
XVI K.K. LUTHRA MEMORIAL MOOT COURT COMPETITION, 2020

Before

THE HIGH COURT OF EREWHONE

Appeal No. 10 of 2019

THE STATE OF EREWHONE.....APPELLANT
v.
ELIZABETH BROWN.....RESPONDENT

Appeal No. 11 of 2019

THE STATE OF EREWHONE.....APPELLANT
v.
ELIZABETH BROWN.....RESPONDENT

Appeal No. 12 of 2019

ELIZABETH BROWNAPPELLANT
v.
THE STATE OF EREWHONE.....RESPONDENT

Appeal No. 13 of 2019

ELIZABETH BROWNAPPELLANT
v.
THE STATE OF EREWHONE.....RESPONDENT

MEMORIAL *for the* APPELLANT

MEMORIAL FOR THE APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS..... vi

ISSUES RAISEDviii

SUMMARY OF ARGUMENTSviii

WRITTEN SUBMISSION 1

ISSUE I: ELIZABETH IS GUILTY OF COMMITTING THEFT. 1

 [A] Theft has been committed under Section 380 of the Erewhon Penal Code 1

 [B] Diana’s vignettes are in the possession of Elizabeth.3

 [C] Elizabeth has stolen Diana’s ‘personal data’.4

ISSUE II: THE CRIMINAL PROCEEDING AGAINST ELIZABETH IS VITIATED. 5

 [A] The search and seizure were legal.5

 [B] The investigation was free, fair and judicious.6

ISSUE III: THE EXCLUSION OF ELIZABETH’S FINGERPRINTS AND HER MOBILE PHONE FROM THE EVIDENCE IS UNLAWFUL..... 7

 [A] The Doctrine of the *fruit of the poisonous tree* is not applicable.7

 [B] The evidence was obtained following the due procedure.8

 [C] The evidence submitted in the court is admissible.9

 [D] The Trial Court consequently erred in giving a reasoned judgment.9

ISSUE IV: THERE HAS BEEN NO SUPPRESSION OF EVIDENCE BY THE PROSECUTION..... 10

 [A] The Appellant did not rely upon the text messages. 10

 [B] Burden to prove the fact asserted is on the respondent. 11

 [C] The appellant did not withhold any material evidence. 12

PRAYER FOR RELIEFix

MEMORIAL FOR THE APPELLANT

TABLE OF AUTHORITIES

Statutes

- Constitution of Erewhon (Part III).
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- The Erewhon Procedure Code,1973.
- The Erewhon Evidence Code,1973.

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- Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 1995 (European Parliament).

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2. <i>A.K. Gopalan v. State of Madras</i> [1950] S.C.R. 88.....	7
3. <i>Alisher v. State of U.P.</i> (1974) 4 254.....	4
4. <i>Anil Rishi v. Gurbaksh Singh</i> (2006) 5 SCC 558.....	11
5. <i>Asandas</i> AIR 1933 SC 240.....	5
6. <i>Asst. Commissioner v. M/S.Shukla & Brothers</i> SLP No. 16466 of 2009.....	10
7. <i>Ayodhya Singh v. State of Rajasthan</i> (1972) 3 SCC 885.	4
8. <i>Bailey</i> (1872) LR 1 CCR 347.	1
9. <i>Bharama Parasram Kudhachkar v. State of Karnataka</i> (2014) 14 SCC 431.	8
10. <i>Bhinka v. Charan Singh</i> 1959 AIR 960.	9
11. <i>Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.,</i> (2019) 3 MLJ (Cri).....	2
12. <i>Brady v. Maryland</i> 373 U.S. 83 (1963).....	12
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22. <i>G.Venkatanarayanan v. The Inspector of Police</i> [2010] 2 S.C.R. 583.....	12
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MEMORIAL FOR THE APPELLANT

