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Question No. 1 (a)

Answer No. 1 (a)

INTRODUCTION:

That evidence may be given in any suit or proceedings of the existence or non-existence of every fact in issue and of such other fact as are hereinafter declared to be relevant and of no others.

RELEVANT PROVISION:

Article of 18 Qanun-e-Shahadat Order 1984.

PRINCIPLES:

That the section lays down that in a suit of proceeding evidences may be given of the existence or non-existence.

- 1) Fact are in issued and
- 2) Fact which are relevant according to Under Article 18 to 45 of the Act.

FACTS IN ISSUE

A is tried for the murder of b by eating him with a club with intention of causing his death.

At A's trial the following fact are in issue:-

- A's Beating B With the Club
- A's causing B's death by such beating.
- A's intention to cause B's death.

RELEVANT FACTS:

That on fact is relevant to another i.e., when one is connected with other in any of the ways referred to the chapter III of Qanun-e-Shahadat order it is relevant. The relevant fact are not themselves fact in issue but are so connective with fact in issue that they render the letter probable or improbable.

EXAMPLE:

A is tried for the murder of B beating him with a club with the intension of causing his death. AT A's trial the following fact are relevant facts.

That a had the motive to kill b and also the opportunity commit murder A and B having quarrel before the murder are relevant facts for the prosecution. An offence as to the existence of the facts in issue may be drawn from m these relevant facts.

EXCEPTION:

The Article shall not enable any person to give evidence of a fact which he disintitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Question No. 1 (c)

Answer No. 1 (c)

CHILD WITNESS:

The Pakistani judicial system has laid down some rule to determine the competency of testimony of a child witness which has also been provided by the Qanun-e-Shahadat Order 1984.

RELEVANT PROVISION:

Article 3 of Qanun-e-Shahadat Order 1984.

RELIANCE OF TESTIMONY OF CHILD WITNESS:

That the Honorable Lahore High Court on the subject of reliance on child witness opined that children are most untrustworthy class of witness for when of a ten age they often mistake dreams for reality repeat glibly as of their own knowledge what they have heard from others and are greatly influenced by fear of punishment by hope or reward and by desire of notoriety Case Laws is PLD 1985 Lahore 18.

IN COMPOTENCE OF A CHILD WITNESS:

in state v/s allen 70 Wn. 2d 690 424 P.2d 1021 (1967) it was observed that the burden of proving incompetence is on the party opposing the witness Honorable Court considered 5 factors when determining competency of a child witness.

Absence of any of them render the child incompetent to testify. That following are as under:

1. An undersetting of the obligation to speak the truth on the witness stand.
2. The mental capacity at the time of the occurrence concerning which he is ti testify to receive an accurate impression of it.
3. A memory sufficient to retain an independent recollection of the occurrence.
4. The capacity to express in words his memory of the occurrence.
5. The capacity to understand simple question about it.

In short child witness is not someone to be frowned upon if he is able to discern between right and wrong. Conviction on the basis of deposition of a lone child witness and his evidence is convincing in term of quality reliability and trustworthiness. However such a witness should be accepted with great caution and circumspection.

Question No. 1 (f)

Answer No. 1 (f)

INTRODUCTION:

That the normally document produced in the Honorable Court is required its proof, but the old documents of the thirty years need not to b proved. Its contents are presumed correct, but it is optional and not obligatory on court as is apparent from the words of the Article the presumption mentioned herein is permissive and not imperative. Thus, if a document is proved to be thirty years old and come for the proper custody the Honorable Court is not bound to presume its genuineness.

RELEVANT PROVISION:

Article 100 and 101 of Qanun-e-Shahadat Order 1984.

DOCUMENTS THIRTY YEARS OLD.

Where any documents purporting or proved to be this thirty year old is produced from any custody which the Honorable Court in the particulars as consider proper the Court may presume that the signature and every other part of such documents which purports to be in the handwriting of any particular person is in that person handwriting and in the case of a documents executed or attested that it was duly executed and attested by the person by whom it purports to executed and attested.

CERTIFIED TRUE COPIES OF DOCUMENTS THIRTY YEARS OLD:

That the provision of Article 100 shall apply to such copy of a documents referred to in the Article as is certified in the manner provided in Article 87 and is not less than thirty years old and such certified copy may be proved in proof of the content of the documents or part of the documents of which purports to be a copy.

