

# **Anti Money Laundering & Offences Related to the Business Environment and New Laws**

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## **Prevention of Money Laundering Act (No. 5 of 2006)**



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# What is money laundering ?

- Money laundering is the movement of criminally derived funds, for the purpose of concealing the true identity of the source of the owner or of the use of such funds.
- The Act describes money laundering as receiving, possessing, concealing, investing, disposing of, bringing into Sri Lanka, or engaging in any other manner in any transaction in relation to property derived or realized directly or indirectly from unlawful activities.
- Unlawful activities include offences in relation to drugs, arms trafficking, bribery, exchange control, terrorism, transnational organized crime, cyber-crime, trafficking of persons, etc.

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## Money laundering as an offence

- Any person who does an act which falls within the definition of money laundering is guilty of an offence under this Act.
- Act states that any person who aids and abets in the offence of money laundering is also guilty of committing the offence of money laundering.

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# **Punishment for money laundering**

- A fine not less than the value of the property and not more than 3 times such value ,
- Imprisonment for 5-25 years,
- A fine and imprisonment, both.

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## **Main objectives of the Act**

- To prohibit money laundering Sri Lanka.
- To provide the necessary measures to combat money laundering.

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# To whom does this Act apply?

- Any resident person in Sri Lanka who commits an act,
- Any institute carrying on business in Sri Lanka , whether incorporated in Sri Lanka or outside Sri Lanka,
- Any act committed in Sri Lanka,
- Which act falls into the category of an offence under this Act.

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## Freezing order in money laundering

- When there are reasonable grounds to believe that any person is involved in money laundering, in order to prevent the commission of this offence a police officer can issue a freezing order under this act.
- A freezing order is an order which prohibits any transaction in relation to any account, property or investment, which may be used in committing money laundering.
- A freezing order must be confirmed by the High Court.
- A freezing order is generally valid for a period of 7 days unless extended by the High Court.
- Any transaction affected on an account, property or investment will be null and void as long as the freezing order is in operation.

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# Main defenses for money laundering

## Consent defence

- This refers to the instance where an authorized disclosure is made to the relevant authorities and consent for the transaction has been obtained, prior to the occurrence of the offence.

## Reasonable excuse defence

- This is where, though the party intended to make a disclosure to the relevant authority, he could not do so due to a reasonable excuse.

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## Computer Crimes Act (No.24 of 2007)



# Main objectives of the Act

- To identify computer crimes
- To provide a procedure to investigate such crimes
- To prevent such crimes

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## What are computer crimes?

- Any act to secure unauthorized access to a computer or to any information held in a computer.
- Any act to secure unauthorized access to a computer or to any information held in a computer, with the intention of committing an offence.
- Unlawfully causing a computer to perform a function which will result in damages or modification to the computer system or the computer.
- Endangering national security or national economy, by making a computer perform certain functions.
- Illegal interception of data, to or from a computer.
- Unauthorized disclosure of information, which enables another to access any service provided by a computer.
- Using devices without lawful authority, in order to commit an offence under this Act.
- Buying, receiving, retaining, selling, or in any manner dealing with any information obtained from a computer or storage medium of a computer by another person unlawfully.
- Attempting to commit any of the offences listed here.
- Abetting to commit any offence under this Act.
- Conspiring to commit any offence under this Act.

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# Investigations

- Investigations for computer crimes are generally conducted under the code of Criminal procedure. The procedure to be followed in conducting an investigation is also laid out in Part II of the Act.

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## Electronic Transaction Act (No.19 of 2006)



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# **Main objectives of the Act**

- To recognize and facilitate contracts in electronic form.
- Creation and exchange of messages and documents and communications, in electronic form.
- Appointment of a certification authority.
- Accreditation of certification service providers.

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## **Legal recognition of electronic communications**

- Data messages, electronic documents, electronic records and other communications in electronic form, are given legal recognition by this Act.

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# **Legal requirements for any document to be accepted in law**

- The document should be in writing.
- The document should be retained and in its original form.
- The document should be signed.