24. <i>H.N. Rishbud v. State of Delhi</i> 1955 SCR (1)1150.....	6
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28. <i>Jai Prakash v. State of Uttar Pradesh</i> 2019 SCC OnLine SC 1525.....	8
29. <i>Jamuna Prasad v. Shivnandan</i> Special Appeal No. 469 of 1994.....	9
30. <i>Justice K.S. Puttaswamy Retd. v. Union of India</i> (2017) 10 SCC 1.	5
31. <i>K. Balakrishnan v. S. Dhanasekar</i> 2018 (2) CTC 859.....	9
32. <i>K.N. Mehra v. State of Rajasthan</i> AIR 1957 SC 369.....	1
33. <i>Kachirji Hariji v. State of Gujarat</i> AIR 1969 Guj 100.	4
34. <i>Kamal Patel v. Ram Kishore Dogne</i> 2016 SCC OnLine MP 938.	9
35. <i>Karanit Singh v. State Rep</i> CRL.OP.No.1387 of 2011.	11
36. <i>Kartar Singh Giani v. Ladha Singh</i> AIR 1934 Lah 777.....	2
37. <i>Khaliqan v. Emperor</i> AIR 1945 Oudh 170.	6
38. <i>King Emperor v. Khwaja Nazir Ahmad</i> (1944) 71 IA 203).	6
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40. <i>Kuruma S/o Kaniu v. The Queen</i> [1955] 1 AELR 236.	8
41. <i>Kuruma v. The Queen</i> [1954] UKPC 43.	7
42. <i>Lal Girwar Lal v. Dau Dayal</i> AIR 1935 All 509.	11
43. <i>Lal Mohammad</i> AIR 1931 Pat 337	1
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46. <i>M.P. Sharma v. Satish Chandra</i> [1954] S.C.R. 1077.	7
47. <i>M/s Sesa Goa Ltd. v. State Of Goa</i> 2013 SCC OnLine NGT 27.	10
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50. <i>Malhu Yadav v. State of Bihar</i> AIR 2002 SC 2137.....	2
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54. <i>Narattam Das v. Md. Masadharali</i> (1991) 1 Gau LR 197.....	9
55. <i>Nardone v. United States</i> , 308 U.S. 338 (1939).	7
56. <i>Narendra Kumar Amin v. Central Bureau of Investigation and ors.</i> (2015) 3 SCC 417.....	11
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58. <i>Paresh</i> AIR 1927 C 93.....	6
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62. <i>Ramratan</i> AIR 1965 SC 926	1
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64. <i>Reid-Dali v. Hickman</i> 1981 2 SA 315 (ZA) 323.....	5

MEMORIAL FOR THE APPELLANT

65. <i>Rogers v. Superior Court</i> 46 Cal.2d 3.....	8
66. <i>S.M. Datta v. State of Gujarat</i> (2001) 7 SCC 659.....	6
67. <i>S.N. Mukherjee v. Union of India</i> (1990) 4 SCC 594.....	10
68. <i>Sanchaita Investment v. State</i> AIR 1981 Cal157.....	5
69. <i>Selvi v. State of Karnataka</i> (2010) 7 SCC 263.....	8
70. <i>Sidhartha Vashisht v. State (NCT of Delhi)</i> (2010)6 SCC 1.....	6
71. <i>Silverthorne Lumber Co. v. United States</i> 251 U.S. 385.....	7
72. <i>Sitaram</i> AIR 1944 P 222.....	5
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81. <i>State of Orissa v. Dhaniram Luhar</i> 2004CriLJ1385.....	10
82. <i>State of U.P. v. Rajnath</i> , 1983 Mad LJ 347 Cri.....	8
83. <i>State of U.P. v. Sunil</i> 2017 SCC OnLine 520.....	8
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87. <i>Swarnalingam Chettiar v. Asst. Inspector of Labour</i> AIR 1955 Mad 685.....	6
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89. <i>United State v. Grady</i> 185 F.2d 273.....	7
90. <i>US v. Dionisio</i> [1973] US SC 23.....	5
91. <i>Vinay Tyagi v. Irshad Ali alias Deepak and ors.</i> (2013) 5 SCC 762.....	10
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MEMORIAL FOR THE APPELLANT

