3Q:1 Give the Definition of false imprisonment And Discuss its Essential Elements?

Ans: Essential elements of 'false imprisonment'.-Following are the essential elements of false imprisonment:

(i)Complete Restraint of Liberty-One of the essential requirements for the tort of false imprisonment is that the restraint on the liberty of the plaintiff must be complete or total. If the restraint is partial or there is a means of escape which the plaintiff knows or is such which any reasonable man in the circumstances might have known, it is not false imprisonment. For example, A has a room with two doors, one opening into the street, the other into a room belonging to B. C locks the streets door. C will not be liable for false imprisonment because restraint of liberty is not complete or total. ** Similarly, X restrains the plaintiff from passing in a certain direction but leaves another way open to him. The plaintiff refused to avail himself of the opening and alleges that X's restraint constitutes false imprisonment. This allegation is not correct. In Bird v. Jones, 26 a part of public footway on a bridge was wrongfully enclosed by the defendants. They put seats in it and charged for admission to the enclosure to witness a regatta on the river. The plaintiff insisted on passing through the enclosed footway and climbed over the fence of the enclosure. The defendants did not allow him to go forward and told him to go back the other way and cross the other side of the bridge. He refused to go and remained in the enclosure for half an hour. It was held that the defendants were not liable. Thus mere obstruction of the passage of the plaintiff in a particular direction does not amount to false imprisonment. Patterson J. observed: "He does him wrong undoubtedly, if there was a right to pass in that direction, and would be liable to an action on the case for obstructing the passage, or of assault if, on the party persisting in going in that direction, he

touched his person, or so threatened him as to amount to assault. But imprisonment, as I apprehend, a total restraint of the liberty to the person, for however short a time and not a partial obstruction of his will, whatever inconvenience it may bring on him."

(ii) Not expressly or impliedly authorised by Law.-Complete restraint of liberty must be without any lawful jurisdiction. If it is expressly or impliedly authorised by law, it will not constitute false imprisonment. For example, a lawful arrest is no false imprisonment. If a person enters the premises upon a contract and subject to certain reasonable conditions, detention for not fulfilling reasonable conditions will not amount to false imprisonment. For example, in *Robinson v. Balmain Fetty Co. Ltd.,* the plaintiff entered the defendants wharf after paying the requisite entry charges (i.e., a penny) with a view to cross the river by one of the ferry boats of the defendants. A boat had just gone and no other boat was available for twenty minutes. The plaintiff wished to leave and was asked to go towards the exit and was asked to pay the requisite charge (i.e., a penny) for exit, stated on a notice board. He was not allowed to go unless he paid exit charges. It was held that the defendants were not liable for false imprisonment. The court regarded the charge of one penny as reasonable. The Judicial Committee held: "There is no law requiring the defendant to make the exit from their premises gratuitous to people who come there upon a definite contract which involves their leaving the wharf by another. way.." Further, Lord Loreburn of the Judicial Committee of the Privy Council observed: "when the plaintiff entered the defendant premises there was nothing agreed as to the terms on which he might go back, because neither party contemplated his going back. When he desired to do so the defendants were entitled to impose a reasonable condition before allowing him to pass through their turnstile from a place to which he had gone on his own free will. The payment of a penny was a quite fair condition and if he did not choose to comply with it the defendants

were not bound to let him through. He could proceed on the journey he had contracted for." Similarly, *in Herd v. Meardale etc. Co. Ltd.*, a minor refused to do certain work which he was allotted to do in the mine under a contract. Thereafter he demanded to be taken up on the surface by the lift although five hours had yet to expire before the shift expired. He was detained there for twenty minutes. The House of Lords held that the defendants were not liable for false imprisonment.

Reference may also be made to the case of Regina v. Governor of Brockhill Prison Exparte Evans No. 2. In this case, a person was imprisoned for several years the longest being 2 years' for robbery in date of release from prison was calculated as on 18 November, 1996 by the Governor of Prisons. This date of release was calculated, rather mis-calculated on the basis of authoritative judicial decision. But this decision was subsequently overruled. As per later decision the actual date of release should have been 17 September, 1996. Thus, the prisoned was detained for 59 additional days. Therefore, damages were claimed for 59 additional days for which the prisoner was illegally detained.

