the thief in order to recover his wallet.

Suppose A catches the thief and recovers his wallet after which the thief starts apologizing and begging to let go of him. Now, at this stage, if A gets angry and kills the thief in anger, A will be charged for murder and cannot take the plea of private defence because this right was available to A only upto the stage of being able to recover his wallet from the thief.

Once the wallet got recovered, the right to private defence would not continue to exist unless the thief makes an entirely new threat like, for instance, beating and killing A for recovering his wallet.

### 10. Law of Crimes for CLAT: General exceptions

The IPC provides certain exceptions which can be pleaded by a person, accused of committing a punishable offence, before the concerned court of law to prove his innocence or to convince the court to impose less severe punishment on the accused.

The exceptions relevant to be studied for CLAT are as follows:

(1) *Act of a child under 7 years* – The IPC states that no act done by a child under 7 years of age shall constitute an offence. This is because a child under 7 years of age is regarded as incapable of properly being able to understand the true consequences of his/her actions.

For example, if a child of 6 years playfully throws a stone in the air which accidentally hits another person and kills him, the child will not be put on trial before a court of law for the accusation of murder.

(2) *Intoxication* – The IPC states that no act done by a person is an offence if

(a) he/she was affected by intoxication at the time of doing the act and

(b) by virtue of such intoxication, he/she was incapable of knowing the nature of the act or being able to understand that the act which he/she is doing is wrong or contrary to law and

(c) the intoxication was administered to the concerned person without his/her knowledge or against his/her will.

So, for example, if A forces B to consume alcohol at gunpoint as a result of which B gets severely drunk and thereafter shoots and kills C in a state of drunkenness, then B can take the defence of intoxication.

Note that there are 3 conditions (a), (b) and (c) mentioned here and all of these conditions must simultaneously be satisfied in order for the accused to plead intoxication as a defence.

So, suppose B consumed alcohol willingly and not against the will or without the knowledge or suppose B killed C after the drunkenness got subsided, in that case, he will not be able to plead intoxication as a defence.

1. Unsoundness of mind – The IPC states that no act done by a person is an offence if (a) he/she was affected by unsoundness of mind (that is – insanity) at the time of doing the act and (b) by virtue of such unsoundness of mind, he/she was incapable of knowing the nature of the act or being able to understand that the act which he/she is doing is wrong or contrary of law.

So, if A who is a mentally ill person and unable to understand the consequences of his actions, kills B by shooting him with a pistol, A can plead unsoundness of mind as a defence while being charged for murder by a concerned court of law.

**Click here to read about the importance of the Law of Crimes for CLAT.**

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