Registration Number	**:**	**LLB119/3-18/M008**
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Answer Sheet

Question : 1

Write note on any of the following:

Answer:

Child witness.

Introduction:

A child as a witness has been looked upon, with different view points. One has to see its place in a judicial proceeding. Article 3 of Qanun-e-Shahadat defines the competency of a witness and deals with as to "who may testify". The article clearly and unequivocally lays down that all persons shall be competent to testify excepting those, whom the court considers that they are prevented from understanding the questions put to them or from giving rational answers to them by tender years, etc. Thus there is a limited incompetency in case of children incapable of giving evidence. Every witness is to be judged from two points: his competency and credibility. The same rule applies to a child witness.

Age of Child: Words 'tender age' in article 3 do not specify any particular age of witness but only capacity of child witness to understand things rationally and then to reply to them.

(ii) Corroboration by Some Other Evidence: Rule of prudence requires very strong corroborative evidence in support of child witnesses. His evidence cannot be made basis of conviction when such strong corroborative evidence lacked.

(iii) Satisfaction of Court: Court must satisfy itself that the child witness is capable of giving rational answers to the questions being put to him.

Types of Evidence.

Introduction:

In order to prove a case best available evidence is required to be produced and documentary evidence is taken as best evidence. Importance of documentary evidence lays this fact document never lies. Documentary evidence is Classified into two categories. Primary and secondary.

TWO TYPES: ORAL AND DOCUMENTARY

ORAL EVIDENCE

Oral evidence is formal utterances made by a witness through his mouth. It consists of statement of witness about . the facts, which he has seen, heard or perceived by any other sense. Further it refers to an opinion or to the grounds on which that opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds. Art.71 of Qanoon-e-Shahadat order requires that oral evidence must be direct. A witness shall state what he had seen, heard or perceived through his other sense, oral evidence though is very important but it cannot out weight documentary evidence and preference would also be given to documentary evidence due to principle that documents never lies but a man can. Direct evidence always establishes directly the guilt of the accused.

Meaning of oral evidence.

Black's Law Dictionary. "Evidence given by word of mouth, the oral testimony of a witness."

Oral evidence must be direct.

It has been provided u/A 71 of Qanun-e-Shahadat Order that oral evidence must in all cases be direct. If it refers to a fact, which could be seen, it must be the evidence of a witness who says he saw it. If it refers to a fact which could be heard, it must be the evidence of a witness who says that he heard it, if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says that he perceived it by the sense or in that p at manner if it refers to opinion or to the grounds on which the opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

Importance of Oral direct evidence.

The best evidence available to prove a fact is oral direct evidence. Whatever a witness has seen from his eyes or heard by his id ears or perceived through his other senses, would be given much weight compared to any other piece of circumstantial evidence.

Deposition of facts seen by witnesses.

If a witness deposes about the facts, which could be seen, then his evidence shall refer to facts, which he has seen. An occurrence taken place in the presence of A, the best available evidence to establish the occurrence would be the oral statement of the witness, who had seen the occurrence. Even if there is evidence of extra judicial confession but the standard of evidence required for a favourable judicial verdict for prosecution would only be fulfilled if the witness who had an opportunity of seeing the incident were produced before court. Where direct ocular evidence was available but not produced before court but reliance was placed upon another circumstantial evidence, then it would amount to with-holding material piece of evidence and any benefit arising out of such state of affairs would be given to the accused.

Even where document was relied upon by one party but said document is lost and its execution is required to be established, then the evidence of a witness, who had read the contents of document, would be admissible. It would not be sufficient to prove a document and its contents that witness had seen said.

DOCUMENTARY EVIDENCE:

All documents produced for the inspection of the cou documentary evidence.

TYPES OF DOCUMENTARY EVIDENCE:

1. Primary Evidence:

(i) Meaning: It means that the original documents itself produced inspection of the court.

(ii) Documents which are included in Primary Evidence:

(a) Documents Executed in Several Parts: When each party tal transaction wishes for the sake of convenience to have a complete document his own possession, then the document is always executed in several parts by the parties. Any one of them may be produced as primary evidence of the contents of the documento

(b) Document Executed in Counterparts: A document is executed when there are two parties to the transaction. When a document is executed in counterpart, each counterpart is primary evidence as against the parties executing it and secondary. I

(c) Document Made By Uniform Process: Uniform process means made from original one. Where a number of documents is made by one uniform process as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest.

