

BA-LLB Semester -VIII
Paper: Law of Evidence -II
Mid Term Examination
Fall - 2021

NAME : M KAMRAN IMRAN

Cnic : 42101-7505051-1

TEACHER NAME : DR ADEEL ABID

QUESTIONS :

ASSIGNMENT NO.1

What do you understand by term Estoppel? Briefly explain the various kinds of Estoppel and give examples?

ASSIGNMENT NO.2

What is 'Burden of Proof' in Law of Evidence? On whom the Burden of Proof lies in Civil and Criminal proceedings and on what circumstances 'Burden of Proof' shifted to accused person?

ASSIGNMENT NO.3

How do you prove the following documents in a Court of Law?

1. A document 30 years old
2. Public & Private documents
3. Power of Attorney executed in a foreign country

ANSWER of 1 :

Estoppel is a legal principle that prevents someone from arguing something or asserting a right that contradicts what they previously said or agreed to by law. It is meant to prevent people from being unjustly wronged by the inconsistencies of another person's words or actions.

1. Estoppel is a legal principle that protects one party by holding another to their word or requiring them to adhere to established legal facts.

2. A form of estoppel encountered in contract law is promissory estoppel, which enforces a reasonable promise made by one party if another party acted on that promise and suffered a loss as a result.
3. Estoppel is seen in common law legal systems around the world.
4. There are different types of estoppel. Collateral estoppel can prevent a person from going back to court as a plaintiff with the same grievance. This prevents legal harassment and abuse of legal resources.

5.

Estoppel by deed prevents a person from denying the truth of any fact stated in a deed they have executed. By contrast, Equitable estoppel prevents someone from taking a legal position that is contrary or inconsistent with their previous stance if doing so harms the other party.

Promissory Estoppel

A common form of estoppel often found in contract law is called promissory estoppel. It protects a person who has acted based on another person's reasonable promise, whether in a formal contract or not, and then suffers significant economic loss because the other party did not fulfill that promise.

Example of Promissory Estoppel

Promissory estoppel was the heart of a case pitting neighbor against neighbor in Iowa. A farmer had leased a property from his neighbor, who he said had promised to sell him his farm sometime in the future for \$3,000 an acre. The farmer then made substantial improvements to the property during the term of the lease, with the expectation that he would become its eventual owner. However, the neighbor then sold the property to a third party, prompting the first farmer to sue his neighbor, saying he had the right to purchase the farm.

At the trial, the jury awarded the farmer \$52,000 in damages to cover the improvements made to the property. Eventually, the case found its way to the Iowa Court of Appeals, which ruled that the option for the farmer to purchase the farm did not need to be included in the written lease agreement to be valid. A clear and definite promise, and the neighbor's understanding that the farmer was relying on that promise, were enough to warrant that the neighbor pay the farmer damages, the court ruled.

Estoppel Around the World

Almost all countries with a judicial system based on common law, including the United Kingdom, Canada, and the United States, have incorporated multiple forms of the doctrine of estoppel in their laws. While the names of the principles differ from country to country, the concept is essentially the same: consistency, in both words and actions, matters.

If the court has established in a criminal trial that someone is guilty of murder, the legal doctrine preventing the murderer from denying his guilt in a civil trial is an example of estoppel.

The basic concept of an estoppel is that where a person (A) has caused another (B) to act on the basis of a particular state of affairs, A is prevented from going back on the words or conduct which led B to act on that basis, if certain conditions are satisfied. In such cases A is estopped (ie 'stopped') from resiling from, or denying, the existence of that particular state of affairs.

The following dicta of Sir Anthony Mann in *Jones v Lydon*, citing in turn Lord Burrows in *Tinkler v HMRC*, and with particular reference to the representation estoppels, is of assistance:

'66. [...] The essence of an estoppel is that a party is forced to accept a legal factual position which is not necessarily the actual position. It gives effect to the erroneous belief of the person with the benefit of the estoppel because the other person has either given rise to it (usually by a representation) or has shared it (estoppel by convention where there is a shared assumption) or has himself/herself gone along with that belief without actually sharing it (estoppel by convention where one side acquiesces in the erroneous belief of the other). Estoppel by convention based on acquiescence fills a gap where a person is responsible for the belief of another without actually creating it in the first place by a representation. In *Tinkler* Lord Burrows described certain principles of estoppel by convention as follows:

"51. It may be helpful if I explain in my own words the important ideas that lie behind the first three principles of *Benchdollar*. Those ideas are as follows. The person raising the estoppel (who I shall refer to as

"C") must know that the person against whom the estoppel is raised (who I shall refer to as "D") shares the common assumption and must be strengthened, or influenced, in its reliance on that common assumption by that knowledge; and D must (objectively) intend, or expect, that that will be the effect on C of conduct crossing the line so that one can say that D has assumed some element of responsibility for C's reliance on the common assumption."