The Judge dismissed the claim on the ground that the Governor of Prison was entitled to rely on previous Court decisions but added that he be in error the damages were assessed at £ 2,000/-. The Court of Appeal allowed the appeal and increased the damages to £ 5,000/- on appeal by prison Governor, the House of Lords dismissed the appeal and held that it was proper to award £ 5,000 as damages.

Knowledge of the plaintiff.–It is a matter of controversy as to whether the plaintiff must have the knowledge of his false imprisonment to constitute a tort. In Grainger v. Hill, it was held that there may be false imprisonment even though the plaintiff is to ill to move. *In Meering v. Grahame-White Aviation Co. Ltd.*, Atkin, L.J. observed: "It appears to me that a person could be

imprisoned without his knowing it. I think a person can be imprisoned while he is in a state of drunkenness, while he is unconscious....." In this case, on suspicion of stealing varnish belonging to the defendants (employers), the plaintiff was asked by two of the defendants officers (or policemen) to go with them to the company's office. The plaintiff assented and was taken to the waiting room. The policemen remained nearby. The plaintiff brought an action for false imprisonment. The defendants argued that the plaintiff knew that he was perfectly free but did not desire to go away. This argument was rejected and it was held that the defendants were liable because the moment he came under the influence of the policemen, he ceased to be a free man. Thus in the view of the court knowledge of detention is not essential. But this does not appear to be a very sound view. Knowledge of the restraint should be considered necessary as it was held in *Herring v. Boyle* wherein a boy was wrongfully detained at school during holiday but was not aware of it. The boy was detained for default of payment dues. The conversation in this connection took place between the mother of the boy and the school-master but in the absence of the boy. It was held that since the boy was not aware of it, no action would lie.

Alderson B. of the court of Exchequer observed: "There was a total absence of any point of consciousness of restraint on the part of the plaintiff. No act of restraint was committed in his presence, and I am of opinion that the refusal in his absence to deliver him up to his mother was not a false imprisonment."

Defences and Remedies." -Against an action of false imprisonment the following defences are available:

(i) consent; (ii) self-defence; (iii) contributory negligence; (iv) prevention or ejection of a trespasser; (v) prevention of breach of peace; (vi) parental or quasi-parental authority; (vii) inevitable accident; and (viii) statutory authority.

Remedies against the tort of false imprisonment are: (i) An action for recovery of damages; (ii) Writ of Habeas Corpus (under Articles 32 and 226 of the Constitution); and (iii) self-help.

Distinction between False Imprisonment and Abuse of Process (malicious prosecution).-Following are the main points of distinction between false imprisonment and malicious prosecution:

(i)If a person arrests or imprisons another person without lawful justification or prevents him from leaving a place without lawful justification, it will amount to false imprisonment. But if arrest or imprisonment is procured by obtaining a judgment in a court of Law, it will not amount to false imprisonment but may still constitute the tort of malicious prosecution. As aptly stated by Willes, J. in Austin v. Dowling 34 "The distinction between false imprisonment and malicious prosecution is well illustrated by a case where parties being before a magistrate, one makes a charge against another, whereupon a magistrate orders the person charged to be taken into custody and detained until the matter can be investigated. The party making the charge is not liable to an action for false imprisonment, because he does not set a ministerial officer in motion, but a judicial officer. The opinion and judgment of a judicial officer interposed between the charge and punishment." In this case, A made certain charges against B and requested a police inspector to arrest B on those charges. The Inspector refused to do so. But when A signed the charge sheet, he acceded to the request and arrested B. A was held liable for false imprisonment. The decision might have been different if there had been the exercise of discretion between the act of the defendant and the arrest of

plaintiff. Thus it is not necessary for liability to arise for false imprisonment that the defendant must detain or arrest the plaintiff personally. He will also be liable if he acts through a third person who does not exercise discretion of his own.

(ii) In false imprisonment, the plaintiff has to prove his intention or arrest and it is for the defendant to prove that the arrest or detention was justified under law. On the other hand, in case of malicious prosecution, the plaintiff has to prove the following: (i) that he was prosecuted by the defendant; (ii) that the prosecution was terminated in his favour, if from their nature they were capable of such prosecution and; (iv) that the prosecution was malicious If the plaintiff was actually arrested it is sufficient to prove the last two requirements, i.e. there was no reasonable and probable cause for launching prosecution and that the prosecution was malicious.