Documents Which Are Included in Secondary Evidence:

(a) Certified copies of documents. It means an attested conv. obtained payment the prescribed fee, from the custodian of public records official capacity.

(b) Copies made from the original by mechanical process. Copies made from or compared with the original, Counter parts of documents as against the parties who did not them. Oral accounts of the contents of a document given by some person has himself seen it.

Presumption:

Definitions and Concept

Presumption literally means an idea that is taken to be true on the basis of probability. According to Merriam Webster it is "a belief that something is true even though it has not been proved: an act of accepting that something is true until it is proved not true.

Presumption is a conclusion drawn from circumstantial evidence. It is a legal inference that must be made in light of certain facts. Presumption is somewhat different from a positive assumption. Former requires existence or proof of certain facts before a further inference is made, whereas latter is in the nature of a pure hypothesis. Moreover hypothesis is often used for elaborating something during discussion etc. and on the other side presumption is a subject of substantive law, giving rise to legal rights.

In other words, when law requires a certain inference to be drawn from a given fact or set of facts, the inference so required by law to be drawn, may be called presumption of law.

A presumption is a rule of law that attaches definite probative value to specific facts and directs that peculiar inference as to the existence of one fact not actually known shall be drawn from a fact which is known and proved. It furnishes prima facie evidence of the matter to which it relates and relieves the party of the duty of presenting evidence until his opponent has introduced proof to rebut the presumption. It raises such a high degree of probability in its favour that it must prevail unless clearly met and explained and over turned by explanatory proof to the satisfaction of the Court.

Kinds

Presumptions therefore can be classified into two kinds on the basis of the extent of their effect or legal/evidentiary value.

These kinds are rebuttable presumptions and conclusive presumptions.

Rebuttable Presumption

Also known as conditional presumption, this specie of presumption is defined in the Black's Law Dictionary as

"An inference drawn from certain fact that establish prima facie case. which may be overcome by the introduction of contrary evidence.

In other words in the case of this kind of presumption, an opportunity is given to the party adversely affected by the presumption, to rebut it through production of evidence or argument.

Conclusive Presumption

In Black's Law Dictionary, it is defined as:

"A presumption that cannot be overcome by any additional evidence or argument."

According to John H. Wigmore" 'Conclusive presumptions' or 'irrebuttable presumptions' are usually mere fictions, to disguise a rule of substantive law (e.g., the conclusive presumption of malice from an unexcused defamation); and when they are not fictions, they are usually repudiated by modern courts.

In our legal system an example can be found in Article 128 of Qanun-e-Shahadat, 1984, which lays down a conclusive presumption of legitimacy.

Rebutable presumptions are indicated by the expression "shall presume and Articles 90 to 95 and 121 of Qanun-e-Shahadat, 1984, govern these presumptions. Irrebuttable presumptions are indicated by the expression "shall be conclusive proof". Articles 55 and 128 of Qanun-e-Shahadat, 1984. pertain to these presumptions. There is no difference between the

phrase "Conclusive Proof", or "Conclusive Evidence". The object of both the phrases, is to give finality to the establishment of the existence of a fact from the proof of another.

Presumptions mentioned in Arts. 90 to 95 of Qanun-e-Shahadat, 1984 are obligatory whereas presumption mentioned under Arts. 96 to 98, 100 and 129 of Qanun-e-Shahadat, 1984 are permissive in nature and court may or may not raise a presumption.

Presumptions of fact and presumptions of law

Phipson says that "presumptions of law are arbitrary consequences expressly annexed by law to particular facts." Presumptions of fact on the other hand are inferences which the mind naturally and logically draws from given facts, irrespective if their legal effect. Presumptions of fact are not therefore obligatory in the sense that Court must raise them. Presumptions of fact are essentially rule of evidence governing the question of burden of proof. Presumptions would be drawn against party failing to produce evidence to establish a fact which he is required to prove.