The emphasis is mine. The acquiescence of the other party is what provides that element of responsibility. [...]

67. So far as the representation versions of estoppel are concerned, it is true that representations can be by word or conduct, but if a representation is to be by conduct then there must be facts which clearly demonstrate that the representation was being made. That will usually mean that there is some context in which the subject matter of the representation is somehow clearly in the background to the conduct in question. It is not sufficient if the conduct would be consistent with the representation if it were made expressly. It must go further and actually contain the representation in an implied way. [...]'

For further guidance on the basics of the doctrine of estoppel, its most common forms (both at common law and in equity), its role in litigation and the limited circumstances in which it can give rise to a cause of action, its relationship with claims for negligent misstatement and its relationship with the doctrine of waiver by estoppel, see Practice Note.

ANSWER of 2 :

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

A duty placed upon a civil or criminal defendant to prove or disprove a disputed fact. In criminal cases, the burden of proof is placed on the prosecution, who must demonstrate that the defendant is guilty before a jury may convict him or her.

[Art. 117 to 129 Qanun-e-Shahadat Order 1984.]

Standard of proof in criminal cases. "A mere balance of probabilities is enough in a civil action but in a criminal case the probabilities must converge to establish the guilt of the prisoner with complete moral certainty. Lord Wright said in Wallace case: If every matter relied on as circumstantial is equally or substantially consistent both with the guilt or innocence of the prisoner the multiplication of these instances may not take you any further in coming to a conclusion of guilt".

Lord Mansfield on proof in civil cases. "As mathematical and absolute certainty is seldom to be attained in human affairs, reason and public utility require that Judges and mankind in forming their opinion of the truth of facts should be regulated by the superior number of probabilities on the one side or the other!"

Supreme Court of Pakistan: "Finding of guilt against an accused cannot be based merely on the high probabilities that may be inferred from evidence in a given case. Finding of guilt should rest surely and firmly on the evidence produced. Mere conjectures and probabilities cannot take the place of proof. Otherwise the golden rule of benefit of doubt will be reduced to naught". (SC) PLD 1970 SC 10 Muhammad Luqman.

Accused pleading exception under the Penal Code, onus shifts on the accused. Accused failing to prove exception, the Court cannot scrutinise the prosecution evidence for giving benefit of doubt to the accused. (DB) 48 P.Cr.LJ 809 Lal etc. v. Crown.

Burden of proving exception that the case of the accused falls in exception is on the shoulders of the accused and he is to discharge the burden by proving the existence of such circumstances. (DB) PLJ 1996 Cr.C (Pesh) 1835, Sheraz v. Muhammad Ayub etc.

Onus on accused to prove that his case was within any exceptions. Murder-Plea of self-defence. Burden of proving existence of circumstances justifying the plea lies on the accused. Court to presume absence of circumstances justifying such plea in absence of rebuttal of presumption by the accused. (See Section 105, Evidence Act.) (SC) 1969 SCMR 802 Hukam Zad.

Burden of proof on the accused to establish his plea in defence does not arise until the case is established against him by the prosecution. Prosecution must prove its

case beyond reasonable doubt irrespective of any plea raised by the accused in defence. 1995 SCMR 1377, Shamoon.

Accused need not prove or plead exception to section 300, P.P.C. (Exceptions 1 to 5) (now amended Sec. 300, P.P.C. is different): Prosecution must affirmatively prove circumstances under which act was committed. Burden never shifts from prosecution to defence, even in respect of an exception to section 300. Accused entitled to benefit of doubt though he may have only suggested a reasonable possibility of his case falling under an exception to section 300, P.P.C. (PLD 1953 FC 93 ref. Safdar Ali's case) PLJ 1974 Kar. 106 Shaukat Ali.

Accused's burden not as heavy as that on prosecution: Burden to prove the general issue is always on prosecution. Accused failing to prove special pleading but succeeding in raising reasonable doubt is entitled to acquittal. "Whole of the evidence" to be looked to in entirety and not merely special pleading of accused irrespective of prosecution evidence. There is no conflict between section 105 Evidence Act and the principle laid down in Woolmington's Case. (FC) PLD 1953 FC 93 Safdar Ali v. Crown.

Burden of proof: Prosecution is not bound to prove in corruption cases that the money received from the accused was for doing illegal favour. 1980 P.Cr.LJ 1039 Ghulam Muhammad.