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MEMORIAL FOR THE APPELLANT

STATEMENT OF FACTS

1. Two friends, Diana and Elizabeth joined the offices of Brown, Fitch & Gump, a publishing house in the city-state of Erewhon. Being the daughter of Jack Brown, a founding partner in the BFG firm, Elizabeth was made part of strategy team in BFG to chart plans for expansion of its digital footprint while Diana was a copy editor in “The Voice”, BFG’s fortnightly magazine but she had been secretly developing content for a rival publishing house.
2. They were developing a “BFG Reader” App to make its online presence and pool in new subscriptions and, Elizabeth was expected to provide innovative ideas for exclusive content to achieve the same. When she couldn’t come up with a viable idea, she asked for Diana’s help. Diana and Elizabeth decided to meet at dinner on 19 May 2019 at Diana’s house. Going around her place, Elizabeth saw a stack of papers marked vignettes with a post-it. After tea, Elizabeth went back to the room on the pretext of going to the bathroom and Diana saw her peering over the papers with a phone but Elizabeth made some excuse and went down to the bathroom which was three doors down.
3. On June 1, 2019, when a beta version of the BFG Reader App was released, Diana was shocked to see writings that resembled her series of vignettes published under Elizabeth’s name. She met her friend Max, an inspector in Erewhon police on the very day and filed a complaint of theft against Elizabeth and BFG.
4. The investigation team raided Elizabeth’s house on June 2 and searched the house without any warrant citing a possibility of evidence being destroyed by her. Elizabeth handed over her mobile phone and laptop computer but the police could not find any copies of Diana’s writing. They also searched her office while raiding BFG and seized a desktop computer from there, but couldn’t find any incriminatory document.
5. The police sent all the devices for forensic analysis which sent its report on August 15 stating that devices obtained from Elizabeth’s house were registered in her name while the one seized from BFG office was not, either passwords or biometric information was required to access the devices, and the thumbnail depiction of the last picture taken in her phone’s camera appeared to be a printout with a post-it marking on top.

MEMORIAL FOR THE APPELLANT

6. On August 30, 2019, when called for questioning, Elizabeth affirmed her visit to Diana's house on May 19 and agreed seeing printouts there but refused that she made copies of any such printout. When she was recalled on August 31, the police on the advice of the prosecutor's office coerced Elizabeth into giving her fingerprints for comparison. The police used the fingerprints to map them into dummy fingers to unlock the digital devices.
7. Some of the photographs found on her phone matched the documents obtained from Diana's house whereas the chat history on Elizabeth's phone revealed that Diana had willingly told Elizabeth about her stories and thanked her for reading them as well. After obtaining duly certified copies of the photographs on September 5, 2019, the prosecutors filed a case against Elizabeth on September 7, 2019, in the District Court of Erewhon.
8. Elizabeth was called for a pre-trial hearing on September 9, 2019. The pre-trial judge agreed with her counsel's argument that the search conducted in Elizabeth's house was illegal and the evidence collected from her phone was unlawful, therefore, inadmissible. The respondent's counsel raised the claim of suppression of evidence against the prosecution but the court did not entertain it. The pre-trial court gave the order declaring the evidence collected unlawfully to be excluded, the seizure was not bad for the want of warrant, and the text messages cannot be referred during trial for they were not relied upon by the prosecution.
9. The case was then posed before a different judge for trial on October 15 where the court found that prosecution had proved all the facts in issue. It ruled that remembering the contents of a document or taking its photograph did not constitute "moving", for S. 378. Thereby the court held Elizabeth guilty under Section 511 EPC in an attempt to commit the offense punishable under Section 380 EPC and was sentenced to 2 years in prison along with a fine of 2000 Erewhon Dollars for compensation. She was released on bail the same day.
10. The prosecution has appealed in the High Court of Erewhon against the acquittal of accused of the commission of theft whereas the accused has cross-appealed against her conviction for the offense of attempt to theft pleading not guilty of any such crime.