The distinction between a presumption of fact and a presumption of law is well known. The presumption that Muslims in Pakistan belongs to Hanfi Sunni sect is obviously a presumption of fact and has apparently been propounded by virtue of Article 129.

Question : 2

Discuss the General Doctrine of Estoppel and kinds of law of Estoppel.

Answer:

INTRODUCTION:

A man should not be allowed to contradict, by his words or conduct, what he has previously asserted and this principle is known as estoppel. Estoppel is based on the principle that it would be most inequitable and unjust that if one person by a representation made, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it.

DEFINITION OF Estoppel:

An Estoppel is a rule whereby a party is precluded from denying the existence of some state of facts which he has previously asserted.

KINDS OF Estoppel:

(i) Estoppel By Record or Judgement: If court has passed judgement about some dispute between parties after complete hearing of both parties or their representatives shall remain bound to such judgement and no litigation shall be instituted in future about the same dispute between these parties.

(ii) Estoppel By Deed: It rests on the principle that when a person has entered into solemn engagement by deed under seal with another party, he or the person claiming through or under him shall not be allowed to set up the contrary of his assertion in the deed.

(iii) Estoppel By Conduct: When some person admits any incident true and makes such admission through conduct, antudo, aut or character shall be prohibited from deviating from such admission.

(iv) Estoppel by Representation: When representation is by state by conduct and it purports to affirm, deny or describe any existing facts, such representation amounts to Estoppel and this Estoppel is called Estoppel by representation.

(v) Estoppel By Waiver: If some person abandons his/her non-ve right by express declaration or conduct, shall be prevented from asserting non-vested right

(vi) Acquiescence and Estoppel: When some person gives a legal warning to another person and this warning is based on some asserted facts, but this other person does not respond within reasonable period of time, then this another person is generally considered to have lost legal right to assert the

contrary.

ESSENTIALS OF Estoppel:

(i) Representation: There must be a representation by a person or his authorised agent to another in any form, declaration, act or omission.

(ii) Representation of Existence of Facts: The representation must have been of the existence of facts and not promises or intention which might or not be enforceable in contract.

(iii) Belief By the Other Party: There must have been belief on the part of the other party in its truth.

(iv) Intention: The representation must have been meant to be relied upon.

(v) Action on Belief: There must have been action on the faith of the declaration, act or omission by the other party.

(vi) Unawareness of the True State of Things: The person claiming the belief of an Estoppel must show that he was not aware of the true state of things.

WHERE RULE OF Estoppel DOES NOT APPLY:

(i) In Criminal Cases: Rule of Estoppel does not apply in criminal cases.

(ii) Against Jurisdiction of Court: No Estoppel operates against jurisdiction of the court.

(iii) Question of Rights: Estoppel deals with questions of fact and not with questions of right,

CONCLUSION:

We may conclude that the rule of Estoppel is basically a rule of evidence and is based on equity and good conscience. It precludes a person from denying the truth of some statement previously made by himself. No cause of action arises upon Estoppel itself.

Question :3

Can any interested witness is acceptable by court? Explain in the light of summed up Principles of Supreme Court of Pakistan and also explain who is competent to testify?

Answer:

INTRODUCTION:

Concept of witness is of great significance 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 facts can be proved or disproved. For settlement of disputes, it is essential that witnesses should reveal truth through evidence. It means that justice can only be done when a witness gives that evidence, which is based on truth.

MEANING OF COMPETENCY OF WITNESS:

A 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 to sovereign or diplomatic immunity who divulges facts of the event that happened and established evidence before court is pronounced as a witness.

Interested Witness is acceptable by court or not:

"Interested witness" is one who has a motive to falsely implicate an accused. "There cannot be an inflexible rule that the statement of an interested witness can never be accepted without corroboration". What corroboration is necessary? The corroboration found in the case was:

(a) The number of culprits mentioned was such as was required for the job.

(b) The persons mentioned were such as would be expected to join in the attack. (SC) PLD 1962 SC 269 Nazir and others.

