

**Criminal Law– Annual Examination 2020 December 15, 2020**

Registration No.	:	<b>LLB119/3-18/M069</b>
Student Name	:	<b>AZHAR HUSSAIN</b>
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Name of faculty Member	:	<b>Sir Imtiaz Ali Abro</b>
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**ANSWERS SHEET**

**ASSIGNMENT(A):**

**PUNISHMENTS PROVIDED BY PAKISTAN PENAL CODE**

**INTRODUCTION**

Punishment is a term from psychological Learning, Theory that has a precise meaning; it refers to something. that causes a behaviour to lessen. There is nothing that is intrinsically punishing. A thing is called punishing if, when it is applied, it results in the reduction of behaviour that you want to reduce. Section 53 of PPC defines several types of punishments for different offences.

**RELEVANT PROVISIONS**

(Section 53 Pakistan Penal Code.)

**DEFINITION OF PUNISHMENT**

The term punishment has been defined in Black's Law Dictionary thus:

**" Any fine, penalty or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a Court, for some crime or offence committed by him or for his omission of duty enjoined by law."**

**PURPOSE OF PUNISHMENT**

The purpose of punishment is the prevention of PPC offences.

**KINDS OF PUNISHMENT UNDER SECTION 53 PPC**

**1. Qisas**

**a. Literal Meanings**

The word Qisas is derived from the word AI Qasas which means' to follow in some on footsteps.

**b. Legal Meanings**

Legally it means to shed blood in repetition or retribution.

**(c) Definition**

Qisas, means punishment by causing similar hurt at the earn part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatiri-amd in exercise of the right of the victim or a wall.

**(d) Non-applicability of Qisas**

There are four cases in which Qisas is not applicable on the offender, namely:

- i. Where the offender dies before the enforcement of Qisas.
- ii. Where right of Qisas waived by any wail
- iii. Where right of Qisas devolves on the offender; and
- iv. Where the right of Qisas devolves on the person who has no right of Qisas against the offender,

**(d) Quranic Injunctions regarding Qisas**

"O ye believe! retaliation is prescribed for you in the matter of the murdered; the free man for the free man and the slave for the slave and the female for the female. And for him who is forgiven somewhat by his (injured) brighter, prosecution according to usage and payment

unto him in kindness. This is an alleviation and mercy from you lord. He who transgressed after this will have painful doom. And there is life for you in retaliation, men of understanding, that ye may ward off (evil)." (Surah-Al Baqara 178,179)

## **2. Diyat**

### **(a) Meaning**

Diyat means a compensation which is payable to the heirs of the victim by the offender as bloodshed.

### **(b) Definition**

Diyat has been defined in section 299(e) as

**"Diyat means the compensation specified in Section 323 payable to the heirs of the victim." In the definition the words "heirs of the victim" have been used and not the words "the victim or his heirs". This means that Diyat is a compensation payable only in cases of Qatl and not in cases of hurt.**

### **(c) Value of Diyat**

The Court shall, subject to the Injunctions of Islam as laid down in the Holy Qurun and Sunnah and keeping in view the financial position of the convict and the heirs of the victim, fix the value of diyat which shall not be less than the value of thirty thousand six hundred and thirty grams of silver and the Federal Government shall, by notification in the official Gazette, declare the value of silver, on the 1st July each year or on such date as it may deem fit, which shall be the value payable during the financial year. (Section 23, PPC)

**3. Arsh**

**(a) Meanings**

Arsh means a compensation which is payable to the offender to the victim or his heirs.

**(b) Definition**

Arsh has been defined in section 299(b) as: "Arsh means. the compensation specified in this Chapter to be paid to the victim of his heirs.

**(c) Value of Arsh:**

The value of Arsh will be assessed at certain percentage, indicated in various provisions of the value of Diyat under Section 323, PPC. The Court while working out the percentage of the value of the Diyat will take into consideration the minimum value of Diyat fixed by the Federal year. Government on the first day of July each year.

**(d) Payment of Arsh**

The Arsh will be payable in lump sum or in over three years installments spreading from the date of final judgment.