Question No. 2

Answer No. 2

INTRODUCTION:

That the estoppel in its broadest sense is a legal term referring to a series of legal and equitable doctrines that preclude a person from denying or asserting anything to the contrary of that which has in contemplation of law been established as the truth wither by the acts of judicial or legislative officers or by his own deed, acts, or representations either express or implied.

RELEVANT PROVISION:

Article 114 of Qanun-e-Shahadat Order, 1984.

MEANING:

This term comes from the Old French estoupail, which meant “stopper plug”, referring to placing a halt on the imbalance of the situation. The term is related to the verb “estop” which comes from the old French term estopper, meaning “stop up, impede”.

TYPES OF ESTOPPELS:

Following are the types of estoppels;

(a) Reliance-based estoppels:

These involve one party relying on something the other party has done or said.

The party who did/said the act is the one who is stopped. Under English law, this class includes estoppel by representation of fact, promissory estoppel.

(b) Equitable estoppels:

Estoppel by representation of fact (equitable estoppel) includes

- Proprietary estoppel
- Promissory estoppel

(c) Estoppel by record:

This frequently arises as issue/cause of action estoppel or judicial estoppel where the orders or judgments made in previous legal proceedings prevent the parties from re-litigating the same issues or cause of action.

(d) Estoppel by deed:

Where rules of evidence prevent a litigant from denying the truth of what was said or done. It is often regarded as technical or formal estoppel.

(e) Estoppel by silence:

Estoppel that prevents a person from asserting something when he had the right and opportunity to do so earlier, and such silence put another person at a disadvantage.

RULES OF ESTOPPEL:

That the following are some important rules of estoppels are as under:

(a) Estoppel by representation of fact and promissory estoppel are mutually exclusive:

The former is based on a representation of existing fact or of mixed fact and law, while the latter is based on a promise not to enforce some pre-existing right i.e. it expresses an intention as to the future.

A proprietary estoppel operates only between parties who, at the time of representation, were in an existing relationship, while this is not a requirement for estoppel by representation of fact.

(b) A representation can be made by words or conduct:

Although the representation must be clear and unambiguous, a representation can be inferred from silence where there is a duty to speak or from negligence where a duty of care has arisen. Under English Law,

estoppel by representation of fact usually acts as a defense, though it may act in support of cause of action or counterclaim.

(c) Equitable estoppel is distinct from promissory estoppel:

Promissory estoppel involves a clear and define promise while equitable estoppel involves only representations and inducements.

It is also said that equitable estoppel lies in tort, while promissory estoppel lies in contract.

CONDITION OF ESTOPPEL:

In order to give rise to the rule of estoppel as embodied in Qanun-e-Shahadat Order the following conditions must be present:

- (1) There must be a representation by a person or his authorized agent to another by a declaration, act or omission.
- (2) The representation must relate to an existing fact and not of a future intention which may or may not be enforceable in contract.
- (3) The statement must be a clear and unambiguous.
- (4) The representation must have been meant to be relied upon or such that a reasonable man would take the representation to be true and believe it was meant that he should act upon it.
- (5) The person to whom the statement is made must believe in it's truth, there is no estoppel if he is aware of the real state of affairs and does not believe in the representation.
- (6) The person to whom the representation is made must act on the faith of the representation and induced to alter his position to his prejudice by the representation.

- (7) Estoppel from failure to do something i.e. from mere omission, can arise only when there is a duty to do something, a duty which arises from a contract or by operation of law or from acknowledge practice of the trade.

WHEN NOT APPLICABLE:

That the situation when doctrine of estoppel is not applicable are summarized as follow.

- There are no estoppels against the settled principle of law.
- That it is not applicable in case of the concluded commercial contract.
- That the doctrine of promissory estoppels cannot be invoked if the assurance is held out but not incorporated in the agreement between parties.
- That for applying the principle of promissory estoppel alteration of the position by the plaintiff is only requirement.
- That the doctrine of estoppel by representation is applicable only to representation as to some state of fact alleged to be at the time actually in existence and not promises de future which if binding at all must be binding only as contract.
- That the doctrine of promissory estoppel is not applicable against the Government in the exercise of its legislative and statutory functions.

Question No. 3

Answer No. 3

INTRODUCTION:

Concept of witness is of great as far as dispensing of justice is concerned. It is the duty of the witness to come forward and give testimony witness is the medium through which fact can be proved or disproved for settlement of dispute it is essential that witness should reveal truth through evidence which is based on truth.

MEANING OF COMPETENCY OF WITNESS:

That the witness is said to be competent if there is nothing in law to prevent him from being sworn in and examined if he wishes to give evidence.