Interested or Partisan evidence when may be relied on without corroboration and when corroboration necessary. Rule of prudence to see

(a) whether the witnesses saw the occurrence and could identify the culprits,

(b) whether they can be relied upon without corroboration,

(c) whether the persons charged are not excessive in the circumstances;

(d) need of corroboration in each case depends on particular circumstances of each case. (SC) PLD 1960 SC 387 Niaz.

Interested witnesses: Independent corroboration not an inflexible rule. Uncorroborated testimony may be relied on in context with other relevant circumstances of a particular case. (SC) PLD 1969 SC 488, PLD 1960 SC 387; PLD 1962 SC 269; PLD 1974 SC 37 ref. PLD 1975 SC 227 Abdul Rashid v. Umid Ali etc. PLJ 1985 SC 24. Muhammad Ali- 1985 SCMR 203.

Evidence of interested witness in a capital case cannot be made the basis of conviction unless such evidence is corroborated by unimpeachable and independent piece of evidence, 1998 SCMR 25. Haji Rab Nawaz.

Want of enmity or interest does not stamp the statement of a witness with truth. Court has to see whether the statement of such witness is in consonance with the probabilities and material evidence and inspire confidence in a prudent mind. 1995 SCMR 1639, Muhammad Arshad.

Absence of enmity of eye-witnesses with the accused would not stamp their statements with truth. 1994 SCMR 1928, Muhammad Iqbal v. Abid Hussain.

Absence of enmity or want of interest does not stamp the statement of a witness with truth, it has to be seen whether the statement of witness is in consonance with probabilities and materially fits in the circumstances of the case and inspires confidence.

COMPETENCY OF WITNESS:

1. General Rule:

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

Qualification For a Competent Witness:

(A) Capability of Giving Rational Answers:

A witness should have the capacity to give rational answers to the questions put to him.

(B) Qualification As Witness Under Holy Quran and Sunnah:

A witness competent to testify should possess the qualification prescribed by Holy Quran and Sunnah.

(i) 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.

(ii) Conditions For Giving Testimony:

(a) Testimony is to be given before the Court.

(b) Witness must remember the incident.

(c) Witness must be able to identify the parties.

(d) With Conformity of the statements with the claim.

(iii) Tazkiah-e-Shahood: It is an obligation on Qazi for ascertaining competency and righteousness of a witness by himself when competency of a witness is challenged.

(C) 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 evidence must show that the witness in giving such evidence was grinding his own axe.

(D) Not Convicted By Court For Perjury:

For a competency of a witness, it is necessary that he should not be convicted by court for perjury or giving false evidence.

(E) Not Prevented From Understanding:

A witness should not be prevented from understanding the questions put to him, he must have understanding as to the nature of the question which was put to him by the party or court.

(F) Must Not Be Female In Hudood Cases:

A witness giving testimony in Hudood cases should be a male.

- **Child As a Witness:**

Words 'tender age' in article 3 do not specify any particular age of witness but only capacity of child witness to understand things rationally and then to reply to them.

- **Deaf, Dumb And Lunatic As Witness:**

A person who is deaf or dumb or lunatic is a competent person to testify he can understand the questions put to him and give rational answers thereto

CONCLUSION:

We may conclude that it is the duty of the court to determine the competency of a witness and the court may do so by asking general questions but it is not mandatory upon court and as far as number of witnesses concerned, it depends on each case. Article 3 of the Qanun-e-Shahadat Order 1984 specifies the qualifications of a competent witness which is not an absolute in its terms.

It is for the court to determine whether a witness who has appeared in court is competent to testify or not and the court may do so by putting the questions to the witness.

Question : 4

Cross-Examination of witness is a sword of attack and shield of defense of a case. Discuss in the light of Rule of cross-examination.

Answer:

Introduction:

Evidence is led to prove a fact in controversy and testimony of a witness constitutes an important part of evidence.

Testimony of witness is brought before court in form of examination in chief, which is then subjected to cross-examination by the opposite party, and witness may if some fact is left un-explained be recalled for re-examination. Examination in chief, whiCh is not allowed to be cross_ examined, cannot be termed.a valid testimony .as truth is only elicited when a witness goes through the rigors of cross- examination and even then his statement remains unshaken.

Statutory Reference. Art . 132 and 133 of Q.S.O. 1984.