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## **How can an electronic document satisfy the legal requirements of a valid document in law?**

These characteristics should be there in order to accept it as a legal document

- It should be accessible for subsequent reference.
- There should be a reasonable assurance on the integrity of the contents of the document.
- The origin and destination of the data should be identifiable.
- The document should be retained in either the format in which it was generated or in a format which can represent the generated information accurately.
- There should be an electronic signature on the document.
- Electronic Signature means any letter, number, symbol, image, character or any of these combinations in electronic form, being logically associated with an electronic document, with the intention of authenticating such document.

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# Electronic contracts

- This Act allows the parties to a contract to make their offer and acceptance in electronic form. This would result in forming a legally valid contract.

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# Electronic communication

- This refers to a communication sent from an automated system programme, by the originator of such communication, to a receiver called addressee.
- **Originator:** the person who sends or generates the communication. It also includes any person who sends or generates such communication, on behalf of another.
- **Addressee:** the person to whom the originator intends such communication to be received by.

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# How does a dispatch of an electronic communication occur?

- When such communication enters an information system which is outside the control of the originator ; or
- In instances where such communication never leaves an information system which is outside the control of the originator, when such communication is received by the addressee.
- When the originator of an electronic communication has stipulated that the addressee has to acknowledge the receipt of the originator's communication, if the addressee does not acknowledge, then it is treated as if the originator never sent such communication to the addressee.

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## How do you determine the time of receipt of an electronic Communication?

- If an information system has been previously designated by the addressee to receive such communication, then the time of receipt is when such communication enters such system.
- If an information system of the addressee, which is not the system designated by the addressee to receive such communication, receives such communication, then the time of receipt is when such communication is retrieved by the addressee.
- If an information system has not been previously designated by the addressee to receive such communication, then the time of receipt is when such communication enters an information system of the addressee.

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# Certification Authority

- This Authority was created by the Act.

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## Powers of the Certification Authority

- To identify the criteria for granting accreditation to Certification Service Providers, and the qualifications required by them.
- To specify the procedure to be followed in the granting of accreditation.
- To hear appeals and to specify the procedure for the hearing of appeals.
- To issue licenses or any other form of authorization to Certification Service Providers.
- Require Certification Service Providers to maintain such records and registers, as may be prescribed.
- To request information from certification service providers.
- To issue directions to Certification Service Providers.

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# Certification Service Providers

- A certification service means any service which is provided to the senders or recipients of information in electronic form, or to those storing such information, to ensure that the confidentiality of such information is secured. These services will make use of cryptographic techniques for this purpose.

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## Items not covered under the Act

- A contract for sale or transfer of immovable property, or any interest in such property.
- A bill of exchange, as defined in the Bills of Exchange Ordinance.
- A power of attorney, as defined in the Power of Attorney Ordinance.
- A trust, as defined in the Trusts Ordinance. It does not include constructive, implied and resulting trusts.
- The creation or implementation of a will, or any other testamentary nature disposition by whatever name called.
- A license for a telecommunication system issued under the Telecommunications Act.
- Any other document, act or transaction specified by the Ministry by regulations made under this Act.

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# Intellectual Property Act (No. 36 of 2003)

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## Main objectives of the Act

- To provide the law relating to intellectual property.
- To provide an efficient procedure for the registration, control and administration of the law.
- To provide for the appointment of a person as the “Director General of Intellectual Property of Sri Lanka”, in order to implement the provisions of this Act.

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# Types of intellectual Properties recognized by the Act

- Copyright
- Industrial designs
- Patents
- Marks and trademarks
- Trade names
- Layout designs of integrated circuits
- Geographical indications

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## Copyrights

- The law relating copyrights ensures that certain intellectual creations will be treated as protected works.
- The effect of a protected work is that no one can copy a work that is protected under copyright without first obtaining the permission from the owner of the copyright.
- If anyone copies such protected work without permission, it amounts to a punishable offence in law.

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# Copyrights

- Examples of intellectual creations of literary, artistic and scientific work which can fall into the category of “protected works”(section 6 of the Act)
  - i. Books, pamphlets, computer programs, and other writings.
  - ii. Speeches, lectures, addresses, sermons, and other oral works.
  - iii. Dramatic, dramatic musical works, pantomimes, choreographic works, and other worked created for stage productions.