**(e) Time for paying Arsh**

The Arsh shall be payable within the time specified by Court and the offender may be kept in jail to serve simple imprisonment until the Arsh is paid in full. The Court may release a convict on bail, if he furnishes security equal to amount of Arsh to the satisfaction of Court for its payment.

If the convict dies before payment of Arsh, it shall be recovered for his estate.

**4. Daman**

**(a) Meaning**

Daman means price or similar things.

**(b) Definition**

Daman has been defined in section 299 (d) of PPC as:

"Daman means the compensation determined by the Court to be paid by the offender to the victim for causing hurt. not 'liable to Arsh."

The word Daman is actually Daman. It is a compensation payable by the offender to the victim for causing hurt not liable to Arsh, as determined by Court. Daman is ordered for injuries where punishment of Arsh is not available

**(c) Value of Daman:**

The value of daman may be determined by the Court keeping in view:

- i. the expenses incurred on the treatment of victim.
- ii. loss or disability caused in the functioning or power of any organ; and
- iii. the compensation for the an suffered by the victim (Section 337-Y(1)).

**(d) Consequences of non-payment of Daman:**

In case of non-payment of daman it shall be recovered from the convict and until daman is paid in full to the extent of his liability, the convict may be kept in jail and dealt with in same manner as if sentenced to simple imprisonment. (Sec. 337(2)).

**(e) Release of offender:**

The offender may be released on bail if he furnishes security equal to the amount of damari to the satisfaction of Court.

## **5. Tazir**

### **(i) Definition**

Tazir has been defined in Section 299(b) as: ent other than "Tazir means punishm Qisas, Diyat, Aish, or Daman.

The Hedeya speaks on the subject thus:

Tazir in its primitive sense, means prohibition and also instruction, in law it signifies an infliction undermined in its, degree by law, on 'account of the right either of God or of the individual, and the occasion of it is any offence for which hadd has not been appointed, whether that offence consist in word or deed,

### **(ii) Infliction of Tazir**

Tazir may be inflicted by imposition of fire, scourging, imprisonment, etc, It is the punishment which is left to the discretion of Quit or Judge.

## **6. Death**

This Is the highest form of punishment authorized by law, This may be awarded as punishment in the following offences:

- Waging war against Pakistan,
- Abetting mutiny actually committed.
- Murder
- Dacoity accompanied with murder

- **Hijacking.**

### **7. Imprisonment for life**

Imprisonment for life is the second highest form of punishment as specified in PPC. It is inflicted for the following offences:

- Waging or attempting to wage war or abetting waging war against Pakistan.
- Collecting arms etc with intention of waging war against Pakistan.
- Sedition.
- Counterfeiting Pakistan coin.
- Punishment for murder
- Kidnapping or abducting in Order to commit murder.
- Dacoity with murder

### **8. Imprisonment**

Imprisonment means the act of putting or confining a person in prison.

Imprisonment is of two kinds name

#### **(a) Rigorous**

In the case 'of Rigorous Imprisonment the offender is put to hard labour, such as grinding the cord, drawing water digging earth, cutting fire woods etc.

#### **(b) Simple**

In the case of simple imprisonment, the offender is confined in jail and is not put to any kinds of work.

The maximum period of imprisonment that can be awarded for an offence is fourteen years (Section 55). The shorter term provided for an offence is twenty four hours but the minimum is unlimited.

### **9. Forfeiture of Property**

Following of property is retained as a punishment in the following cases

- i. Whoever commits, or prepares to commit, depredation on the territories of any power at peace with Government, shall be liable in addition to other punishments, to forfeiture of any property used, or intended to be used in depredation or acquired thereby. (Section 126).
- ii. Whoever knowingly receives property taken as above mentioned or in waging war against any Asiatic power at peace with government, shall be liable to forfeit such property. (Section 127).
- iii. A public servant, who improperly purchases property, which by virtue of his office, he is legally prohibited from purchasing forfeits such property.

