



LAW FOR everyday life

LAW week

Right to self-defence

NOTHING is an offence, which is done in the exercise of the right of private defence. In order to find out whether the right to self-defence existed or not the entire incident should be examined with care and in its proper setting. The injuries received by the accused, the imminent threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered on a plea of private defence. The circumstances in which one can exercise the right of private defence are specified below according to the national legislation.



cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

When such right extends to causing any harm other than death 101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99 to the voluntary causing to the assailant of any harm other than death.

in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property 105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

Commencement and continuance of the right of private defence of the body 102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

When the right of private defence of property extends to causing death 103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:

Firstly-Robbery; Secondly-House-breaking by night; Thirdly-Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property; Fourthly-Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised;

The right of private defence of property against house-breaking by mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Right of private defence against deadly assault when there is risk of harm to innocent person 106. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Example A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

The court would first find out whether the right to self-defence existed or not and consider the case in its proper setting, then only would it decide the punishment.

-Compiled by Law Desk.

THE PENAL CODE, 1860

Chapter IV - General exceptions

Extent to which the right may be exercised

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1 - A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2 - A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

Things done in private defence

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence against the act of a person of unsound mind, etc

98. When an act, which would otherwise be a certain offence is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Example

(a) Z, under the influence of madness,

attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against which there is no right private defence

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

When the right of private defence of the body extends to causing death

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely: Firstly - Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault; Secondly - Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault; Thirdly - An assault with the intention of committing rape;

Fourthly - An assault with the intention of gratifying unnatural lust; Fifthly - An assault with the intention of kidnapping or abducting; Sixthly - An assault with the intention of wrongfully confining a person, under circumstances which may reasonably

LAW amusements



Outrageous Lawsuits

Gratitude...not!

While climbing a mountain, a young man slipped and fell 90 feet and sustained injuries. The mountain rescue unit, which has saved hundreds of lives over the past 30 years, worked with a physician and a paramedic to mount a difficult nighttime helicopter rescue. The rescuers probably saved the man's life...but he turned around and slapped them with a \$12 million lawsuit. (Source: AVALA)

Thanks buddy

A woman dropped some burglar bars on her foot. She claimed that her neighbour, who was helping her carry the bars, had caused the accident. The neighbour's insurance company offered to settle the dispute by paying her medical bills, but she refused.

She wanted more and sued for damages, including "pain and suffering." The jury took only 17 minutes to unanimously decide that the woman was fully responsible for her own injuries. The innocent neighbour had to pay \$4,700 in defence costs. The two are no longer friends. (Source: AVALA)

Where's it say I can't do that?

A bank discovered that millions of dollars deposited in an account were in fact embezzled funds. The bank transferred the funds back to the lawful owner and got sued! The embezzler's alleged accomplice filed a lawsuit against the bank for returning the money, and asked for \$20 million in damages. The bank won in court, but only after spending over \$20,000 in legal fees. (Source: AVALA)

Perfectly good sense

A man joined a group to learn, among other things, to fly through self-levitation.

Unsatisfied with the results, he claimed psychological and physical damages and sued the group for \$9 million. (Source: AVALA)

Maybe I was drunk...but...

A drunk driver was speeding, careened passed detour signs and crashed. He sued the engineering firm that designed the road, the contractor, four subcontractors and state highway department property, which owned both sides of the road. Five years later, all of the defendants settled for \$35,000. The engineering firm was swamped with over \$200,000 in legal costs. (Source: ATRA)

Plus, he got sick

A man sued Anheuser-Busch for \$10,000 for false advertising. He claimed that he suffered physical and mental injury and emotional distress from the implicit promises in the advertisements. When he drank the beverage, success with women did not come true for him plus, he got sick. The Michigan Court of Appeals affirmed a lower-court decision dismissing the case. (Source: ATRA)