EXAMINATION OF A WITNESS.

Examination of a witness means his examination in chief, cross-examination and if required then re-examination. IV. MODES OF EXAMINATION (ART.132) Testimony of a witness consists of three parts as under:

A: EXAMINATION INCHIEF.

i) Definition.

Examination in chief has been defined under Art.132 (1) of Q.S.O. 1984, as "the examination of a witness by the party who calls him shall be called his examination in chief

ii) Form. Examination in chief is generally made by a witness in answer to questions put to him by the party counsel. It is brought on record in form of narrative but

examination in chief can also be made in question and answer form if circumstances of a case so require.

iii) Object. Examination in chief brings on record all the facts, which a witness knows about some controversy. Through examination in chief a party to a case produces evidence in his support to prove fact in issue.

iv) Right to conduct. Right to conduct examination in chief lies to a party who calls a witness before court.

v) Questions allowed. All the questions are allowed in examination in chief, which are relevant to matter in controversy. However, a party cannot ask a leading question to his witness during examination in chief with the permission of court conductinh except

vi) e trial. Bars Placed. g t Following are ' the bars placed upon the examination chief.

a irrelevant fact can be stated in examination in chief.

b) No leading questiyn can be put in examination in chief.

c) Witness will have to state about the facts in the knowledge and not give his views or personal opinion.

CROSS-EXAMINATION.

i) Meaning under Art.132 (2).

The examination of a witness by the adverse party shall be called his cross-examination. Black's Law Dictionary. The examination of a witness upon a trial or hearing, or upon taking a deposition, by the party opposed to the one produced him, upon his evidence given in chief, to test its truth, to further develop it or for other purposes.

ii) Object of Cross-examination. Following are the objects of the cross-examination.

a) Main object of cross-examination. is to edlic.it t(rupidtph or to expose falsehood. It has been held is 1967 S.C. 167) that cross-ex:mbinn bringing theconducted to "assist the court intruth to light by disclosing 1 matters, which witness may wish to:arconceal or confuse from motives of partisanship

b) Cross-examination is conducted to probe and highlight desired facts considered veiled and withheld by a witness.

c) Cross-examination, also aims to rebut the opposite version and to establish one's own version as well, as to impeach the credit of the witness. It has been held in (1984 P.Cr.L.J.1039 D.B) that party cross-examinaing the witness should put its own case as for as it was close to the evidence of such witness in the form of suggestion to discredit version of opposite party.

iii) RiKht of cross-examination. Right. of cross-examinadon is available to adverse party but in some cases, where a witness states against the party who has called him, then such witness can also be cross-examined by the party calling him with permission of court.

iv) Extent of Cross-examination. Cross-examination is to be conducted by the adverse party about the facts narrated by a witness in his examination in chief but it is not obligatory to cross-examine the witness only about the facts given by him, he can be cross-examined about other fact's and questions can also be put to test his accuracy and veracity and to impeach his credit as well.

v) Opportunity to cross examine mandatory It is mandatory that when witness has been examined before court, then he shall be subjected to cross-examination. If court does* not • afford opportunity to cross-exams a witness, then his statement would be of no worth and would not be relied upon. It is an elementary principle of law that no evidence, which has not been subjected to cross-examination, can be used against any body that it is sought to be

tendered unless cross-examination is declined or waived. It has been held in (PLJ 1982 Cr.r 276) that where there was failure to afford opportunity to ; cross-examine 347 opposite party's witness, cases was remanded by high Court which the direction to give opportunity to the party to cross-examine witness and then examine the evidence in accordance with law. Effect of Omission to Cross- Examine. If opportunity has been provided by court to cross-examine the witness but party fails to cross-examine or refused to cross-examine or waives right of examination, then such statement would be deemed to be admitted. Even if some portion of a statement of a witness were not subjected to cross-examination, said part of statement would be deemed to be admitted. In this regard it has been held in (PLD 1983 Karachi 181) that it is well settled that failure to cross-examine a witness tantamount to admitting his statement. vii) Bars on right of cross-examination. Following are the bars placed oh the right of cross-examination.

Conclusion.