DEFINITION OF WITNESS:

Any person adult and sane not subject sovereign or diplomatic immunity who divulges facts of the event happened and established evidences before court is pronounced in witness.

COMPETENCY OF WITNESS:

1. General Rule:

All person shall be competent to testify if they have qualification made under Qanun-e-Shahadat Order 1984.

2. Qualification for a Competency Witness:

(a) Capability of Giving Rational Answer:

That a witness should have the capacity to give rational answer to the question put to him.

(b) Qualification As witness Under Holy Quran and Sunnah:

That witness competent to testify should possess the qualification prescribed by Holy Quran and sunnah.

Competency According to Muslim Jurists:

- (a) Possession of sound reasoning faculty.
- (b) Capacity to speak in cases of Hudood
- (c) To be a male in cases of Hudood and Qisas.
- (d) The witness is to be of the same religion as that of the party against whom appearing or should be a Muslim

Condition For Giving Testimony:

- (a) Testimony is to be given before the Honorable Court.
- (b) Witness must remember the incident.
- (c) Witness must be able to identify the parties.
- (d) Conformity of the statement with the claim.

Tazkiah-e-Shahood:

That it is an obligation on qazi for ascertaining the competency and righteousness of a witness by himself when competency of a witness is challenged.

Not an Interested Witness:

A witness should not have any interest in the litigation or has a relation with the party to the litigation, but this is not an absolute rule. Party objecting to such evidences must show that witness in giving such evidences was grinding his own axe.

Duty to Determine Competency:

That it is for the court to determine whether witness who has appeared in the Honorable Court is competent to testify or not and the court may do so by putting the question to the witness.

Competency of Child, Deaf, Dumb, or Lunatic as a Witness:

Child as a Witness:

- 1) **Age of Child:** That the word tender age I article 3 do not specify any particular age of witness but only capacity of child witness to understand thing rationally and the to reply to them.
- 2) **Corroboration by Some other Evidences:** Rule of prudence requires very strong corroborative evidences in support of child witness. His evidences cannot be made basis of conviction when such strong corroborative evidence is lacked.
- 3) **Satisfaction of Honorable Court:** That the Honorable Court must satisfy itself the child witness is capable of giving rational answer to the question being put to him.

Deaf, Dumb, And Lunatic as Witness:

A person who is deaf or dumb or lunatic is a competent person to testify if he can understand the question put to him and give rational answer.

CONCLUSION:

In conclusion it cant be stated all the person are competent to testify in court preceding however the court can exercise discretion with respect to children lunatics, elderly people deaf or blind witness. and as well as duty of the Honorable Court to determine the competency of a witness and the court ay do so by putting general question concerned it depends on each case Article 3 of the Qanun-e-Shahadat Order 1984 specifies the qualification of competent witness is not an absolute in its term.

Question No. 6

Answer No. 6

PRODUCTION OF EVIDENCE THROUGH MODERN DEVICES

In 2002, The Electronic Transactions Ordinance 2002, was promulgated providing legal recognition of electronic documents, records, information, communications transactions. According to Article 164, Modern devices are also a manner of method to proof the testimony of a witness. If the court considers that testimony of that witness can be proved by any of the modern devices then it may allow any evidence to be produced for the satisfaction of court. The purpose of this article to provide the faculty of modern devices to prove or disprove the evidence of a witness for the canon of justice. In certain cases, and situations there is a problem of production of evidence. so in these cases the court may allow to be produced evidences that may have become available because of modern devices.

Kinds of modern devices: -

Internet, video link, tracker, tape recorder, dogs, video conference, phone calls, SMS, DNA test, Blood test, etc.

Example: -

Whether Ali is a legitimate child of Bilal, to prove this through available modern devices like as DNA Test and Blood test.

Example: -

Electronic Documents: In 2002, the electronic transactions Ordinance 2002, was promulgated providing legal recognition of electronic documents, records, information, communication and transaction.

- A. Authenticity of electronic documents
- B. Legal backing.

(a) **Authenticity of electronic documents:** Authenticity and integrity of electronic document made by or through an information system is to be checked by expert as to the functioning, specification programming and operation of information system.