Source: www.duhaime.org

LAW letter

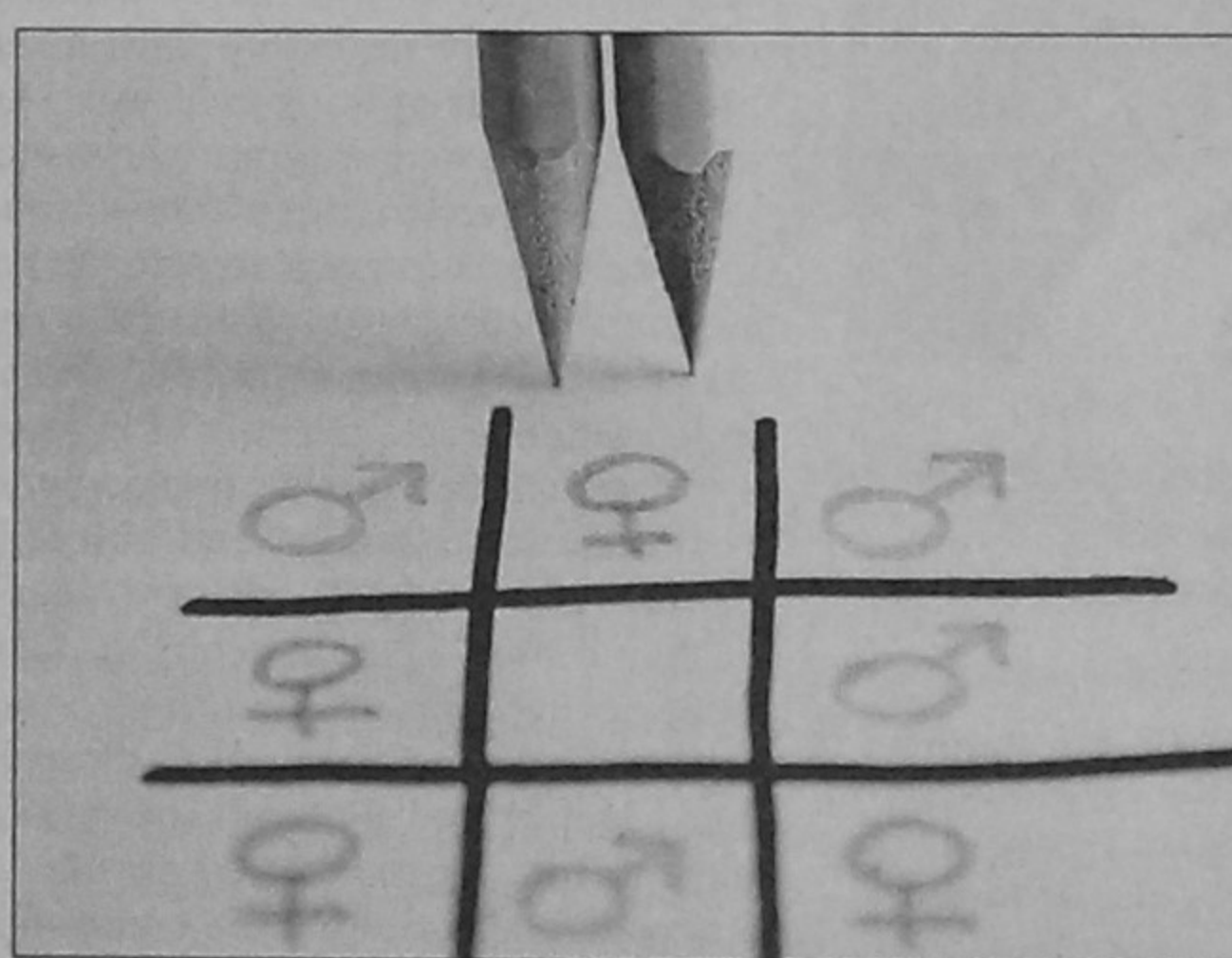
Women's Rights

Even as the country celebrated yet another Woman's Day amidst the usual high-sounding rhetoric, the sad truth is that such ritualistic observance means little to a majority of our women, shackled by poverty, illiteracy and social bias. Women who constitute half of the country's population continue to get a raw deal in different spheres even after three decades of independence. Much as governments may boast about 'achievements' on various fronts, the abysmal human development indices for women make a mockery of such tall claims.