Burden on accused to prove that he acquired his knowledge in innocent way when he points out the place where corpse of deceased was burnt and bones of human being, footwear and ring, etc. was discovered. Accused, held. Guilty under section 201, P.P.C. (DB) PLD 1951 Lah. 352 Sher Bahadur v. Crown.

Burden of the accused: Despite provision of section 106 of Evidence Act onus in criminal cases rests on prosecution to prove the guilt of the accused beyond reasonable doubt. Section 106 cannot be construed to mean that this onus at any stage shifted to accused to prove his innocence or to make up for the failure of prosecution to produce evidence to establish guilt of the accused. PLD 1977 SC 352. Rehmat PLD 1977 SC 515.

Despite provision to the contrary. Section 106 E.A. cannot be construed to mean that onus at any stage shifts on to the accused to prove his innocence nor any presumption can be made against him under section 114 (f) E.A. Despite section 8 of

Suppression of Terrorist Activities (Special Courts) Ordinance XVIII of 1974, initial burden lies on the prosecution to prove the guilty of the accused. (DB) PLJ 1978 Cr.C. (Quetta) 557. State v. Ghazi etc. PLD 1978 Quetta. 191. Onus of proof of guilty knowledge does not shift from the prosecution to the accused, and it is not necessary for the accused to prove affirmatively that he came by the goods innocently. (In a case under section 411, P.P.C.). Held, if he can give explanation which might raise doubt in the mind of the Court, as to his guilt he will be entitled to the benefit of doubt. PLD 1951 Bal. 14 Ido v. Crown.

Recovery of incriminating articles at the instance of the accused. Burden on the accused to prove how he came by the knowledge of the place of concealment of such articles. (DB) PLD 1966 Lah. 157 Fateh Sher v. Crown.

Burden of proving accident does not lie on the accused. Death caused by firearm injuries. Prosecution must prove not only that firing was intentional or voluntary but also that it was prompted by intention or knowledge as mentioned in section 300, P.P.C. Failure to prove such knowledge or intention by the prosecution entitled the accused to acquittal. Plea of accident. Burden of proving the accident not on the accused. PLD 1959 Lah. 655 Swab Gul.

Grave and sudden provocation: Burden lies on the accused to prove the exception. Yet in absence of affirmative proof, accused may have benefit of doubt raised on examining prosecution evidence side by side with defence version (Section 300, Exception 1) (DB) PLD 1957 Lah. 31 Muhammad Iqbal.

Self-defence: Evidence not led to prove the plea but accused's version receiving support, to the extent of being reasonably possible, from prosecution evidence. Accused entitled to acquittal. (SC) PLD 1958 SC 242, Shamit.

Failure to prove alibi: Onus always remains on prosecution to prove its case. Failure to prove alibi does not recoil to the disadvantage of the accused. (SC) 1969 SCMR 584 Ilaahi Bakhsh etc. also see alibi.

defence version false: Prosecution story, not therefore necessarily true. Burden on prosecution to prove its case. PLD 1950 Kar. 273-A. Mirza Zada v. Crown. PLJ 1980 Cr.C. (Lah.) 376 State v. Fateh Muhammad.

Version of the accused unconvincing. Prosecution nevertheless to prove its case. (SC) 1969 SCMR 612 = 1969 P.Cr.LJ 1185 Wali Muhammad. PLJ 1980 SC 478 = PLD 1980 SC 317 Ali Sher.

Falsehood by accused: Accused cannot be convicted merely for having told untruth in relation to one or more facts alleged against him. (SC) PLD 1964 SC 792 Muhammad Fazil Karim.

Weakness of defence: Onus always lie on prosecution to prove its case. Prosecution to succeed on the strength of its own case and not on the weakness of the defence. (SC) 1971 SCMR 432 Hakim Ali.

Prosecution to prove its case beyond reasonable doubt. Such burden cannot be discharged by weakness in defence case. 1998 SCMR 854, Mst. Shamshad.

Reasonable doubt. It is prosecution's burden to prove its case beyond reasonable doubt. Burden never shifts. reasonable doubt arising on considering a case as a whole, the benefit must go to the accused, though what he has pleaded has not been fully established by him. (FC) 1969 P.Cr.LJ 1047 Ali Gohar v. Crown. (SC) PLD 1977 SC 515 Rehmat.

Prosecution to prove guilt of the accused beyond reasonable doubt. Section 106 E.A. does not shift onus on the accused at any stage to prove his innocence. (SC) PLD 1977 SC 515 Rehmat.

Prosecution has to establish its case beyond reasonable doubt and it cannot derive any benefit from the weakness of defence. PLD 1994 S.C. 858, Rab Nawaz etc.