That some Case law in which the judgment passed on the modern devices/credibility are as under: -

1. 2016 SCMR 2084 in this case the court consider the evidence of (CCTV) footage Evidentiary value in order to prove the genuineness of such footage it was incumbent upon the defense or prosecution to examine the person who prepared such footage from the CCTV system.
2. 1998 PLD 388 in this case the court consider the evidence of press clipping and newspaper reports.
3. 2016 PCrLJ 1390 in this case of murder the court consider the evidence of CD, briefly that the co-accused has made confession of involvement in crime in press conference. Such CD was produce to the SHO for the investigation purpose. The said CD was played before the HIGH COURT in which there clearly noted that accused was confess his involment such crime, so art 164 QSO 1984 such CD as modern Devise can be used against him

(b) **Legal backing:** The Electronic Transactions Ordinance 2002, states that document, record, information communication or transaction will be denied legal recognition, admissibility, validity, proof or enforceability on the ground that it is in electronic form and has not been attested by any witness.

Question No. 8

Answer No. 8

INTRODUCTION:

That most occupations have ethics that come along with the job they are not written down they unspoken rules of conduct that people adhere to. Ethic are based on such supreme good rule which should be followed because they are good in themselves. It concentrates on the individual rather than society it must of necessity consider the motive as all important and a man is free to accept or reject the obligation of ethics. If a rule of ethic which is in accord with positively morality is broken there may be the effective sanction of the pressure of public opinion.

PROFESSIONAL ETIQUETTE:

A practicing lawyer is one who is entitled to practice and who hold himself out as ready to do so not being otherwise employed in a whole-time occupation.

PROFESSIONAL CONDUCT AND ETIQUETTE:

The Central function of the legal profession is to promote the administration of justice.

CARDINAL RULES OF PROFESSIONAL ETHICS:

That the two cardinal rules are under:

- 1) Nothing which politeness and right feeling demand of a lawyer in his dealing with other can properly be withheld by him
- 2) Nothing which is morally wrong can make profession all right.

All other rule and code of conduct which may be laid down are simply application of their two cardinal rules. In regard to their application lawyer should make his guide to his own conscience.

CANON OF CONDUCT:

Canon of conduct cannot be crystallized into rigid rules but felt by the collective conscience of the practitioner as right.

FIVE PRINCIPLE OF THE BAR:

That the following are the elements which constitute five principles of the Bar.

1) Honesty:

That the integrity of advocate must be above board. Honesty is the foremost and paramount requirement for a lawyer to gain success and to win confidence of the people.

2) Industry:

That an advocate must be industrious. He should come to the Honorable Court as well prepared . He has to precise with clear cut issue and should plead the cause of his client with utmost devotion.

3) Justice:

Advocate are the officer of the Court. They should help the court in proper administration of justice. They should equally be fair to the client as well as to the Court.

4) Service:

The advocate should make their aim at the services of the people and the nation. They are there to protect the right and liabilities.

5) Philosophy:

The advocate should have some philosophical outlook and should not be limit to the interpretation on fixed rule.

Ostensibly it is said unarguably that there is indeed relationship between ethic and law. The onus now rest on manager to examine both what is legal and

what they and the society as whole consider of perceive as ethical too. It is pertinent to also note that managers should put into consideration what their client customer will and will not condone.

Surely there are no amount of formulated policies and law that will be as good and potent enough to satisfy everyone but establishing of ethical codes potentially can afford us all a framework for ethical behaviors.

Conclusively issues and areas where law is silent or permits ethics come in and raise the standard to a level where everyone producers and consumer alike feel safe and contend.

Professional Role of Bar Councils:

- a) to prepare and maintain a common roll advocates;
- b) to admit persons as advocates entitled to practice before the various Courts of Pakistan and E prepare and maintain a roll of such advocates are to remove advocates from such roll;
- c) to entertain and determine cases of misconduct against advocates on its rolls and to order punishment in such cases;
- d) to lay down standard of professional conduct and etiquette for advocates;
- e) to promote and suggest law reform;
- f) to lay down the procedure to be followed by its Committees;
- g) to recognize universities whose degree in law shall be a qualification for enrolment as an advocate;
- h) to manage and administer the property and funds of the Bar Councils, and to invest any of its funds;
- i) to conduct the election of its members;
- j) to provide free legal aid;

- k) to perform all other functions conferred on it by or under this Act;
to do all other things necessary for discharging the aforesaid functions.

CONCLUSION:

To conclude that the central function of the legal profession is to promote the administrative of justice and the profession of lawyers ordains a high level of ethics as much as I the means as in the ends justice cannot be attained without the stream being pellucid throughout its course and that is of great public concerns not marly professional care.