At the root of all forms of discrimination against the fairer sex is the irrational gender inequality, which starts even before she is born, and continues to fetter her till death. The irony is that women are treated as second-class citizens in a country which has an enduring tradition of revering women as the very embodiment of power. Women continue to find themselves in vulnerable positions -- at the workplace, in their access to basic needs like health, education and employment, and even in their own homes.

Along with the discrimination - which seems to be entrenched deep in the psyche of a male-dominated society - the rising level of violence against women is another disquieting concern. Violence against women in the form of rape, sexual abuse, dowry, female feticide, etc., continue to be rampant. Even the proliferation of laws supposed to check such crimes has made little positive intervention. Along with laws and proper implementation, what we need is a social transformation something that can ensure equality and justice.

If the plight of our women is to be ameliorated, a beginning has to be made by addressing some basic issues. The challenge posed by a grossly skewed sex ratio, low level of female literacy, reduced access to economic activities, low female life expectancy, and high fertility rates has to be met on a war footing. The failure to bring down fertility rates and infant and maternal



mortality rates in spite of incurring huge expenditures on family welfare and population control measures is attributable, to a great extent, to the low female literacy rate and low level of women education.

Of equal importance is to have a sustained campaign at the grassroots to make women aware of the need to pursue education and income-generating activities so that they become aware of their rights and assert those. Government agencies obviously have not done a great job in this, and therefore NGOs can play a critical role in disseminating information and educating women at every level.

Mohammad Shahidul Islam National Tourism Worker

FOR YOUR information

Law examination tips

JUSTIN A SANTIAGO

So, how do you ensure that you 'answer the question'? Let us first discuss essay questions, and then problem questions.

Essays

The 'trick' here is to deconstruct the question asked. Take the question to bits, and play it back to the examiner, explaining the issues which the question raises. Take, for example, the following question from a few years ago:

Any system of law which recognised the trust would have need of the automatic resulting trust, for this merely provides the mechanism by which property ineffectively given on trust beneficially remains with the would-be donor. On the other hand, there is no similar need for the presumed resulting

trust, which is anachronistic and has largely outlived its usefulness. Discuss.

The first thing to notice is that the examiner has not said, 'Please write every thing you know about resulting trusts'. Yet, the vast majority of candidates will answer the question as if he did. What the examiner has instead done is ask a specific question, and the first thing to do is identify exactly what that is. And that is done by simply playing back the question in different language. So here, we could say that the question raises a number of issues.

First, it assumes that there are two types of resulting trust, the presumed and automatic. One issue is whether such a distinction is valid. Second, on the assumption that there really are resulting trusts which are 'automatic' (and the meaning of that word

will need to be explained), the next question is whether such trusts are needed. Is there no other way of dealing with the situations to which there is a response? Third, is it correct to say that such trusts arise because the property 'beneficially remains with the would-be donor'? And fourth, what is the true based of presumed resulting trusts? What is the presumption in play in such cases? And can it really be said to be anachronistic?

Notice that in deconstructing the question, you have provided yourself with a structure for your answer. Moreover, you have ensured that everything you then say will be of relevance to the question asked. After that, you can't go wrong!

Source: justin-santiago.blogspot.com

High-profile body formed to tackle militancy

The government has formed a 17-member high-profile committee to tackle militancy in the country and mobilise public opinion against militant activities. The committee led by State Minister for Home Affairs Tanjim Ahmed Sohel Taj is comprised of top officials of seven ministries and law enforcement and intelligence agencies. Home ministry sources said the committee, formed on Monday, will evaluate the procedure for investigation into all major subversive acts carried out in the country. "It will collect information, analyse those and issue necessary directives to combat militancy," Sohel Taj told journalists. -The Daily Star, April 23, 2009.

JS body's ACC intent called into question

Speakers at a workshop termed the summoning of Anti-Corruption Commission (ACC) by parliamentary standing committee on public undertakings 'malafide' since, they claimed, the standing committee is headed by a convict. "The person heading the parliamentary standing committee is a convict and it needs to be understood whether it is appropriate to summon a body like anti-corruption commission by the committee," said Badiul Alam Majumder, secretary of Shushashoner Janney Nagorik (Shujan). He was speaking at a two-day-long workshop titled "Right to transparent governance, South Asian Perspective," organised by South Asians for Human Rights (SAHR), at Brac Centre Inn. -The Daily Star, April 22, 2009.