MEMORIAL FOR THE APPELLANT

ISSUES RAISED

ISSUE I: WHETHER ELIZABETH IS GUILTY OF COMMITTING THEFT?

ISSUE II: WHETHER THE CRIMINAL PROCEEDING AGAINST ELIZABETH IS VITIATED?

ISSUE III: WHETHER THE EXCLUSION OF ELIZABETH'S FINGERPRINTS AND HER SEIZED MOBILE PHONE FROM THE EVIDENCE IS LAWFUL?

ISSUE IV: WHETHER THERE HAS BEEN A SUPPRESSION OF EVIDENCE BY THE PROSECUTION?

SUMMARY OF ARGUMENTS

ISSUE I: WHETHER ELIZABETH IS GUILTY OF COMMITTING THEFT?

It is humbly submitted before this Hon'ble Court that trial court has erred in convicting Elizabeth for an attempt to theft when the crime of theft was completely committed as soon as the vignettes were published on the BFG Reader App. Elizabeth had the dishonest intention of wrongfully gaining the work of Diana. She accessed her "personal documents" without her consent. Information is a corporeal property and such information stolen by digital means amounts to moving that property for section 378. of Erehwon Penal Code The vignettes were appropriated by Elizabeth and were found in her recent possession. Not only did she steal her data but also infringed her guaranteed right under Article 21 of the Constitution of Erehwon. Therefore, Elizabeth is guilty of committing theft.

ISSUE II: WHETHER THE CRIMINAL PROCEEDING AGAINST ELIZABETH IS VITIATED?

It is humbly submitted before this Hon'ble Court that the seizure conducted at Elizabeth's house was not bad for the want of warrant. The devices were seized to obtain proper evidence

MEMORIAL FOR THE APPELLANT

for the case. The investigation team had to take quick action, for there was a fear of destruction of evidence by the accused. The investigation was free, fair and judicious. The accused cooperated with the search and all other procedures of investigation. Hence, no prejudice was done to the accused.

ISSUE III: WHETHER THE EXCLUSION OF ELIZABETH'S FINGERPRINTS AND HER SEIZED MOBILE PHONE FROM THE EVIDENCE IS LAWFUL?

It is humbly submitted before this Hon'ble Court that the doctrine of *the fruit of the poisonous tree* is not applicable as no technical violation in the functioning of the investigation done in the interest of justice can amount to exclusion of evidence. There has been no violation of Article 20(3) of the Constitution of Erewhon as the investigating authority was only performing its lawful duty and it did not exceed its statutory authority. The state reserves the right to extract any information when it is necessary to establish evidence in the court of law. The certified copies of the printouts obtained from Elizabeth's phone are admissible evidence and hence, must not be excluded.

ISSUE IV: WHETHER THERE HAS BEEN A SUPPRESSION OF EVIDENCE BY THE PROSECUTION?

It is humbly submitted before this Hon'ble Court that the appellant did not rely upon the text messages exchanged between Elizabeth and Diana and is not obliged to produce it on record. Since, it is the respondent who is claiming the importance of those messages, burden is cast upon them to produce the same in the court or else its claim would fail. It was neither a reliable evidence nor a relevant fact. Moreover, the court could not decide upon its relevance as the same was never brought before it. Hence, the appellant didn't withhold any material evidence.

MEMORIAL FOR THE APPELLANT

WRITTEN SUBMISSION

ISSUE I: ELIZABETH IS GUILTY OF COMMITTING THEFT.

It is humbly submitted that the accused must be convicted for the commission of the theft of vignettes from the complainant's house because of the following averments:

[A] Theft has been committed under Section 380 of the Erewhon Penal Code.

[B] Diana's vignettes are in the possession of Elizabeth.

[C] Elizabeth has stolen Diana's 'personal data'.

[A] Theft has been committed under Section 380 of the Erewhon Penal Code

(i) Dishonest intention on the part of Elizabeth.