(iii) That essential element of false imprisonment is inflicting of bodily restraint without lawful justification. As contrasted with this, the essential elements of malicious prosecution, as the very term suggests, are: (a) that prosecution was instituted without reasonable and probable cause and (b) that the prosecution was malicious. If a person arrests or detains another person with reasonable and probable cause and without malice, it may still amount to false imprisonme..t if the arrest or detention was not expressly or impliedly authorised by law. But that is not the case in malicious prosecution. However, merely setting the law in motion by making an appeal to some person clothed with judicial authority in regard to any matter, or mere giving information to the police which induces the latter to launch an investigation, would not constitute prosecution. Investigating a prosecution by the police or taking further active part in the plaintiff's prosecution after laying the information before the police would amount to prosecution. Further, malice is not merely

the doing of a wrongful act intentionally but it must be established that the defendant was actuated by malice and animus, that is to say, by spite or ill will or by any indirect or improper motive.

Q-2 Define the term 'battery' Discuss its Essential ingridients and Distingaish it from Assault?

Ans: Battery is the intentional use of force to another person without legal justification. In the Thirteenth Edition of Winfield and Jolowicz on Tort this definition has been slightly modified. According to the modified definition, "Battery is the intentional and direct application of force to another person." Further, for battery there must be a voluntary act by the defendant intended to bring about the contact with the plaintiff..But the act need be intentional only as to the contact and intention to bring about the harmful consequence is not required.

According to Salmond and Heuston on the Law of Torts, "Intentionally to bring any material object into contact with another person is a sufficient application of force to constitute a battery, for example, to throw water upon him, or to pull a chair under him whereby he falls to the ground or to apply a 'tone-rise' to his scalp." It has following essential elements:

(i) Use of force;

(ii) It should be intentional; and

(iii) It should be without any lawful justification.

(i) Use of force.- One of the essential requirements of battery is the use of force. It is not material how much force has been used. "The least touching of another in anger is a battery."Anger or hostility is not an essential element. Even an unwanted kiss may be battery. Mere accidental contacts between persons in a crowd will not amount to battery but it may amount to a battery if a person uses violence to force his way "in a rude and inordinate manner." Mere words or singing also does not amount to battery.

(ii) Use of force should be intentional.- For an act of the defendant to constitute battery, use of force must be intentional. It must not, therefore, be an involuntary act. For example, if X seizes the hand of A and X slaps B, A has committed battery, although A may be guilty of it. "The basis of liability is the intentional conduct of the defendant." It may be noted that "It is the act and not the injury which must be intentional.

(iii) Without lawful justification. —Yet another essential requirement for the tort of battery is that force should be used without any lawful justification. If force is used as permitted or authorised under law, it will not constitute battery. Arresting a it f by a policeman by touching him or using some force will not constitute battery if i n pursuance of a lawful authority. For the tort of battery, force should have been u without lawful justification, For example, in *Hurst v. Pictures Theatres Ltd.* the plaintiff had a ticket for a seat at a cinema. The defendants doorkeeper forcibly removed him from the cinema building under the mistaken belief that he wrongfully obtained admission without payment. It was held that the plaintiff was entitled to recover substantial damages. Buckley, L.J. of the court of Appeal observed: "The defendants had.....for value contracted that the plaintiff should see a certain spectacle from its commencement to its termination. They broke that contract and it was a tort on their part to remove him. They committed an assault upon him by law."

Illustration.-P entered a restaurant and ordered for Coffee which was served to him P refused to pay the bill and assaulted the servant. In this case obviously the tort of battery was committed by P because he used force against the servant, the use of force was intentional, and that it was without any lawful justification. Thus all the elements of battery discussed above are present. P would therefore be liable to pay damages.

Assault

"Assault is an act of the defendant which causes to the plaintiff reasonable apprehension of the infliction of a battery on him by the defendant" Thus the conduct forbidden by this tort is an act which threatens violence, namely, one that produces in the plaintiff a reasonable expectation of immediate unlawful force. The essential requirements of assault are the following:

(i) Some preparation or gesture constituting a threat of force.- The first essential requirement of assault is that there should be some preparation or gesture constituting a threat of force. For example, showing a fist by A to B or loading a pistol by A in the presence of B along with uttering of some words showing A's intention for its use against B. But mere words do not constitute an assault. For example, in Tuberville v. Savage13 the defendant while laying his hand on his sword said, "If it were not assize time I would not take such language from you". This was held not to be assault because it was clear from the words that the threat would not be carried out. But where the defendant makes a menacing gesture and also gives a threat to break the plaintiff's neck unless he got out the defendant would be liable for assault. 14

(ii) A reasonable apprehension of the use of force:- There should be reasonable apprehension of the infliction of force. As aptly remarked by Fleming, tort of assault is "the only instance in English jurisprudence of a mere offensive sensation unaccompanied by any untoward psychosomatic symptoms, let alone external trauma giving a cause of action for damages."15 For example, pointing a pistol will amount to assault. It is immaterial whether the pistol is loaded or unloaded unless the person against whom it is pointed does not know that it is unloaded. 16 If the person against whom it is pointed does not know

that it is unloaded it will not constitute assault because it will then not cause any reasonable apprehension of the infliction of injury.