Testimony of a witness consists of his examination in chief. subsequent cross-examination by adverse party 'and iif requires re-examination. If a witness has testified before court but opportunity was not afforded to cross-examine and h no s statement then his statement would not be relied upon decision can be based upon such statements could not be cross-examined. Examination in chief puts forth version of a party who has produced a witness in his favour and then h is cross-examination by adverse party which is the greatest It:gal engine ever invented for discovery of truth. However, stone fact deposed in examination in chief is not cross-examination then it is impliedly admitted. Re-examination is .only conducted if some point requires explanation and such r.e-exmin:= would not be allowed to rebut such facts which have brought on record by cross examination.

PART B

Question : Explain the concept and scope of natural justice.

Answer:

INTRODUCTION

The term Natural Justice, In English Law is often retained as a general concept; it is also extended as “duty to act fairly (will be discussed later on)”. Natural justice is a term of art that denotes specific procedural rights in the English legal system and the systems of other nations based on it. It protects against the arbitrary exercise of power by ensuring fair play. "The content of these rules can be summarized in the maxim audi alterarn partern. Translated literally this means "no one shall be condemned unheard".

Natural justice is based on two fundamental rules:

(1) Audi alteram partem (Latin for, hear the other side): no accused, or a person directly affected by a decision, shall be condemned unless given full chance to prepare and submit his or her case and rebuttal to the opposing party's arguments.

(2) Nemo judex in causa sua (Latin for, no man a judge in his own case).

THE RISE OF NATURAL JUSTICE AS A‘FUNDAMENTAL RIGHT’:

Natural justice has a long history. The requirement was that people should receive adequate notice of decisions which may affect them. The concept of Natural justice was built up in the 17th Century but at that time Natural justice was not recognized as a Fundamental Right. Later on, in 20th Century, the rules of natural justice in administrative decision-making widened, questions arose about the basis of natural justice. The problem was highlighted in the seminal decision of Kioa v West (1985)159 CLR 550(‘Kioa’), where a majority of the

High Court held that an administrative official had denied natural justice to two non-citizens by failing to put to them prejudicial allegations (and also failing to provide them with chance to respond to the allegations) before deciding to deport them as prohibited immigrants.

Rules of natural justice are not codified cannons. They are principles ingrained in the conscience of man. Justice is based substantially on natural ideas and values which are universal. What particular form of natural justice should be implied and what its extent should be in a given case must depend to a great extent on the facts and circumstances of that case and the framework of the statute under which an action is taken. Earliest expression of natural justice could be found in philosophical expression of roman jurists (jus naturale) and signified rules and principles for the conduct of man, which were independent of enacted law or customs and could be discovered by the rational intelligence of man and would grow out of and conform to his nature – which meant the whole mental, moral and physical constitution of man. The basis of the principles of natural justice is rule of law. The observance of these principles is demanded by our sense of justice to which the total system of governance must conform.

AUDI ALTERAM PARTEM:

Audi alteram partem is the basic concept of the principles of natural justice. It means that both sides must be heard before passing any order. It signifies that no man can be condemned without a hearing. It is a fundamental principle of natural justice that before an order is passed against a person, he should be given an opportunity to be heard in the matter. In administrative law, this is the principle which protects the individual from arbitrary administrative actions whenever his right to person or property is jeopardized. Thus, one of the objectives of giving a hearing in application of the principles of natural justice is to see

that an illegal action or decision does not take place. Any wrong order may adversely affect a person, and it is essentially for this reason that a reasonable opportunity may have to be granted before passing an administrative order.

This principle has been applied to administrative actions to ensure fair play and justice to affected persons. However, the doctrine is not the cure to all ills in the process. Its application depends upon the factual matrix to improve administrative efficiency, expediency and to mete out justice. The procedure adopted must be just and fair.

The corollary deduced from this principle is qui aliquid statuerit parte inaudita altera, aequum licet dixerit, haud aequum facerit (he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right.) As stated earlier, this principle is not of some importance but is of fundamental importance that justice should not only be done, but also manifestly ad undoubtedly seems to be done.