Appointment of war crime probe agency delayed

The appointment of an investigation agency and formation of a prosecution cell for conducting war crime trial has been deferred until return of the law minister from Iran. State Minister for Law Qamrul Islam said the government could not finalise the persons to appoint to the investigation agency and the prosecutors for various reasons including their security. The process will be completed after Law Minister Shafique Ahmed is back home, Qamrul said at a press briefing at the ministry. The government will go for trial of only the 'identified' masterminds of war crimes who had collaborated with the occupation army in killings, looting and arson during the Liberation War, he said. -The Daily Star, April 21, 2009.

Govt to consult legal experts to decide mode of trial

The government will exchange views with the legal experts in a couple of days to decide under which law the trial of Bangladesh Rifles (BDR) mutineers will be held. Sources said though many policymakers are in favour of trying the BDR mutineers under the military laws, the final decision will be made after taking opinion of the legal experts. The sources said the Bangladesh Army has informed the government that the trial could be held under the military laws. Once finalised, the government will issue a gazette notification mentioning the trial process. -The Daily Star, April 21, 2009.

HC issues rule on govt

The High Court (HC) issued a rule upon the government to explain within three weeks why it should not be directed to ban the set of books that distorted the fact regarding the declaration of independence. The court in the rule asked the government to explain why it should not be directed to take legal action against the individuals who changed the history of declaration of independence as stated in the Proclamation of the Independence. It also directed the government to produce all the newspapers published from March 1, 1971 to March 25, 1971, kept in the national archive of Bangladesh, before the court during the hearing of the rule. -The Daily Star, April 21, 2009.

Upazila chairmen demand end of MPs' control

Leaders of Bangladesh Upazila Parishad Association alleged that lawmakers have already started creating complexities in the functioning of upazila parishads across the country. The association leaders at a press briefing demanded removal of the "controversial provisions" regarding lawmakers' authority over the parishads. They said a "conspiracy" is being hatched to cancel the upazila system. They also urged all chairmen and vice-chairmen to be alert and requested the government to bring necessary amendments to make the Upazila Parishad Act, 2009 more acceptable. -The Daily Star, April 20, 2009.

Investigating agency to be formed

Investigating Agency to inquire into the war crimes committed during the Bangladesh Liberation War will be constituted, State Minister for Law Md Quamrul Islam said.

Law Minister Shafique Ahmed, Home Minister Sahara Khatun, State Minister for Home Affairs Tanzim Ahmed Sohel Taj and Attorney General Mahbub Alam attended the meeting. The government on April 9 formally started the pre-trial process of holding trial of the 1971 war criminals. The trial would be conducted under the International Crimes Tribunal Act-1973. -The Daily Star, April 20, 2009.

Justice Rashid made Law Commission chairman

The government has appointed former High Court judge Md Abdur Rashid as chairman of the Bangladesh Law Commission. Sources said the prime minister has recently signed the file regarding his appointment as per the Law Commission Act 1996. The file reached the law ministry, which will soon issue a notification on the appointment. The government in consultation with the new chairman will then appoint two members of the commission, sources said. -The Daily Star, April 20, 2009.

Upazila Parishad law goes against SC verdict

Provisions of the newly-enacted Upazila Parishad Act, 2009, that empower lawmakers to meddle with the functioning of upazila parishads, go against a Supreme Court (SC) verdict. "The members of parliament are entitled to ask for any information and raise grievance against any of their electorates before the House but cannot interfere with the local administration," asserted the SC in the verdict delivered on April 27, 2006. The new Upazila Parishad Act empowers local lawmakers to interfere in the administration of the parishads as the law made them advisers to the parishads in their constituencies and the parishads have to "accept the suggestions of the lawmakers". -The Daily Star, April 19, 2009.

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net