



LAW AMUSEMENTS

At a trial, an attorney was putting witnesses through an exacting cross-examination, and was taking great delight into forcing witnesses to admit that they did not remember every single detail of an automobile accident. While the lawyer knew that no witness has a perfect memory, he had honed a skill in exploiting minor inconsistencies and lapses of memory in order to challenge the credibility of honest witnesses. After a series of scathing cross-examinations, he was looking forward to his examination of yet another witness.

"Did you actually see the accident?" he asked.
The witness responded with a polite, "Yes, sir."
"How far away were you when the accident happened?"

"I was Thirty-four feet, seven and three quarters inches away from the point of collision."

"Thirty-four feet, seven and three quarter inches?" the lawyer asked, sarcastically, "Do you expect us to believe that your memory is so good, and your sense of distance is so precise, that months after the accident you can come into court and give that type of detail?"

The witness was unphased. "Sir, I had a hunch that some obnoxious, know-it-all lawyer would ask me the distance, and would try to make it seem like I was lying if I could not give an exact answer. So I got a tape measure, and measured out the exact distance."

Source: lawlaughs.com.

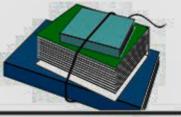
LEGAL MAXIM



- Id est (i.e)** - That is.
- Id quod commune est, nostrum esse dicitur** - That which is common is said to be ours.
- Idem** - The same person or thing.
- Idem nihil dicere et insufficienter dicere est** - It is the same to say nothing as not to say enough.
- Ignorantia facti excusat, ignorantia juris non excusat** - Ignorance of fact excuses, ignorance of law does not excuse.
- Imperium in imperio** - A sovereignty within a sovereignty.
- Impotentia excusat legem** - Impossibility is an excuse in the law.
- Impunita semper ad deteriora invitat** - Impunity always leads to greater crimes.
- In aequali jure melior est conditio possidentis** - When the parties have equal rights, the condition of the possessor is better.
- In alta proditione nullus potest esse accessorius; sed principalis solum modo** - In high treason no one can be an accessory; but a principal only.
- In camera** - In private.
- In casu extremae necessitatis omnia sunt communia** - In a case of extreme necessity everything is common.
- In criminalibus probationes debent esse luce clariores** - In criminal cases the proofs ought to be cleared than the light.

Source: inrebus.com

LAW LEXICON



- Instructions** - Judge's explanation to the jury before it begins deliberations of the question it must answer and the applicable law governing the case. (Also referred to as charge.)
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- Intangible assets** - Nonphysical items such as stock certificates, bonds, bank accounts, and pension benefits that have value and must be taken into account in estate planning.
- ***
- Intentional tort** - Wrong perpetrated by one who intends to break the law.
- ***
- Interlocutory** - Temporary; provisional; interim; not final.
- ***
- Interrogatories** - A set or series of written questions propounded to a party, witness, or other person having information or interest in a case; a discovery device.
- ***
- Intervention** - An action by which a third person who may be affected by a lawsuit is permitted to become a party to the suit.
- ***
- Intestate** - The status of a person who dies without leaving a will.
- ***
- Intestate succession** - A succession of property when the deceased has left no will, or when the will has been revoked.
- ***
- Involuntary bankruptcy** - A proceeding initiated by creditors requesting the bankruptcy court to place a debtor in liquidation.
- ***
- Issue** - 1. The disputed point in a disagreement between parties in a lawsuit. 2. To send out officially, as in to issue an order.

Source: Jurist International.



YOUR ADVOCATE

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Query
I want to adopt a child from Nepal as I want to maintain secrecy of that adoption from certain people from my family. What are the legal procedures?

Baridhara, Dhaka

Response
I would like to thank you very much for your query. As far as adoption of a child is concerned, in Bangladesh it is governed by the personal law to which each individual belongs. In Bangladesh, Muslims cannot lawfully adopt a child as Muslim law does not permit adoption. But, Hindus can adopt according to their traditional personal law, i.e. Hindu law. As from your query it is not clear to which religion you belong to and whether you are a male or female. If you are a Muslim, simply you cannot adopt a child. Though you may have seen some Muslims in Bangladesh have actually adopted children, the same has no legal footing. If you are a Muslim, you may, however, take the guardianship of a minor child in Bangladesh through the family court. At this stage, it may be wise to give a brief account of what the Hindu law provides for Adoption.