### **10. Fine**

The ' Punishment of fine may also be given along with other punishment on the commission of any offence. it is as much a punishment as Diyat, Arsh or Daman. It is the only Punishment provided for in Sections 137, 154, 155, 156, 171-G 171H, 171-1, 278, 283, 290 and 294-A.

### **LIMIT OF IMPRISONMENT FOR NON-PAYMENT OF FINE U/S 65**

if the offence is liable with imprisonment as well as fine the term shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence.

**CONCLUSION**

In last to conclude I can say some pain or penalty warranted by law, inflicted on a person, for the commission of a crime or misdemeanor, or for the omission of the performance of an act required by law, by the judgment and command of some lawful Court called punishment and it has different kinds i.e. Qisas, diyat, arsh, imprisonment and fine etc.

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**ASSIGNMENT (B)**

**ABETMENT AND LIABILITY OF ABETTOR**

**INTRODUCTION:**

**Abetment in PPC Section 107**

A person abets the doing of a thing, who;-

- (i) Instigates any individual to do that thing; or
- (ii) Engages with one or more other person or persons in any conspiracy for the doing of that thing, if a act or illicit oversight happens in pursuance of that conspiracy and in order to the doing of that thing; or

**EXPLAINATION**

A person who, by willful distortion, or by willful concealment of a material fact he is bound to disclose, voluntarily causes or procures, attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing, either before or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

### **ABETTOR**

#### Explanation

- (i) The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.
- (ii) To constitute the offence of abetment it is not necessary that act abetted should be committed, or that the effect requisite to constitute the offence should be caused.
- (iii) Abetment is substantive offence. The offence of abetment is a substantive offence. Therefore the fact that the principal cannot be brought to trial does not prevent a charge of abetment against the abettor.
- (iv) Even the acquittal of the principal is no bar to conviction of the abettor. Abettor and principal may be convicted for separate offences. The fact that his abettors have been found guilty of an offence of manslaughter only does not prevent the principal offender from being found guilty of murder, when there is ample evidence to support the finding.
- (v) But persons punished as principals cannot also be punished for abetment of the same offence. Abetment by act not necessary for commission of offence. An offence of abetting the making of a false document can be committed by attesting the document, even if the document does not require attestation to

complete it, if the person who brings this document into existence intended that it should be attested and that the accused should be one of the attesters.

- (vi) Actual knowledge or intention necessary In order to constitute an abetment, intention is essential. Persons having no knowledge of the fraud could not have intended to aid the commission of an offence under section 406, P.P.C. Where the aiding accused came a little later and were not supposed to be aware of concealment of knife by the principal accused in his dab from where he took it out, they could not be blamed for sharing a common intention and to have acted in concert pursuant to pre-planned scheme with the principal accused in doing away with the deceased.

### **LIABILITIES OF A ABETTOR**

Abetment can be committed only when there is positive evidence of either instigation or conspiracy or intentional aid. If none of these three elements stated above is available then abetment does not stand proved. Therefore, mere presence at the scene of offence would not be sufficient to make out a case of abetment. NLR 1991 Cr. 163(DB)

#### **A. Instigation**

‘Instigation’ shows some sort of advice for the commission of an act, which if done, would be an offence. It necessarily indicates some active suggestion or support or stimulation to the commission of the act itself which constitutes an offence. ‘Advice’ can become ‘instigation’ only if it is found that it was meant actively to suggest or stimulate the commission of an offence. Advice per se, or temptation to do a forbidden thing does not amount to instigation.

#### **B. Conspiracy**

The distinction between the offence of abetment by conspiracy and the offence of criminal conspiracy, so far as the consent to submit an offense is concerned lies in this. Unless “agreement” can be prima facie spelt out no Prima facie case under S.120-B can be said to be made out to invite second part of S. 107. But for abetment by conspiracy mere agreement is insufficient. A demonstration or illicit exclusion must happen in pursuance of the conspiracy and in order to the doing of the thing conspired for.

