

Queries & Clarifications:

We have recently received queries from teams, who have sought a clarification on the Moot Problem as under:

Q1. Page 7 Para 5 - Elaborate "any similarly worded law".

A1. No Clarification is required. Participants are expected to rely upon the Moot Problem.

Q2. Can we use amendments made by the IT Act, 2000 to Indian Penal Code, 1860?

A2. The information given at Point No. 5 of Notes for Counsel sufficiently answers the query.

Q3. Seek the following clarifications:

Para 23 of the problem states "The prosecutor's office considered the matter and decided to challenge the pre-trial ruling...". Is it to be assumed that the prosecution has decided to challenge the order of acquittal on the direction of the State Government, given the fact that Sec. 378(1)(b) of the CrPC does not allow the prosecution to file an appeal *sou moto*?

Para 24 has provided that the defense has decided to file "cross-appeal" on the order of conviction for the attempt to theft charge. Section 374 (2) of the CrPC provides only for appeals for conviction if the sentence is for more than 7 years of imprisonment, which is not the case in the present situation. So are we to assume that "cross-appeal" is inclusive of an "application for revision" under Section 401 of the CrPC?

A3. The maintainability of the appeals is not in issue before the Court.

Q4. Whether the parties can argue on the issue of maintainability, or the appeals are to be assumed as maintainable?

A4. Appeals are to be assumed as maintainable.

Q5. Given that 4 appeals are being heard together, ie. Appeal No.s 10, 11, 12 and 13 of 2019, what will be the cause title of the matter posted for hearing on 18th to 20th Jan 2020 before the Hon'ble High Court of Erewhon?

A5. No clarification required.

Q6. What would be the preferred format of citation- the 20th Edition of the Bluebook system or the 19th one?

A6. No clarification required — See Point 16 of Moot Rules.

Q7. We needed clarification that "**Non-Joinder**" of BFG is an issue or not?

A7. No clarification required.

- Q8. Is there any typographical error in the Moot preposition point number 24 clause **b**.
- A8. No. See Paragraph 22. Conviction secured is only for attempt and not the standalone offence. Hence an appeal against acquittal.
- Q9. The facts refer to the court conducting the pre-trial hearing and the trial of the alleged theft as 'District' Court. Should this actually be 'Sessions' Court?
- A9. No clarification required.
- Q10. Are other Indian laws, ie. apart from the ones already adopted by Erewhon, applicable to Erewhon as is?
- A10. Erewhon is a constitutional republic following the common law system. No further clarification required.
- Q11 Note 6 on Page 7 of the Moot Problem states that the Erewhon Criminal Procedure Code (for short, "ECPC") is a verbatim copy of the Indian Criminal Procedure Code (for short, "CRPC"), with only a single modification with regards to pre-trial proceedings. The modification so made has no applicability to the subject matter of this query.

Fact No. 19 on page 5 of the Statement of Facts mentions the invocation of Section 173 and 207 of the ECPC by the prosecutor to justify the exclusion of the messages exchanged between Elizabeth and Diana from the initial case record, as not being materials "relied upon" by the prosecution, which they are required to provide copies of.

From these provisions, there arise 2 material discrepancies/ contradictions.

Firstly, no part of S. 207 of the CRPC. mandates the filing by the prosecution of 'relied upon' materials, or allows the exclusion of materials not so relied upon.

What S. 207 of the Cr.PC allows for, with respect to the exclusion of evidence, is a situation wherein a request for the exclusion of evidence has been made by a police officer under S. 173(6) of the CRPC.

A request under S. 173(6) may be made only on the grounds that the evidence sought to be so excluded is "not relevant to the subject matter of the proceedings" , or that "its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest."

S. 173(6), therefore, does not permit a request for the exclusion of evidence on the grounds of it not being "relied upon by the prosecution."

Secondly, the only provision in Chapter XVI of the CRPC that allows the exclusion of documents which are not relied upon by the prosecution is S. 208. However, this section applies only in a case instituted "otherwise than on a police report." This section would not apply to the moot problem, as the same has been instituted on a police report.

The two discrepancies that thus arise can be summed up as follows:

1. S. 173 and S. 207 of the CRPC do not allow for the exclusion of materials that have not been "relied upon by the prosecution".
2. The only provision of the CRPC that allows for such an exclusion is not applicable to the moot problem.

Please explain this situation to us so as to cure the discrepancies we so believe to exist.