(iii) Ability or capability of the Defendant to carry out the Threat.- Along with a reasonable apprehension for the infliction of force or injury, the plaintiff must have a reasonable belief that the defendant has the ability or capability to carry out his threat. Thus, as remarked by Tintal, C.J. in *Stephens v. Myers* . "It is not every thred when there is no actual personal violence, that constitutes an assault. There must, in all cases, be the means of carrying the threat into effect." In this case, the plaintiff, the Chairman at a Parish meeting, was sitting in a chair. The defendant was also sitting at the same table at a little distance. The defendant became vociferous and it was resolved by a large majority to expel him. Resisting his ejection, he threatened to pull the plaintiff out of chair and advanced towards the plaintiff with clenched fist. But before he could execute his threat, he was stopped by the churchwarden who sat next but one to the plaintiff. The defendant was held liable. Thus an assault consists of an overt act indicative of an intention to commit battery, coupled with a present capacity to carry out the intention. Unless both the elements combine there is no wrong."

In *Read v. Coker*, the plaintiff, a paper stainer, was in financial, difficulties and in arrears with his rent. His equipment was purchased by the defendant who paid the rent under an agreement which secured to the plaintiff a weekly allowance. One day the defendant asked the plaintiff to leave the premises. On plaintiff's refusal to leave, the defendant collected together some of his workmen who mustered round the plaintiff, tucking up their sleeves and aprons. They threatened to break the plaintiff's neck if he did not leave. Though the plaintiff left, he later on brought an action for trespass and assault. The trial judge left it to the jury to decide whether there was an intention on the part of

the defendant to assault and whether the plaintiff was apprehensive of the personal violence in case he did not leave. The jury found for the plaintiff awarding one farthing as damages. The defendant moved for a new trial on the grounds of misdirection by the judge. The rule was discharged on first count. Byles Serjt, J. observed: "To constitute an assault, there must be something more than a threat of violence..to constitute an assault, there must be an attempt, coupled with a present ability to do personal violence to the party; instead of leaving it to them, (i.e. jury), to say what the plaintiff thought and not what they (the jury) thought was the defendant's intention. There must be some act done denoting a present ability and an intention to assault."

Jervis, C.J. observed: "..... If anything short of actual striking will in law constitute an assault, the facts here clearly showed that the defendant was guilty of an assault. There was a threat of violence exhibiting an intention to assault and a present ability to carry the threat into execution....."

In another case, Ball v. Axten, there was an altercation between a farmer and the defendant because the defendant was hunting without permission on his land. The defendant struck a blow at the farmer's dog and hit his wife who was trying to protect it. Lord Cockburn, C.J. held: "...even though the defendant had not aimed the blow at the woman, there was no doubt an assault .

Distinction between Assault and Battery

Following are the main points of distinction between an Assault and Battery:

(i)In assault use of physical force or actual contact is not necessary. Battery, on the other hand, is the intentional application of force. "So, to throw water at a person is an assault but if any drop fell upon him it is a battery; riding a horse at a person is an assault but riding it against him is a battery. Pulling away a chair, as a practical joke, from one who is about to sit on it is probably an assault until

he reaches the floors, for while he is falling he reasonably expects that the withdrawal of the chair will result in harm to him. When he comes in contact with the floor, it is a battery."

(ii) Reasonable apprehension of the use of force is an essential requirement of assault but the same is not necessary in case of battery. A blow from behind may constitute a battery. Thus battery does not always include assault.

(iii) In assault, along with the reasonable apprehension of use of force, plaintiff must also have reasonable belief that the defendant has the capacity to carry out his threat. This is not necessary in case of battery. If there is intentional application of force without lawful justification, it will constitute battery irrespective of whether the plaintiff had the reasonable apprehension of the infliction of injury and the liability of the defendant to execute it. It is true that generally assault precedes battery but it is not always necessary.