**C. Intentionally aids by act**

If a person joins another in the commission of a crime by which he is to benefit and which it would not be possible to commit anyway for his support, he is liable of the commission of the crime. In order that there may be abetment by intentional aid, the commission of the crime must have been facilitated by either an act on the part of the abettor or by his illegal omission. The act may be one which directly assists the commission of the crime or one which merely affords facilities for its commission. In either case the person who does such an act is an abettor. Illegal omission

**D. Illegal omission**

Under section 107 the accused must be shown to have intentionally aided the commission of the offence by his non-interference. The prosecution must be able to establish that such illegal omission was likely to have lent support to or to have encouraged the principal offender to commit the offence in question. Accessory after the fact Abetment by aiding or instigating necessarily means some active suggestion or support or stimulation to the commission of the offence itself. If the offence had already been completed before anything was done by the alleged abettor, any subsequent action of his which might, in any way help the main offender, will not abetment within S.107, being an accessory after the fact which is no offence under Pakistan Penal Code.

**E. Law Charge of Abetment**

It is open to the prosecution to bring a charge of abetment generally. The charge will amount to notice to the accused that they have to meet a case of abetment in one or more of the different ways indicated in S.107, Penal Code. But a specific charge must be framed for abetment of an offence under S.114, P.P.C. A general charge of instigating various persons to commit dacoities is bad. Separate acts of abetment must be distinctly specified. Abettor A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if submitted by a person able by law to commit an offence with the same intention or knowledge as that of the abettor. Section 108.

**Accessory after the act**

There can be no abetment of an offence after it is committed, therefore a person cannot be convicted of abetting an offence of instituting a false charge solely on the ground that the person gave evidence in support of such charge.

**CONCLUSION**

Abetment is rightly declared a substantive offence for the purpose very aptly defined by Terremy Bentham as; “The discovery of such preparatory offence with the object of prohibiting them would reduce the level of the principal crimes committed in consequence to them.”

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**ASSIGNMENT (C)**

**ROBBERY AND DACOITY**

**INTRODUCTION**

Dacoity and robbery are two different offences. Dacoity is a criminal activity involving robbery by groups of armed bandits. The word "Dacoity" is the anglicized version of the Indian word dakaiti, historically spelled clakaiter, robbery as an aggravated form of theft.

**RELEVANT PROVISIONS**

Sections 390 to 395 of the PPC deal with offences of robbery and dacoity respectively.

**ROBBERY**

Robbery is a special and aggravated form of either theft or extortion and means felonious taking from the person of another or in his presence against his will, by violence or putting him in fear, and it becomes Dacoity when it is committed by five or more persons co-jointly.

**When theft is robbery**

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

**When extortion is robbery**

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other

person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

**Illustrations**

(a) A holds Z down and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high roads, shows a pistol, and demands Z's purse. Z in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z

**DACOITY**

When five or more persons co-jointly commit or attempt to commit a robbery or where the whole number of persons co-jointly committed or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit Dacoity.

**i) Five or more person**

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The number of person committing robbery must be five or more. As robbery becomes dacoity only when it is committed by five or more persons. So in order that an offence of robbery may constitute, the number of persons must be five or more.

### **(ii) Act co-jointly**

The word co-jointly, in union or together. Five or more person must act co-jointly whether directly or indirectly as aiders.

### **(iii) Act must be robbery**

Such act must be robbery or attempt to commit robbery% If the act committed is not robbery or it is not an attempt to commit robbery then the case cannot be of dacoity. So the act committed must be robbery or an attempt to commit robbery.

### **(iv) Status of person**

Such persons must consist of those who themselves have committed or made an attempt to commit robbery or they must of consist of those who has committed or made an attempt to commit robbery and those who were present and aided them in such commission or attempt.

## **PUNISHMENT FOR DACOITY UNDER SECTION 395**

Whoever commits Dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which shall not be less than four years nor more than ten years and shall also be liable to fine.

## **DIFFERENCE BETWEEN ROBBERY AND DACOITY**

### **IAS TO DEFINITION**

Robbery has been defined in Section 390 of PPC and Dacoity has been defined in Section 391 of PPC.