Under traditional Hindu law only a boy can be adopted. Thus, it is not possible to adopt a girl. A Hindu male can adopt even if he is a widower or unmarried. However, a Hindu female can only adopt with the express consent of her husband. In case of a Hindu widow, consent

of her husband during his lifetime is needed to make an Adoption. Consent of both the giver and taker of the adopted son is also important. It is also necessary to have consent of the person adopted where he has attained maturity. As far as Adoption under the traditional Hindu law is concerned, there are some restrictions as well. For instance, the son to be adopted and the person adopting must belong to the same caste. Besides, the only son of a family cannot be adopted under traditional Hindu law. Adoption of an orphan is not allowed unless permitted by custom. In order for Adoption to take place, there must be actual giving and taking of the adopted son. In addition, some rituals are also required to be performed but they are not as essential.

Besides, since you are considering adopting a child from Nepal, you also have to consider and fulfill what the Nepalese Law in this regard. I am not expert in Nepalese law. So, if you are a Hindu and fulfil the aforesaid

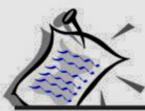
requirements, you are encouraged to consult a Nepalese lawyer to ascertain the legal and procedural formality that needs to be fulfilled for adopting a child from there. In Bangladesh as well, you may have to satisfy a number of requirements with the immigration and other



authorities, which may also prove to be very difficult.

I hope the aforesaid opinion will help you to assess your position.

For detailed query contact:
omar@legalcounselbd.com.



CRIME & PUNISHMENT

Rape under Penal Law

UNDER section 375 of the Penal Code 1860, a man is said to commit rape who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstance falling under any of the five following description.-

- Clause-1: "Against her will"** - the first clause is evidently intended to refer to a fully conscious normal person - one who is in full possession of her senses and reason and is capable of exercising her own volition.
- Clause-2: "without her consent"** - Here consent must be given freely. It may be express or implied. But there can be no consent when the woman raped is in a state of insensibility and, therefore, unable to exercise any judgment. In addition consent obtained by fraud is not consent within the meaning of the law.
- Clause-3: Consent by "fear of death or hurt"** - so, again, by parity of reasoning, a consent obtained "under fear of injury" is no consent at all, if the person doing the act knew or had to believe that the consent was given in consequence of such fear.
- Clause 4: Consent under misconception of facts** - "With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that she is another man to whom she is or believes herself to be lawfully married."

The fourth clause was enacted as a dissent from the view, that if a man had connection with a married woman with fraud, having induced her to believe that he was her husband and she having consented, under such belief, the act was not "rape".
Clause 5: Under Fourteen Years of Age - "With or without consent, when she is under fourteen years of age."

This is an important clause and it has been simply declares that an act even though committed with the consent of a child under 14 years of age would be rape, her consent and precocity will both being immaterial.

Explanation: Necessity of penetration - "Penetration is sufficient to constitute the sexual intercourse



necessary to the offence of rape." A slight degree of penetration has been held to be sufficient to constitute offence under the section". The penetration may not be sufficient to deprive the woman of the marks of virginity by rupturing the hymen, but that there must be some penetration without which there can be no rape, though there

may be an attempt.

In the case of *Saleh Muhammad v. State*, 18 DLR 1966, Supreme Court held that, Absence of semen in the vagina does not necessarily disprove that the woman was raped. The absence of injuries on the private parts of the complainant can easily be explained by the fact that the complainant had intercourse before. The presence of spermatozoa in the vagina is conclusive proof of sexual connection but not of rape; their absence is no proof that connection had not taken place for they may have been removed by washing.

Exception: Forcible Sex by Husband - "Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape."

The exception lays down that sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape. The marital right of the husband to have sexual intercourse with his wife exists by the virtue of the consent given by the wife at the time of marriage and not by virtue of a consent given at the time of each act of intercourse, as in the case of unmarried person.

Punishment for rape
S.376 of Penal Code 1860 states as follows:

Whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine, or with both.

Compiled by Law Desk.