False imprisonnment-False imprisonment has define as "the infliction of bodily restraint which is not expressly or impliedly authorised by the law." "The word 'false' in this tort means 'unlawful' i.e. without lawful excuse or justification. If a person freely and expressly consents to being restrained there is, of course, no liability The word imprisonment means "the complete restriction of the plaintiff's freedom of movement..... . To constitute a wrong in question there need be no actual imprisonment in ordinary sense, i.e., incarceration.....It is enough that the plaintiff has been in any manner completely deprived of his personal liberty. A mere unlawful arrest. for example, amounts in itself to false imprisonment, and so does any act whereby a man is unlawfully prevented for leaving the place in which he is..". "And in all these places the party so restrained is said to be a prisoner, so long as he hath not his liberty freely to go at all times to all places whether he will, without bail or mainprize.

Q-3 Enumerate the elements which Contitute the Wrong of Defamation?

Ans:- Definition.* – Defamation has been defined as 'the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person." Thus, to constitute the tort of defamation, a defamatory statement should not only be published but it should tend to lower the reputation of the person in the eye of right-thinking members of the society. By right-thinking members of the society is meant reasonable persons of the society. An extraordinary or abnormal person may not think worse of a man against whom the defamatory statement is published. But that is not the determining factor. The determining factor is what a reasonable person thought or might have thought about the person so defamed and whether the defamatcry statement tended to make him shun or avoid that person. For example, in Youssoupoff v. Metro-Goldwyn-Mayer Pictures Ltd., a cinematograph firm showed the plaintiff, a Russian princess, Natasha, to have been raped or seduced by a notorious monk named Rasputin. This being a false imputation regarding the plaintiff, it was held to be defamatory because it tended to make the plaintiff be shunned or avoided without any moral discredit on her part. It is immaterial that the person to whom defamatory statement is communicated does not believe it. As remarked by Goddard, L.J., "If words are used which impute discreditable conduct to my friend, he has been defamed to me, although I do not believe the imputation and may even know that it is untrue. "4 In such a case, it is true that reputation is not diminished but the person defamed suffers annoyance or worse when he learns that a defamatory statement has been published about him.

It may be noted here that liability for defamation generally does not depend on the motive or malice of the defendants but on the fact of defamatory publication. However, it may be noted here that the "defence of qualified

privilege is not available if the defendant was actuated by malice. Malice means the presence of an improper motive, or even gross and unreasoning prejudice; it does not necessarily mean personal ill-will, though a desire to injure the plaintiff will usually be present." *In Horrock v. Lowe*, Lord Diplock of the House of Lords observed: "Even a positive belief in the truth of what is published on a privileged occasion which is presumed unless the contrary is proved may not be sufficient to negative malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. The commonest case is where the dominant motive which actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill-will towards the person he defames. If this be proved, then even positive belief in the truth of what is published will not enable the defamer to avail himself of protection of the privilege to which he would otherwise have been entitled, There may be instances of improper motives which destroy the privilege apart from personal spite. A defendant's dominant motive may have been to obtain some private advantage unconnected with the duty or interest which constitutes the reason for the privilege. If so, he loses the benefit of the privilege despite his positive belief that he said or wrote was true,"

Kinds of Defamation: Libel and Slander. -According to English Law, defamation is of two types: Libel and Slander. As pointed out hy an eminent author, "A libel consists of a defamatory statement or representation in permanent form: if a defamatory meaning is conveyed by spoken words or gestures it is slander. Examples of libel, as distinguished from slander are a picture, statute, waxwork effigy, or any writing, print, mark or sign exposed to view. On the other hand, defamation in the manual language of the deaf and dumb, and mimicry and gesticulation generally (e.g. holding up an empty purse to indicate that the plaintiff has robbed the defendant would probably be

slander, because the movements are more transient. These examples show that it is only broadly true to say that libel is addressed to the eye, slander to the ear. Moreover, broadcasting, both radio and television, and theatrical performances, are by statute, treated as publication in permanent form, i.e. as libel."

According to Section 1 of the Defamation Act, 1952, for the purpose of the law of libel and slander the broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form. Section 2 of the Act provides that in an action for slander in respect of words calculated to disparage the plaintiff in an office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

Distinction between Libel and Slander" - Following are the two main distinctions between Libel and Slander

(i) Libel is both a tort as well as crime whereas slander is only a civil wrong.