- A11. No clarification required.
- Q12. Are teams allowed to put forward arguments on the procedural requirements of the ERPC, that the facts are silent about? Or are we to assume that all such procedural requirements have been fulfilled? E.g. with regards to the presence of 2 panch witnesses at the time of the search.
- A12. Teams are not allowed to put forward arguments about procedural requirements that the facts are silent about.
- Q13. Whether the search of Elizabeth's phone was conducted with or without a warrant?
- A13. No clarification required.
- Q14. What would have been the course of action taken by the police if Elizabeth had refused to give her fingerprint?
- A14. No clarification required.
- Q15. With regard to Para 6-7, what is the sequence of communication between Diana and Elizabeth?
- A15. No clarification required.
- Q16. Under Para 9, is complaint to be inferred as 'FIR'?
- A16. No clarification required.
- Q17. In Paras 13-14, was Elizabeth informed about her rights before fingerprints were taken?
- A17. See Para 14.
- Q18. Was Elizabeth 'arrested'?
- A18. No clarification required.
- Q19. Did the pre-trial judge's order, in Para 20, bar both parties from using/ referring to the text messages in the trial, or only the prosecution?

A19. No clarification required.

Q20. Is the State the appellant, and Elizabeth the respondent in the present case?

A20. No clarification required.

Q21. Was Max the Inspector-in-Charge of the Police Station?

A21. No clarification required.

Q22. Does the initial case record mean the final police report under sec 173 CRPC?

A22. Yes. But also see note 6 of notes for counsel.

Q23. Did the final police report include the piece of evidence, i.e., the chat messages between Elizabeth and Diana mentioned in Para 16 of the moot proposition?

A23. See para 19.

Q24. Are the “stories” mentioned in Para 16, that Diana willingly asked Elizabeth to read, the same stories that have been used in the vignettes published on the BFG App?

A24. Among others.

Q25. According to 165 CRPC whether the police has recorded in writing the reasons for conducting warrantless search and whether the conditions provided under sec 100 have been complied with?

A25. No clarification required.

Q26. I went through the Moot problem, and I want to know that are we supposed to raise the issues by ourselves? As there are no issues mentioned at the end of the moot problem.

A26. Read the moot problem carefully. In addition, you may also refer to Rule 16 of the Rules of the Competition.

Q27. Who will be party from the side of applicants and for respondents as both are appealing the same judgements i.e pre-trial and trial ruling and there is cross appeal.

If both will be party against each other than do we need to make 2 memorials from the side of applicants and 2 memorial for respondents? Or do we need to merge both the memorials of respective side, but in that case what prayer will the applicant seek through prayer from bench as both parties will seek in contrary to each other?

Hence we seek a clarification on the said matter.

A27. Kindly refer to Rule 16 of the Rules of the Competition.

- Q28. What was the contract of employment between Diana and BFG?
- A28. It was a standard employment contract and carried a non-compete clause, which also prohibited engaging in publication of material in the employee's personal capacity.
- Q29. Did Diana enter into any contract with the rival publishing house? What were the terms of her "writing deal" as mentioned in para 9?
- A29. Diana had signed a pre-publication agreement made on the warranty that she was not barred from entering into the agreement.
- Q30. The photographs mentioned in para 15, were they accessed through camera or the gallery of images, or were they received from some external source?
- A30. No clarification required.
- Q31. Did Diana tell Elizabeth about her stories, in para 16, by herself or as a reply to something mentioned by Elizabeth?
- A31. No clarification required.
- Q32. Are the decisions of the Supreme Court of India binding upon the Erewhon High Court? If not, what is their degree of persuasiveness compared to judicial decisions of other common law countries?
- A32. Judgments/decisions of any court carry only persuasive value.
- Q33. Are the decisions of Apex Courts of any other common law countries binding upon the Erewhon High Court?
- A33. Judgments/decisions of any court carry only persuasive value.
- Q34. Has the charge of receipt or retention of stolen property been excluded from the decision of the judgement under appeal?
- A34. No clarification required.
- Q35. Have the appeals been clubbed together in such a form that the appellants will comprise of the State of Erewhon (prosecution) as well as Elizabeth, simultaneously, with both of them making submissions on their respective questions of appeal?
- A35. No Clarification required.
- Q36. In paragraph 9 of the moot problem, whether the FIR has been registered based upon the complaint filed by Diana?

- A36. No Clarification required.
- Q37. Whether the phrase "short trial" used in paragraph 21 of the moot problem is a trial under Section 260 of the Code of Criminal Procedure, 1973 (Erewhon Procedure Code 1973)?
- A37. No Clarification required.
- Q38. The query is "In para 9 Diana has filed a complaint for theft. The complaint has been filed to whom whether magistrate or police?"
- A38. No clarification required.
- Q39. In para 13 it is written that elizabeth was called in for questioning. Does this mean that a notice was issued to her under Section 41A to appear before the police officer?
- A39. A formal notice was served upon Elizabeth who appeared of her own volition.
- Q40. Clarify the meaning of "animate" and "inanimate" as it cannot be found in any of the reliable sources. Or provide a definition for the same.
- A40. No clarification required.
- Q41. Will the Identification of Prisoner's Act be applicable as a statute in Erewhon?
- A41. No clarification required.
- Q42. Will the provisions of any other statute other than the CrPc, Indian Penal Code and Indian Evidence Act have a statutory binding in the present case?
- A42. No.
- Q43. Following Clarification sought regarding the moot problem: with regards to the title of the case since both State and Elizabeth have preferred appeals, the clarification is required as to who will be the appellant and respondent, so as avoid any confusion or chaos during the competition.
- A43. No clarification required. See Rules.
- Q44. Are the amendments made by the Information Technology Act to the Indian Penal Code, Indian CrPc and Indian Evidence Act applicable to the Erewhon Evidence Act, Erewhon CrPc and the Erewhon Penal Code?
- A44. No. No IT Act passed for Erewhon, so these consequential amendments won't come to be.