## **II. AS TO NUMBER OF IN PERSONS**

In robbery, no fix number of person required. It may be even by a single person but in dacoity fix number of person are required. They must be five or more in numbers.

## **III. SERIOUSNESS**

Robbery is less serious in nature but dacoity is more serious offence than robbery because of the terror caused by the presence number of offenders.

## **IV. POSITION OF ABETTORS**

In Robbery, the abettors are liable independently but In Dacoity abettors who are presently and aiding when the crime is committed are counted in the number.

## **V. JURISDICTION OF COURT**

Robbery may be triable by the Illaqa Magistrate but Dacoity shall be triable by the Court of Session.

## **VI. PUNISHMENT**

Whoever commits robbery shall be punished with rigorous imprisonment for a term which shall not be less than three years, not more than ten years and shall also be liable to fine but Court while convicting a person u/sec. 395, PPC can either sentence him to imprisonment for life or to rigorous imprisonment which cannot be less than four years or more than ten years in addition to fine (1993 SCMR 1058).

## **VII. POSITION IN HIGHWAY:**

If robbery is committed on the highway, the imprisonment may be extended to fourteen years but The fact that the Dacoity committed on the highway, does not change the position or punishment.

**ANALYSIS AND CONCLUSION:**

In last to conclude I can say that when five or more than five persons commits robbery it is called dacoity where number of persons are less than five then robbery.

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**ASSIGNMENT (D)**

**QATALE–E–AMAD**

**INTRODUCTION:**

**INTRODUCTION**

Preservation of life, religion, reason, lineage and property square measure main objectives of Islamic Law. For preservation of life, Islam has forbidden transgression against life. As murder may be a sort of transgression against life, so Islam has additionally forbidden commission of murder. To punish murderer and defend society from reoccurrence of this crime, Islam has provided severe punishments.

**Definition**

Qatl can be defined as causing death of a person by another person. Relevant Provisions Sections 300, 301, 302, 303A, 303B, 304, 305, 306, 307, 308, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322 of P.P.C. 1860.

**Kinds of Qatl Under Pakistan Penal Code**

Following different kinds of qatl have been described in Pakistan penal code constituting the offence of Qatl.

- **Qatl e Amd**
- **Qatl e shibh amd**
- **Qatl e khata**
- **Qatl e bis sabab**

**QATALE-E-AMAD**

When a person intends to cause death or bodily injury to another person, does an act, which in ordinary course of nature is likely to cause death or which is done with knowledge that his act is so imminently dangerous that it must in all probability cause death, and causes death of such person, he/she commits qatl-i-amd.

**Concept According To Islam**

**“Oh believers Qisas have been made obligatory on you in case of Qatl.”**

**“If any one kills a human being except in Qisas or Fasad he will be treated as if he has killed the whole humanity”**

Human life and integrity is supreme in Islam and too much sanctity has been attached to it. The charge of common intention to murder in pursuit of a family vendetta at such stage as to whose shot proved fatal. The qatl-i-amd is punishable as Qisas, and if evidential standard is not fulfilled than punishment as Tazir up to twenty five years imprisonment.

**Essential Ingredients of Qatl-e-Amd Under Section -300 of P.P.C**

The essential ingredients of the definition of Qatl-i-Amd as provided in the Pakistan Penal Code are as follows

1. Causing death of a human being
2. Such death must be caused by doing an act
3. With the intention of doing bodily injury to that person
4. The act in the ordinary course of nature is likely to cause death.
5. With the knowledge that the act is so imminently dangerous that it must in all probability cause death Illustrations “A” shoots “Z” with the intention of killing him. “Z” dies in Consequences “A” commits this offence.