(ii) Libel is in all cases actionable per se. That is to say, it is not necessary to prove special damage, on the other hand, slander is save in exceptional cases, actionable only in proof of special damage. Exceptional cases when slander is actionably per se (ie. without proof of special damage) are the following: -

(a) Imputation of a criminal offence punishable with imprisonment.

(b) Imputation of a contagious disease likely to prevent other persons from associating with the plaintiff

(c) Imputation of unchastity or adultery to any woman or girl.

(d) Imputation of unfitness, dishonesty or incompetence in any office, profession, calling, trade, or business held or carried on by the plaintiff at the time when the slander was published.

Special damage.--As noted above, one of the main points of difference between libel and slander is that libel is in all cases actionable per se but slander is actionable only on proof of special damage. Generally, damages are of two kinds: (i) general and (ii)special.

Indian Law.-The distinction between libel and slander is not recognised under Indian law. Both libel and slander are recognised as criminal offences under Section 499 of the Indian Penal Code. Moreover, the English rule regarding proof of special damage in actions for slander is not applicable in India. 17 In Parvathi v. Mannar, 18 Turner, J., held: "It appears to us that disregarding the distinction between the method of publication adopted, the questions which demand serious consideration are whether or not actions may be maintained for injury to the reputation which may result only in mental pain and whether damages may be awarded which are in their nature more or less punitive..Mere hasty expressions spoken in anger or vulgar abuse to which no header would attribute any set purpose to injure character would of course not be actionable but when a person either maliciously or with such carelessness to enquire, deliberately defames another, we conceive that he ought to be held responsible for damages for the mental pain his wrongdoing occasions..we consider the action should be allowed where the defamation is such as would cause substantial pain and annoyance to the person defame,

Essentials of Defamation.* — To constitute a tort of defamation the plaintiff has to establish the following essentials:

(I). The words must be defamatory.

(II) The words must refer to the plaintiff.

(III) They must be published.

(I) The words must be defamatory.-One of the essentials of defamation is that the words must be defamatory. That is to say, they should tend to lower a person in the estimation of other persons or which tend to make them shun or avoid that person. A statement may also be defamatory if it excites adverse opinion or feeling of other persons against the plaintiff or tends to bring the plaintiff into hatred, contempt or ridicule or injures his trade, profession or business. Sometimes the words may not be defamatory but may become so because of the manner in which they have been spoken. The manner of pronouncing the words and various other circumstances may explain the meaning of the words.28 As noted above, a defamatory statement is that which lowers the plaintiff in the estimation of the right-thinking members of the society. By right-thinking men, we mean reasonable persons. Words cannot be said to be defamatory if a reasonable man would not regard them so. For example, in *Capital and Counties Bank Ltd. v. Henty*, Henty & Sons, a firm of brewers, used to receive cheques, in lieu of payment. on different branches of Capital and Counties Bank and the bank used to cash them for Henty & Sons at a particular branch. Henty had a dispute with the manager of the said branch and consequently sent a printed notice to his customers. The notice was as follows:"

Henty & Sons hereby give notice that they will not receive in payment cheques drawn on any of the branches of the Capital and Counties Bank." The Bank brought an action for libel alleging that the notice contained an imputation of insolvency and as such was defamatory. But the House of Lords

held that in the circumstances of the case a reasonable man would not infer that they were defamatory.

Sometimes, it may be possible to have several interpretations of the words, particularly, in case involving innuendoes. As remarked by an eminent writer, 30 "The most simple words are capable of a defamatory meaning. The court will reject those meanings which can emerge only as the product of some strained or forced or utterly unreasonable interpretation."

In Lewis v. Daily Telegraph Ltd., 32 the Daily Mail published a paragraph headed "Eraud Squad Probe Firm" and the Daily Telegraph published a para entitled "Inquiry on Firm by City Police" In 1958 just before Christmas. The said paragraphs identified the corporate plaintiff as the company in question and the individual plaintiff as its chairman. It was alleged by the plaintiffs that the words were defamatory in the ordinary and natural meaning. This was not disputed by the defendants. The plaintiffs also alleged that the said words in their ordinary meaning indicated that the plaintiffs were guilty of, or were being suspected by the Police of being guilty of fraud, dishonesty. The defendants, on the other hand, contended that the words meant only that an inquiry was on foot. The trial court decided in favour of the plaintiff and the jury awarded in the first action against the Daily Telegraph £ 25,000 to the Chairman and £ 75,000 to the company; in the second action against the Daily Mail, a different jury awarded £ 17,000 to the Chairman and £ 100,000 to the Company. It was obvious from the size of the awards that the juries accepted that the words imputed guilt and not mere suspicion. The Court of Appeal, however, allowed the appeal and ordered new trials. Thereupon, the plaintiffs appealed to the House of Lords but the same was dismissed. Lord Hosdon of the House of Lords observed : "....I am satisfied that the words cannot reasonably be understood to impute guilt. Suspicion, no doubt, can be