Q45. Can the Sections inserted by the Information Technology Act in the IPC, CrPc and the IEA which have been adopted by Erewhon be referred to in arguments?

A45. No.

Q46. Can the Information Technology Acts of other common law countries be referred and will they have any persuasive value in the arguments?

A46. No clarification required.

Q47. Para 22 -- Section 511 EPC is mentioned wrongly should be replaced by Section 411 EPC as mentioned in Para 17.

A47. No error in the problem.

Q48. Para 24- Section 511 EPC is being mentioned wrongly. (to be replaced by Section 411 EPC

A48. No error in the problem.

Q49. There are 4 appeals Nos 10,11,12 & 13
Does that mean we need to make Total 8 memorials (For every appeal One for Applicant and One for Respondent)

A49. See Rules.

Q50. Kindly clarify what do we mean from Appeal #10 & #12. .? How can they both be maintainable and if assumed to be maintainable which Sections as Either State can appeal under Section 378 1(b) EPC / CrPC against acquittal in Appeal #13 or Elizabeth against conviction under Section 374 (3) (a) .

A50. Maintainability is not in issue.

Q51. How can State or Elizabeth appeal against pre-trial ruling? Is it assumed they had appealed before conviction / acquittal?

A51. Maintainability is not in issue.

Q52. If yes ... does that means Total 8 Memorials to be made; i.e. for Each Appeal 2 Memorials (1 for applicant side and 1 for respondent)

A52. Refer to Rules for memorials.

Q53. Can provisions of Intellectual Property Rights apply in the situation?
And U.N. Conventions can apply this?

- A53. No clarification required.
- Q54. Was it the police officer who did not file chat messages in the police final report under sec 173 crpc?
- A54. No clarification required.
- Q55. Was it the prosecutor who did not file the chat message considering the prosecution had not relied upon the message?
- A55. No clarification required.
- Q56. Were the text messages not relied upon by the prosecutor or the text messages were not relied upon by the prosecution?
- A56. No clarification required.
- Q57. How did Elizabeth come to know about the chat message if they were never filed in the initial case record?
- A57. No clarification required.
- Q58. Is Erewhon a monoist or a dualist country?
- A58. No clarification required.
- Q59. Is BFG a party of the pre-trial ruling?
- A59. No clarification required.
- Q60. What are the UN conventions that Erewhon is a signatory to??
- A60. Erewhon is a signatory to ICCPR.
- Q61. Did the chats referred to in Paragraph 16 take place before Elizabeth and Diana's meeting on May 19th?
- A61. No clarification required.
- Q62. This is regarding the Note #5 for counsel; with there being no IT Act, 2000 or any other "similarly worded law", will the other relevant laws also be as before the enactment of the abovementioned Act or should they be considered in their present form of 2019?
- A62. Since Erewhon did not adapt India's IT Act, it also did not adapt the amendments brought about by this statute to other laws.

- Q63. Whether police have recorded in writing to conduct warrantless search and seizure digital devices?
- A63. All procedural requirements for conducting warrantless search and seizure were complied with.
- Q64. Whether consent of employer was obtained to conduct warrantless search in Elizabeth office?
- A64. No clarification required.
- Q65. Was the mobile phone seized during the seizure returned to Elizabeth?
- A65. The phone was returned after making a clone of the contents of the device.
- Q66. The Moot Problem states that both parties (the prosecutor & Elizabeth) have appealed on different aspects of the judgment. In those circumstances, & for the avoidance of doubt, who qualifies as the Appellant and who will be the Respondent?
- A66. Please consult competition rules.
- Q67. Is Erewhon a signatory to the Vienna Convention on the Law of Treaties?
- A67. No clarification required.
- Q68. Point two under 'Notes for Counsel' says that "the Erewhon Constitution guarantees the same set of fundamental rights as Part III of the Indian Constitution."
- Does this phrase include judicially recognised rights under Part III as well, (for instance, the right to free legal aid) or is it limited in scope to only those rights expressly enumerated by the text of Part III of the Indian Constitution?
- A68. Only the constitutional text is the same. Decisions of the Indian Courts interpreting Part III of the Indian Constitution will carry appropriate value for argument.
- Q69. Can the additional facts provided by way of the Clarifications (such as the non-compete clause in Diana's agreement with BFG) be included in the Statement of Facts?
- A69. No clarification required.
- Q70. Will the judges of the oral rounds be aware of the additional information provided to the participants by way of clarifications?
- A70. Yes. Please consult competition rules.