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# Copyrights

- (iv) Stage production of works listed in (iii) above and expressions of folklore that are apt for such productions.
- (v) Musical works with or without accompanying words.
- (vi) Audio visual works.
- (vii) Architectural works.
- (viii) Works of drawing, painting, sculpture, engraving, lithography, tapestry, and other works of fine art.
- (ix) Photographic works.
- (x) Works of applied art.
- (xi) Illustrations, maps, plans, sketches, and three dimensional works relating to geography, topography, architecture or science.
- (xii) Translations, adaptations, arrangements, and other transformations or modifications of works.
- (xiii) Original collections of works and data bases.

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# Copyrights

## Duration of a copyright

- The general rule is that, once a copyright is registered, it is protected during the entire lifetime of the author and for a further period of seventy years after the death of the author.

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## Industrial design

- Any composition of lines of colours of any three dimensional form, capable of serving as a pattern for a product of industry or handicraft.

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# Industrial design

## Registered industrial design

- A creator of an industrial design can register his industrial design under the Act, subject to the provisions of the Act.
- All such registered designs will be recorded in the “Register of Industrial Designs”.
- This register is a public document which can be inspected by any person. The registration is valid for a period of 5 years from date of receipt of the application for registration. This term can be renewed for two more consecutive 5-year terms, at the option of the author.
- The main purpose of this registration is that the owner gets exclusive ownership over this industrial design.

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## Patents

- An inventor has a right to patent his invention, provided that this invention is new, involves an inventive step, and is industrially applicable.
- If satisfied, the Director General will register the patent and cause it to be recorded in the Register of Patents.
- This register is a public document which can be inspected by any person.
- A patent is valid for a period of 20 years from the date of filing of the application for its registration, provided the annual renewal fee is paid (section 83(2) of the Act)
- The owner of a patent has certain specified and exclusive rights in relation to the patented invention.

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# Marks and trade marks

- Definition of a mark: , “a trade mark or a service mark”
- Definition of trade mark: “any visible sign, serving to distinguish the goods of one enterprise, from those of another enterprise”
- Definition of service mark: “any visible sign, setting to distinguish the services of one enterprise, from those of another enterprise”.

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# Marks and trade marks

## Registration of a mark

- The owner of a mark can obtain an exclusive right to the mark by registering the mark under the Act with the Director General.
- Upon the fulfilment of certain laid down by the Act, the Director General will issue the applicant with a certificate of registration, confirming the registration of the mark.
- All registered marks will be recorded in the Register of Marks, which is a public document and can be inspected by any person.

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# Marks and trade marks

## Inadmissible marks

- The marks that cannot be registered are called inadmissible marks under the Act.

# Marks and trade marks

## Duration of a registered mark

- The registration of a mark is initially valid for a period of 10 years from the date of receipt of the application for its registration by the Director General.
- This initial 10-year term can be renewed for consecutive 10-year terms, at the option of the registered owner of the mark.

# Marks and trade marks

## Rights of the registered owner of a mark

- (i) Exclusive use of the mark.
- (ii) To assign or transmit the registration of the mark.
- (iii) To conclude license contracts.
- A license contract means “any contact by which the registered owner of a mark grants another person a license to use the mark for all or part of the goods and services in respect of which the mark is registered.

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## Trade names (section 144)

- A trade name definition: “the name or designation identifying the enterprise of a natural or legal person”
- Trade names may also be registered as intellectual property, but certain trade names, called prohibited trade names, are not allowed to be registered.
- Prohibited trade are ones which are contrary to morality or public order, likely to offend religious or racial feelings of any community or are likely to mislead the public.

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# Layout designs of integrated circuits

- An integrated circuit definition: “a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnection are integrally formed in or on a piece of material and which is intended to perform an electronic function.”

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# Layout designs of integrated circuits

- A layout design definition: “three dimensional disposition”, “of the elements, at least one of which is an element, and some or all of the interconnection of an integrated circuit, or such three dimensional disposition prepared for an integrated circuit intended for manufacture.”

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# Layout designs of integrated circuits

## A registered layout design

- The creator of a layout design can seek protection for his design under this Act, provided the design is “original”.
- Once registered, the registered layout design will be stated in the Register of Layout Designs, which is a public document and can be inspected by any person.

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# Layout designs of integrated circuits

## Duration of the registration

- The duration of this protection will prevail for 10 calendar years from the date of commencement of such protection.