LAW WEEK

Pilkhana carnage FIR reading out on

A Dhaka court on April 12 morning started reading out the first information report (FIR) against 850 Border Guard Bangladesh (BGB) jawans in connection with February 2009 Pilkhana carnage. Charges against 60 accused were read out till 12:30pm. Of the 850 accused, 827 were produced before the court. Two accused died while 21 are absconding.- *The Daily star online edition April 12 2011.*

30-40 lawyers accused in 2 cases

Two cases have been filed against three named and 30 to 40 unnamed lawyers following the vandalism which has been held on April 10 at a Dhaka court after a magistrate sent a lawyer accused in a fraud case to jail. The accused lawyers are Khorshed Alam, Nurul Islam and Minara Begum. On April 10, a group of lawyers snatched a fellow lawyer, an accused in a fraud case, from the dock of a Dhaka court as it rejected his bail petition and ordered sending him to jail. The lawyers also vandalised furniture and windowpanes of the courtroom after Metropolitan Magistrate MA Salam rejected the bail petition of advocate Nurul Islam, and passed the order.-*The Daily star April 12 2011.*

Rid Pharma Case, Plea to place proofs before court

Special Public Prosecutor Mahmud Hossain Jahangir On April 11 appealed to the court for directing the complainant to produce before it on May 15 the evidence seized in connection with the Rid Pharma case. The case was filed against managing director of Rid Pharmaceuticals Ltd and four other officials on charges of adulterating paracetamol syrup that caused deaths of 28 children in 2009. Judge Mohammad Abdul Majid of the Drug Court granted the prosecution petition directing Mohammad Shafiqul Islam, drug superintendent, to produce all the alamsats seized from different places on the scheduled date. Earlier on March 9, the same court framed charges against the five accused for manufacturing adulterated syrup. On August 10 of 2009, Shafiqul Islam filed the case accusing the five of the company for using toxic diethylene glycol in manufacturing paracetamol syrup that caused deaths of 28 children the same year.- *The Daily star April 12 2011.*

Limon's mother sues 6 Rab men

Mother of Limon Hossain, who lost his leg due to torture by Rapid Action Battalion, sued six members of Rab in a Jhalakathi court on 10 April. Henu Ara Begum filed a case with Senior Judicial Magistrate's court against Deputy Assistant Director of Rab-8 Md Lutfur Rahman, corporal Md Majaharul Islam, constable Md Abdul Aziz, nayeks Moktadir Hossain and Prahlad Chandra and soldier Kartik Kumar Biswas. After hearing the case petition, Magistrate Nusrat Jahan directed the officer-in-charge of Rajapur Police Station in Jhalakathi to register it as a regular case. Earlier on March 23, Rab shot the 16-year-old college student in the left leg while he was on his way to bring his cows back home at Chhaturia village in Rajapur.- *The Daily star April 12 2011.*

Tinni murder trial begins after nine years

After nine years, trial of model Syeda Tania Mahub Tinni murder case began with deposition of her father with a Dhaka court on april 10. Judge Fatema Najeeb of the Seventh Additional District and Sessions Judge's Court recorded part of the statement of her father Syed Mahub Karim and set May 11 to record his rest of the statement. The trial against the lone accused Golam Faruq Ovi, a former student leader and Jatiya Party MP, began in his absence. On Nov 10, 2002, police recovered Tinni's body from under China-Bangladesh Friendship Bridge over the Buriganga River and a case was filed with Keraniganj Police Station on the same day.- *The Daily star April 11 2011.*

Assault on bauls

On April 5, Sadhu Sanga, an organisation of bauls, arranged a two-day annual cultural programme at Char Ramnagar village in Pangsha upazila where followers of baul mystic Lalon Shah came from different places including Kushtia, Rajbari and Pabna. Then a group of villagers foiled the programme, assaulted 28 bauls and cut their hair and moustaches following instruction from the imam of a local mosque. The imam aided by a local influential person termed the bauls' programme as 'anti-Islamic' and had the devotees to do touba (repentance) under duress. Mohammad Fakir, 60, a Lalon devotee of the village, yesterday filed a case with Pangsha police station accusing 50 people including 13 named ones in this connection.- *The Daily star April 11 2011.*

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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 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: 9111111