Burden of proving the prosecution case is on the prosecution and does not depend on the weakness of the defence. PLJ 1996 Cr.C. (Pesh) 1599, Ishtiaq Ahmed.

Prosecution to prove its case; beyond reasonable doubt. Such burden cannot be discharged by weakness in defence case. 1998 SCMR 854 Mst. Shamshad.

Mere entrustment of property and its shortage would not be enough to establish guilt of dishonest misappropriation and mere existence of adverse presumption cannot be equated with establishment of guilt. Onus is on the Prosecution to prove its case. Appellat acquitted. PLJ 1998 Cr.C. (Q) 1463 Manzoor Ali.

ANSWER of 3 :

Part I :

Presumption as to documents thirty years old

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.-Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

Part II :

Evidence have great important in both civil and Criminal cases and major part of procedural law. Evidence is a mean of proof. There can be different kinds of evidence. Among these kinds, two major kinds of evidence are oral and documentary evidence. Sometimes evidence is established by producing or presenting documents before the court. The document so produced for the inspection of the court, is called documentary evidence. Two types of documentary evidence, first is public documents and second is Private documents.

Public Documents are proved by Secondary Evidence. Private Documents are proved by original i.e. Primary Evidence. The certified copy of a public document is to be admitted in judicial proceedings. The secondary evidence of the original document is not to be admitted in judicial proceedings.

Private Documents are proved by original i.e. Primary Evidence. The certified copy of a public document is to be admitted in judicial proceedings. The secondary evidence of the original document is not to be admitted in judicial proceedings.

Part III :

Under the normal circumstances for the purposes of legal process or to perform the legal duties or to transact in any other manner, person himself and if he is not in a position to do so may authorize anybody to act on his behalf. In first instance the person who gives right to the other to perform duty on his behalf is called "Principal" and the person to whom the authority is given is called "Attorney". The Principal may authorize the Attorney not to pursue his cases only but also to compromise or settle the matters on his behalf. In these circumstances all the acts performed by the Attorney will be deemed to be performed by the Principal who will be responsible for the acts done by the Attorney as he has done them himself.

There are two kinds of Power of Attorneys: General Power of Attorney and Special Power of Attorney.

General Power of Attorney means that Attorney may perform more than one job on behalf of the Principal and all his acts will be binding on the Principal as done by him and under his authority.

Special Power of Attorney is for only a specific purpose which is explained in that deed of Special Power of Attorney.

It is relevant to mention here that power of attorney either General or Special given by the Principal to the Attorney must be in writing and it cannot be given orally. If Power of Attorney is for any immovable property, sale or for mortgage then it should be registered under section 17 of the Registration Act, 1908.

Power of Attorney should be attested: All the documents written as a Power of Attorney should be authenticated by a Notary Public, any Court, Judge, Magistrate,

Pakistan Consul or Vice-Consul, or representative appointed by the Federal Government, and then it will be presumed correct.

Necessary requirements of Power of Attorney: Every Pakistani citizen who is a major, adult and according to law is competent to enter into a contract whether resides in Pakistan or outside Pakistan may authorize any other person through power of attorney to act on his behalf. If power of attorney is executed outside the country then Pakistani Embassy or consulate's authorized officer will verify it and if the power of attorney relates to transfer of property then it should be registered in Pakistan with the concerned registrar.

Power of Attorney in Civil Cases: Civil cases can be pursued through power of attorney i.e. to appear in the court, to move application and to proceed in the matter. In civil cases the Attorney can do each and every act on behalf of the Principal. Service of summons/notices of the court on the Attorney will be presumed to be service on the Principal. For all these matters no court will allow the Attorney to act on behalf of the Principal unless Power of Attorney is there.

Civil and Criminal liabilities of Principal and Attorney: Civil liability of Principal; if in performance of acts according to the power of attorney the third party suffers a loss then the Principal will be responsible subject to authorizing for the same act in the power of attorney. Civil liability of Attorney; in case of any action for which he is not authorized he will be responsible for the losses occurred to the third party on the basis of such act.

Criminal liability of Principal and Attorney: Criminal liability of Principal; under normal circumstances the Principal will not be responsible for the criminal acts of the Attorney. Criminal responsibility of the Attorney; if Attorney is found guilty of breach of trust then he can be proceeded under section 406 and 409 of Pakistan Penal Code and be punished.

Cancellation of Power of Attorney: The Principal can cancel the Power of Attorney whether General or Special at any time or in case of death of Attorney or the Principal, it will be cancelled automatically. In the first instance, concerned Registrar where Power of Attorney is registered will cancel it and it will also be published in a newspaper. Power of Attorney will also be cancelled if the job/assignment for which it was given is completed.