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# Geographical indications

- Definition: “an indication which identifies any goods as originating in the territory of a country or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin.”

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# Geographical indications

- Protection accorded to geographical indications
- Prevention to the use of means in the presentation of goods that suggest that the goods in question originated in a geographical area other than the true place of origin, in a manner which misleads the public as to the geographical origin of goods;
- Prevention of any use of geographical indication which will constitute an act of unfair competition under this Act.

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# **Consumer Affairs Authority Act (No.9 of 2003)**

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## **Consumer Affairs Authority**

- The consumer Affairs Authority Act (No. 9 to 2003) created the establishment of the Consumer Affairs Authority.

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# Objectives of the Consumer Affairs Authority

- To protect consumers against the marketing of goods or providing services which are harmful to life and property of consumers.
- To protect consumers against unfair trade practices, and guarantee that consumers' interest shall be given due attention.
- To ensure that wherever possible, consumers have sufficient access to goods and services at competitive prices.
- To seek damages against unfair trade practices, restrictive trade practices or any other form of manipulation of consumers by traders.

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## Main functions and powers of the Consumer Affairs Authority

### (1) To control or eliminate:

- i. Restrictive trade agreements among enterprises.
- ii. Arrangements amongst enterprises with regard to prices.
- iii. The abuse of a controlling position, regarding domestic trade or economic development within the market or in a significant portion of the market.
- iv. Any restraint of competition adversely affecting local or international trade or economic development.

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# Main functions and powers of the Consumer Affairs Authority

- (2) To investigate or inquire into anti-competitive practices and abuse of a dominant position.
- An anti-competitive practice is a practice by which a person in the course of business pursues a course of conduct likely to have the effect of preventing competition, in relation to any good or service in Sri Lanka.
- (3) To maintain and promote effective competition between persons supplying goods and services.
- (4) To promote and protect the rights and interests of consumers, purchasers and other users of goods and services, relating to the price, availability and quality of such goods and services and the variety supplied.
- (5) To keep consumers informed about the quality, quantity, potency, purity, standards and price of goods and services made available for purchase.
- (6) To carry out investigations and inquiries in relation to any matter specified in this Act.
- (7) To issue directions to manufacturers or traders in respect of price marking, labelling and packaging of goods.
- (8) To promote competitive prices in markets, where competition is less than effective.

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# Main functions and powers of the Consumer Affairs Authority

- (9) To undertake studies, publish reports and provide information to the public, relating to market conditions and consumer affairs.
- (10) To undertake studies on the distribution of goods and services.
- (11) To undertake public sector and private sector efficiency studies.
- (12) To promote consumer education relating to good health, safety and security of consumers.
- (13) To promote the exchange of information relating to market conditions and consumer affairs, with other institutions.
- (14) To promote, assist and encourage the establishment of consumer organizations.
- (15) To charge fees for any services rendered by the Authority.
- (16) To inquire into complaints on violations of the Act.
- (17) To inquire, and make order, on complaints made by consumers on a breach of an implied warranty in a sale of good or service contract.
- (18) To determine the standards and specifications required, in relation to goods and services.

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# **Main functions and powers of the Consumer Affairs Authority**

- (19) To enter into agreements with manufacturers or traders or their associations, regarding the maximum selling price, standards and specifications of good sold.
- (20) To require manufacturers, importers, distributors and exporters of goods and services, to maintain records and to furnish returns to the Authority.
- (21) To issue warnings in writing to any violator of the Act.
- (22) To require any person called for an inquiry by the Authority, to furnish the requested information.
- (23) To enter, inspect and search any premises, seize and detain goods and records, in order to ascertain whether there is a violation of the Act.

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# **Main functions and powers of the Consumer Affairs Authority**

- (24) To obtain samples of goods, when the Authority has reason to believe that the goods do not comply with the stipulated standards and specifications.
- (25) To pay rewards to an informant, if such information resulted in the conviction of a violator of the Act.
- (26) To sell any goods seized and detained which are of a perishable nature. after giving notice of such sale in newspapers of all three languages.
- (27) To appoint any committee to facilitate the discharge of the functions of the Authority.
- (28) To do all such other acts required to achieve the objects of the Authority, and for the effective discharge of the functions of the Authority.