Practically speaking, this maxim covers two things:

1. Giving notice to the affected person

2. Giving him a fair hearing

Duty to act judicially or to act fairly:

In cases classified as ‘quasi-judicial’, there is a ‘duty to act judicially’, i.e., to follow the principles of natural justice in full, but in cases which are classified as ‘administrative’ there is only a ‘duty to act fairly’, which simply means that the administrative authority must act justly and fairly and not arbitrarily or capriciously.

The only essential point that has to be kept in mind in all cases that the administrative authority concerned should act fairly, impartially and reasonably

The basic purpose behind developing the 'fairness doctrine' within the area of 'administrative or executive' functions of the administration, wherein the principles of natural justice are not attracted, is to reconcile 'fairness to the individual' with the flexibility of administrative action.

Right to Notice:

The term 'notice' originated from the Latin word 'notitia' which means, 'being known'. In the legal sense, it embraces knowledge of circumstances that ought to induce suspicion or belief, as well as direct information of the fact.

Notice is the starting point of any hearing. Unless a person knows the formulation of subjects and issues involved in the case, he cannot defend himself. It is not enough that the notice in the case is given, but it must be adequate also. The adequacy of notice is a relative term and must be decided with reference to each case. However, generally in order to be adequate must contain the following:

- Time, place and nature of hearing.
- Legal authority under which the hearing is to be held.
- Statement of specific charges which the person has to meet.

Right to know the evidence against him:

Every person before an administrative authority exercising adjudicatory powers has the right to know the evidence to be used against him. Whatever mode is used, the fundamental

remains the same that nothing should be used against the person which has not been brought to his notice.

Right to present case and evidence:

The adjudicatory authority should afford a reasonable opportunity to the party to present his case. This can be done through writing or orally at the discretion of the authority, unless the statute under which the authority is functioning directs. The requirements of natural justice are fulfilled only if the person is given an opportunity to present his case in view of the proposed action. The demands of natural justice are not met even if the very same person proceeded against, has been furnished information on which the action is based in a casual way or for some other purposes.

The administrative authority must provide full opportunity to present evidence either testamentary or documentary. Not giving a chance to produce material evidence violates the rule of fair hearing.

Right to rebut adverse evidence:

The right to rebut adverse evidence presupposes that the person has been informed about the evidence against him. As stated earlier, the original material need not be supplied in all cases; a summary of the contents of the adverse materials shall suffice, provided that it is not misleading.

It is not enough that the party should know the adverse material on file but it is further necessary that he must have an opportunity to rebut the evidence. Rebuttal can be done either orally or in writing at the discretion of the administrative authority provided the statute does not provide otherwise.

The opportunity to rebut evidence mainly involves two factors, i.e.

- Cross-examination
- Legal representation

Cross-examination:

Cross-examination is a most powerful weapon to elicit and establish the truth. However, courts do not insist on cross-examination unless the circumstances are such that in the absence of absence of it, a person cannot put up an effective defence.

The right to cross-examine has never been considered to be an integral element of the audi alteram partem rule. The court can decide, in each case, as to whether such an opportunity ought to have been given to the person against whom action is being taken.

Legal representation:

The right to be represented by a legal practitioner has not been considered to be a part of natural justice. However, if such a right has been expressly conferred by a statute, an order may be set aside if this right is denied.

CONCLUSION:

It is to be understood that the ultimate objectives of departmental/domestic probe is to determine or to draw inference whether punishment should or should not be awarded to on employee and so the principles of Natural Justice are applicable to domestic enquires even though there may not be any rule or provision to that effect.

The principles of natural justice are easy to proclaim, but their precise extent is far less easy to define. The rule against bias is one thing. The right to be heard is another. These two rules

are characteristic of what is often called ‘natural justice’. They are twin pillars supporting it. They have been put into two words- Impartiality & Fairness. The Principles of natural justice are considered to be more important to ensure justice to the workman whose conduct is being enquired into.

Hence, it is essential to understand its scope and extent and implications for purpose of domestic enquiry. We come across new cases every day but basic structure about the machinery entrusted with the task of holding departmental enquiry and coming to a decision, remains the same. Therefore, the employer should give proper attention to this aspect of the disciplinary action so that pit falls on this score could be avoided.