**Following persons shall not be liable to qisas for qatl amd section 306 PPC**

- § When the offender is minor or insane,
- § When he causes death of his child or grand child how low so ever,
- § When any wali of the victim is a direct descendent how low so ever of the offender

**Qisas for qatl amd shall not be enforced under section 307 if**

- § The offenders dies before the execution,
- § When any wali waives or compounds under section 309 or 310,
- § When the right of qisas devolves on the offender as a result of death of wali of victim or right devolves on any other person who has no right of qisas against the offender,
- § It can be waived under section 309 PPC by an adult sane wali at any time with out compensation but it cannot be waived where wali is minor or where government is wali,

**Waiver of Qisas**

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An adult sane wali may at any time waive his right of Qisas under section 309 PPC with out any compensation .The wali who does not waive shall be entitled to his share of diyat. It can not be waived on behalf of the minor and where Government is the Wali

### **Compounding of qatl amd**

It may be compounded under Section 310 PPC by an adult sane wali at any time on accepting badl sulh which is mutual agreed compensation and may be any thing but female can't be given in badl sulh. Moreover it can be compounded on behalf of the minor or by the Government but value shall not be less than diyat

### **Section 315 defines Qatl-i-shibh-Amd,**

“Whoever with to cause harm to body, causes death of human being with the weapon which is not in ordinary course of nature likely to cause death. Number of injuries, nature, seat, part of the body is also determining factor in order to bring it in the category of Qatl e shibh amd. The punishment provided is diyat and imprisonment which may extend to twenty five years as tazir. “

That act or omission is not often regarded as probable consequence of death. It is question of medical science to determine the fact rather employment of weapon has caused the death of that person as result of hit or striking of weapon on the body of person. The direct consequence of death as result of the weapon used to cause the death of that person is ultimate principle of criminology for putting criminal liability on the person for commission of the offence of Qatl. Non-production of most natural and independent witness of occurrence only leads to presumption that Qatl-i-Shaib-AMD has been committed. The section is applicable to circumstance where the fighting has taken place out of sudden impulses without premeditation causing the death of human being and means or weapon used by offender do not cause the death of human ordinary course of life.

**Punishment Against Qatl-i-Amd**

Following punishments can be awarded against commission of Qatl-i-Amd

**(i) Death as Qisas**

A person, who commits Qatl-i-AMD, can be punished with death as Qisas. Qisas means 'to copy the other' or 'to follow the path followed by other' or 'to act like the act of another'. The basic principle of Qisas is similarity. If similarity of injury is not possible Qisas may not be enforced. In Qatl-i-Amd the difference between punishment of Qisas and punishment of death lies in the mode of execution of sentence.

**(ii) Death or Imprisonment For life**

The punishment of death or imprisonment for life as tazir especially when proof against commission of such qatl is not available through voluntary and true confession of convict before a court competent to try such qatl according to Article 17 of Qanun-e-Shahadat.

**(iii) Imprisonment,**

Which can extend to twenty five years When punishment of Qisas is not applicable against commission of qatl-i-AMD according to Injunctions of Islam, a person, who commits qatl-i-AMD, can be punished with imprisonment, which can extend to twenty-five years.

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**ASSIGNMENT (E). (i)**

**Theft to Hadd**

**Introduction:**

In Islamic law, theft signifies the taking away the property of another in a secret manner at a time when such property is in custody and the value of such is not less than the prescribed nisab. The Holy Quran in Sura-Al-Maida provides punishment for such offence and it is also made punishable under the hudood ordinance.

**2. Relevant Provisions:**

Following are the relevant provisions of “Enforcement of Hudood Ordinance VI of 1979”.

Regarding the concerned topic.

Section 4 to 9 of Enforcement of Hudood ordinance VI of 1997.

**3. Kinds Of Theft:**

There are two kinds of theft:

(i) Theft liable to Hadd

(ii) Theft liable to Tazir

**ASSIGNMENT (E). (ii)**

**4. Theft Liable To Hadd:**

**(I) Definition Liable U/Sec 5:**

Whoever, being an adult, surreptitiously commits, from any hirz theft of property of the value of the nisab or more, not being stolen property is said to commit theft liable to hadd”.

**(II) Ingredients:**

Following are the essentials of theft liable to hadd.

**(i) Adult Offender:**

The offender must be an adult person.

**u/sec 2(a):**

adult means a person who has attained the age of eighteen years of puberty.