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## Main offences under this Act

- (i) Selling, or offering to sell goods, above the price marked on the goods.
- (ii) Refusal to sell goods by a trader when such goods have been obtained by him for the purpose of selling in Sri Lanka, and which are in his custody and control.
- (iii) Denial of possession by a trader of any goods which have been acquired by him for the purposes of trade.
- (iv) Sale of goods subject to any condition when such goods are in the possession of a trader for the purpose of trade.
- (v) Hoarding of goods by a trader or any other person.
- Hoarding refers to the act of stocking goods in quantities in excess of the normal trading requirement and hiding them.
- (vi) The increase in prices of goods and services declared as essential to life, by a manufacturer or trader, without the prior approval of the Authority.

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## Obligations of traders under the Act

1. To exhibit conspicuously in his place of business, the maximum retail or wholesale price of goods available for sale in his place of business.

Goods where the prices are either marked on the goods themselves or on their wrapping or packaging, are exempted from inclusion in this price list.

2. To issue a receipt for any goods sold by him, if requested by the purchaser.

3. To register himself with the Authority.

4. To keep a notice board at a prominent place in his place of business for displaying the notices, warnings etc. issued by the Authority.

5. Not to mislead or deceive any customer or trader, in the course of his business.

6. Not to make any false representation, relating to the goods sold by him.

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## Related main offences and defences

- An offence, according to the Penal Code, refers to “an act or omission punishable under the Penal Code or any other law in force.”
- Some of the main offences that will be discussed briefly in this section are as follows:
  - Fraud
  - Theft
  - Bribery
  - Negligence
  - Money laundering

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## Fraud

- Fraud refers to the procuring of an advantage for oneself, or furthering some purpose of one's own, by causing a person with whom one deals with to act upon a false belief. The person committing the fraud acts with the intent to defraud another.

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# Fraud

## Main defences for fraud

- There being insufficient evidence “to prove beyond a reasonable doubt” being induced or lured into it by another person.
- Non-fraudulent statement:
- Not all false statements become fraudulent statements. Therefore, if the offender can prove that his statement, which was instrumental in the other person believing in an untruth, was not a fraudulent statement but merely a false statement.

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# Theft

- Theft refers to the act of taking another person's property without that person's permission or consent, and with the intent of depriving the rightful owner of it.

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# Theft

- **Claim of right or ownership of property**
- This means that the accused had in good faith believed that the property he stole belonged to him.
- **Intoxication**
- Here the defendant relies on his state of intoxication, irrespective of whether it was induced by alcohol , chemicals or drugs, to show that he did not have an intent to steal.
- **Entrapment**
- As mentioned before, this means, that the person committing the crime did so as a result of being induced or lured into it by another person.
- **Intention to return property**
- Here the defendant has to establish that he did not steal, but merely “borrowed” the property.

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# Bribery

- Bribery means an offer, solicitation or acceptance of any gratification in contravention of any provision of the Bribery Act (No. 2 of 1965)
- According to the judicial Dictionary, Bribery is defined as “an act of offering to or acceptance by, a public servant, of a reward or gratification, to discharge the servant’s duty in a particular way.”

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# Negligence

- According to the Judicial Dictionary, Negligence is defined as “the omission to do an act which a reasonable man, guided upon by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing an act which a reasonable and prudent man would not do”

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# Negligence

- Main defences for negligence

## **Contributory negligence**

- This is where the plaintiff is also at fault, due to his own negligence. When both the plaintiff and defendant are guilty of negligence, the damages are divided amongst them, on the basis of which party acted more negligently.

## **Voluntary assumption of risk**

- This is where the plaintiff clearly knew of the risk involved is drunk, voluntarily assumes the risk of injury in the event of an accident.

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# Negligence

## Inevitable accident

- This is when an injury or loss may result from a situation that is unavoidable, no matter what precautions a reasonable person would take under similar circumstances.

Example : inevitable accident

“A” drives a car slowly and carefully in the rain, when suddenly lightning strikes the car. This causes “A” to lose control of the car, and crash into “B”’s car, which is parked nearby. “A” is not liable for negligence, as this was an inevitable accident.

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# Negligence

## Illegality

- This defence is based on the Latin maxim, “ex turpi causa non oritur action”, which means , “out of an illegal act, there can be no cause of action.”

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