inferred from the fact of inquiry being held if such was the case, but to take further step and infer guilt, is in my view, wholly unreasonable. This is to draw an inference from an inference and to take two substantial steps at the same time."

Where the plaintiff expresses a grievance strongly against a professional (a doctor) it does not amount to defamation by any stretch of imagination. This was held by the Delhi High Court in Sh. M.L. Singhal v. Dr. Pradeep Mathur33 where the plaintiff had raised the controversy regarding proper or non-giving of proper treatment to the plaintiff's wife having the bona fide belief that had the defendant No. 1 consulted the Nephrologist at the very initial stage perhaps his wife could have lived longer. In this case even the doctor had formed an impression that the kidney of the plaintiff's wife was involved. If a doctor could form such an impression then why the plaintiff could not think so and allege that for kidney treatment a Nephrologist should have been consulted.

It was, therefore, held that if the controversy raised by the plaintiff regarding the treatment given to his wife that by itself will not amount to lowering the status of the defendant. Thus, filing of a case or raising a bona fide controversy regarding the treatment would not constitute defamation. Further, if for raising this controversy hospital authorities did not consider the candidature of the defendant for the post of Hony. Consultant the plaintiff cannot be blamed for the same.

Innuendo.* —No statement can be said to be defamatory in all circumstances. There may be a statement containing an allegation which apparently is no imputation, may be proved by the plaintiff to have an imputation under the special circumstances of the case. Under special circumstances of a particular case, even the language of praise may be held to

be defamatory. Thus the words may be defamatory in two ways. In the first place, they may be defamatory in their ordinary and natural meaning. Secondly, they may also be defamatory in view of the special facts and circumstances in the knowledge of the persons to whom they are published.

As pointed out in Winfield's Book : "Where, however, the words are not defamatory in their natural and ordinary meaning, or where the plaintiff wishes to rely upon an additional meaning in which they were understood by persons having knowledge of particular facts, then an innuendo is required. This is a statement by the plaintiff of the meaning which he attributes to the words and must prove the existence of facts to support that meaning. If such facts do not exist, the innuendo fails and may be struck out of the statement of claim, though the plaintiff may still fall back on natural and ordinary meaning of the words. Separate causes of action exist in respect of that meaning and of each innuendo that is proved." As noted above, "the burden of proving that the libel was published of and concerning the plaintiff."

Liability for defamation depends on fact of defamation rather than on intention of the defendant to defame.

N.B.-See for this matter discussed under the Heading "The words must refer to the plaintiff" given below.

(II) The words must refer to the plaintiff.-In order to be defamatory of the plaintiff, the words (or article) must contain something which to the mind of a reader with knowledge of the relevant circumstances, contain defamatory imputations and points to the plaintiff as the person defamed 54 It is, however, not required that the defamatory statement must have been intended by the defendant to refer to the plaintiff. Liability for libel depends on the fact of defamation and the intention of the defamator is immaterial. An illustrative case

on this point is Hulton & Co. V. Jones the facts of which may be summarised as follows:

The case related to the publication of a humorous article in the appellant's newspaper. The article was concerning a motor festival at Dieppe and contained certain imputations on the morals of one Artemus Jones described as churchwarden at Peckham and was intended to be a purely fictitious character. But there happened to be a barrister of this name who was neither a churchwarden at Peckham nor had taken a part in the festival at Dieppe. He sued the newspaper proprietors for libel on the ground that his friends believed that the article referred to him. The House of Lords held the proprietors of newspapers liable. Lorbeurn L.C. observed: "A person charged with libel cannot defend himself by showing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff, if in fact he did both. He has nonetheless impugned something disgraceful and has nonetheless injured the plaintiff.....