**(ii) Surreptitiously Commits:**

Offence of theft liable to hadd must be committed surreptitiously. According to Explanation 2 of sec. 5, it means that the person committing the theft commits it believing that the victim of theft does not know of his action.

**Continuance of Surreption:**

For surreptitious removal of property, it is necessary

If it is day, time surreption should continue till the completion of the offence, and

If it is night, surreption need not continue after commencement of the offence.

**(iii) Removal From Hirz:**

The property must be removed from any hirz.

Meaning of Hirz:

Literally hiez means precaution and protectin.

**U/sec2(d):**

“Hirz means an arrangement made for the custody of property.”

According to Explanation 1 of sec. 2, it is not necessary that the goods in hirz be confined in a building or a in a locked house. Grazing cattle under the custody of the herdsman are considered under his hirz. If any of the cattle is stolen, it will be deemed to be a theft from hirz.

**(iv) Value of Stolen Property:**

The property must be nisab as laid down in section 6.

**U/sec 6.**

The nisab for theft liable to hadd is 4. 457 grams of gold. According to explanation to section 6, If theft is committed from the same hirze in more than one transaction or from more than one hirz and the value of stolen property in each case is less than nisab, it is not liable to hadd even though the value of the properties removed exceeds the nisab, if collected.

Illustration:

‘A’ enters a house several times and removes from the house on each occasion property, the value of which does not amount to the nisab. Such theft is not liable to hadd even though the value of the properties removed exceeds the nisab, if collected.

**(v) Not Being a Stolen Property:**

It must not be a stolen property i.e. must not be acquired by means of theft. According to explanation 1 of section 5, stolen property does not include property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed.

**(vi) Knowledge of Accused:**

Accused must be aware that the property stolen by him is either equivalent or exceeding limit of nisab.

**5. Proof Of Theft Liable To Hadd U/Sec 7:**

The proof of theft liable to hadd shall be in one of the following forms.

**(I) Confession:**

Where the accused pleads guilty of the commission of theft liable to hadd then he shall be liable to hadd.

“Ghulam Habib Vs. state (1994)”

“Confession in a theft case would be material only if made before the trial court.”

**(II) By Evidence Of Witnesses:**

Theft liable to hadd may be proved by the evidence of at-least two eye witnesses.

**Case Law**

**2004 P. cr. L. J 285**

It was held that an accused person is presumed to be innocent until his guilt is proved.

Witnesses must be male

They must be Muslim, but if the accused is non-Muslim the witnesses may be non-Muslim.

They must be adult

They must not be the victim of the theft

The court must be satisfied about them having regard to the requirements of tazkiya-al-shuhood (inquiry adopted by the court to satisfy itself to the credibility of a witness) that they are:

Truthful persons, and

Abstain from major sins

**6. Theft By More Than One Person U/Sec 8:**

Where theft liable to hadd is committed by more than one person and the aggregate value of the stolen property is such that, if the property is divided equally among them, each one of them gets a share which amounts to or exceeds the nisab, the hadd shall be imposed on each of them.

**7. Punishment For Theft Liable To Hadd U/Sec 9:**

Whoever commits theft liable to hadd shall be punished with.

- (i) Amputation of his right hand from the joint of the wrist, if it is committed for first time.
- (ii) Amputation of his left foot up to the ankle, if it is committed for the second time.
- (iii) Imprisonment for life, if it is committed third time or any time subsequent thereto .

**Confirmation by Court Appeal:**

Punishment of hadd shall not be executed unless it is confirmed by the court to which an appeal from the order of the conviction lies.

**Postponement of Hadd.**

Hadd shall be postponed if the authorized medical officer is of the opinion that the amputation of hand or foot may cause the death of the convict, until the apprehension of death ceases.

**8. Conclusion:**

To conclude, I can say, that theft liable to hadd will be committed when property is stealthily taken away from the custody of that person or a person under whose hirz the property was, and the value of that property was not less than the prescribed nisab. Crime of theft represent the most serious crime against property and by severing the hand of the robber. Islam gets to the root of evil and protects society from the destruction.