Reference may be made here to *Newstead v. London Express Newspaper Ltd*. In this case the statement published in the newspaper was to the effect that "Harold Newstead, thirty-year old Camberwell man," had been convicted of bigamy. The name of the plaintiff also happened to be Harold Newstead and he was of thirty years of age and worked with his father in a Hair-dressing saloon in Caberwell. He was not convicted of bigamy. The defendants were held liable for libel although what was published by them was not intended to refer the plaintiff.

(III) The Words Must be Published.-As stated by Lord Halsbury, "A defamatory statement is a statement which, if published of and concerning a person is calculated to lower him in the estimation of right-thinking men or causes to be shunned or avoided or to expose him to hatred, contempt or

ridicule or to convey an imputation on him, disparaging or injurious to him in his office, profession, calling, trade or business. It follows, therefore, that everything printed or written, which reflected on the character of another and published without lawful jurisdiction or excuse, is a libel. Thus, publication is an essential ingredient in the case of a libel." It is, therefore, well settled that 'defamation' is publication of a defamatory matter and publication of defamatory matter is the communication thereof by one person to others, neither of such persons being the person of whom the matter is defamatory. Such communication is effected by any act which conveys the defamatory meaning of the matter to the person to whom it is communicated. It is not the matter but its publication which causes the injury. The essence of the wrong is the diminution of the good opinion of others and not the outrage or insult to the dignity or feelings of the person vilified.

Defences. -Assent to the publication of a defamatory statement is one of the recognised defences to an action for defamation. Besides this, the following are the well recognised defences:

1. Justification (or Truth).

2. Fair comment.

3. Privilege.

1. Justification (or Truth).-**No action will lie if the person responsible for publication of a defamatory matter is able to justify it or establish that it is true. This defence is recognised because law does not permit a man "to recover damages in respect of an injury to a character which he either does not, or ought not, to possess. " It is, however, a risky plea. If the defendant takes only this plea and the plea fails, heavier damages will be awarded against him. But if the plea succeeds no action will lie even if the publication was made with

malicious and improper motives. It may also be noted that what is required to be proved is not literal but substantial truth. For example, in *Alexander v. N.E. Rly.*, the plaintiff had been convicted for travelling without a ticket in a train and had been fined one pound or two weeks' imprisonment in default of payment. The defendants had published a statement stating that the plaintiff was fined one pound or three weeks' imprisonment in default of payment. It was held that the defendants were not liable because the statement was substantially true. . Moreover, as stated in Section 5 of the Defamation Act, 1952, "In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charge."

Fair Comment.* — Fair comment on a matter of public interest is a good defence against an action for libel. As aptly pointed out in Winfield and Jolowicz on Tort :

"Honest criticism ought to be, and is, recognised in any civilized system of law as indispensable to the efficient working of any public institution or office, and as salutary for private persons who make themselves or their work the object of public interest. .The defence has been recognised for a long time in English law, and although criticism of government and of public functionaries was not always so freely allowed as today, 101 it is now fully recognised as one of the essential elements of freedom of speech which is not to be whittled down by legal refinement."

Privilege.-The general rule is that a man who defames does so at his own peril. A privileged statement is an exception to this rule. It is said that it is the occasion in which the statement is made is privileged and not the statement.

108 There are occasions on which freedom of expression of views, without fear of an action for defamation, is considered more important than the protection of the reputation of a person or persons. Thus no action lies for a defamatory statement made at a privileged occasion. "For example, no action for defamation lies against a Member of Parliament for saying anything during the proceedings of the Parliament. Privilege may be of two kinds Absolute and Qualified.

Absolute Privilege.-An absolutely privileged statement is a statement which is "of such a nature that no action will lie for, however false and defamatory it may be, and even though it is made maliciously-that is to say, from some improper motive. The right of free speech is allowed to prevail wholly over the right of reputation. These cases are at the opposite extreme, from the ordinary cases of privileged defamation". 109 For obvious reason occasions of absolute privilege are the following: -

(i)Any statement made in the course of and with reference to judicial proceedings by any judge, juryman, party, witness, or advocate.

(ii) Fair, accurate, and contemporaneous reports of public judicial proceedings published in a newspaper;

(iii) Any statement made in Parliament by a Member of either House;

(iv) Parliamentary papers published by the direction of either House, and any repetition thereof by any person in full;

(v) Any statement made by one officer of State to another in the course of his official duty;

(vi) Communications between husband and wife;

(vii) Reports by the National Board for Prices and Incomes.