1. Dishonest intention is one of the most essential ingredients to bring home the guilt of theft,¹ which is made out when the transfer of possession by theft is done with the intention of either causing wrongful gain to one person or wrongful loss to another person.² Wrongful loss is the loss caused to a person who loses some property to which the person is legally entitled.³ Elizabeth had the requisite *animus furandi*.⁴ She went to the same room where she had seen the vignettes before tea, on the *pretext* of going to the bathroom and she got 'startled' when Diana caught her peering over the papers with her phone.⁵ Therefore, she had a dishonest intention.

(ii) Information is a subject matter of theft.

2. The alleged stolen property, vignettes, is a literary work involving creativity⁶ and thus a form of intellectual property.⁷ The word 'intellectual', indicates a thing created by

¹ *K.N. Mehra v. State of Rajasthan* AIR 1957 SC 369.

² *Ramratan* AIR 1965 SC 926; *Lal Mohammad* AIR 1931 Pat 337; *Burasing* AIR 1935 Sind 115.

³ *Pyare Lal Bhargava v. State of Rajasthan* AIR 1963 SC 1094.

⁴ *Bailey* (1872) LR 1 CCR 347.

⁵ Moot Problem, p.no.2, para.7.

⁶ Berne Convention for the Protection of Literary and Artistic Works, art. 2(1).

⁷ What is Intellectual Property, available at: <https://www.wipo.int/about-ip/en/> (last visited on October 22, 2019).

MEMORIAL FOR THE APPELLANT

human mental activity.⁸ Words photographed are documents⁹ and, the information contained in a document is a corporeal property and hence, a subject matter of theft.¹⁰ A document is a valuable security.¹¹ Thus, Elizabeth replicated the information in a digital medium that fulfills the requirement of “moving” of property.¹²

3. Everyone has the right to protect one’s moral and material interests resulting from any literary work authored by him.¹³ Diana as a creator of those vignettes has a right to exclusive possession of her property,¹⁴ which is lost as soon as it is digitally duplicated by Elizabeth.¹⁵ Common law copyright has recognized the value of encouraging creativity by granting the creators to keep the benefit, particularly the economic benefit, of their work.¹⁶ Diana’s proprietary right was infringed because she lost her exclusive right to commercially gain from it.¹⁷ The commercial utilization of Diana’s work has led to an unreasonable prejudice and has harmed her legitimate interests in her intellectual property.¹⁸ Elizabeth took unfair advantage of Diana’s work and therefore the defense of fair dealing is not available to her.¹⁹ Moreover, the law of copyright is an extension of the right to freedom of speech and expression²⁰ guaranteed by the Constitution of Erewhon.²¹ Thus Diana has a legitimate right to protect her property.

(iii) Information was taken without Diana’s consent.

4. Elizabeth moved Diana’s proprietary property, without her consent which fulfills an essential requirement of theft.²² Appropriating the property without the knowledge and connivance of the person amounts to theft.²³ And when the stolen property was found in her phone, she had no explanation to such possession. Diana has confirmed

⁸ Byun Jung Wook , Developing curriculum for professionals of intellectual property, available at: <https://ieeexplore.ieee.org/abstract/document/4599820> (last visited on November 30, 2019).

⁹ Erewhon Evidence Code, 1973, s. 3.

¹⁰ *Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*, (2019) 3 MLJ (CrI).

¹¹ Erewhon Penal Code, 1860, s. 380.

¹² Erewhon Penal Code, 1860, s. 378.

¹³ The Universal Declaration of Human Rights, 1948, s. 27(2).

¹⁴ The Berne Convention for the Protection of Literary and Artistic Works, 1886, art. 2^{bis}(3).

¹⁵ *A&M Records, Inc. v. Napster, Inc.* 239 E3d 1004, 1027 9th Cir. 2001.

¹⁶ World Intellectual Property Organisation, *Principles of Copyright, Notions and Fundamentals* p.no. 49.

¹⁷ “Understanding Copyrights and Related rights”, World Intellectual Property Organisation, p.no. 9.

¹⁸ The Trade Related Aspects of Intellectual Property Rights Agreement, 1995, art. 13.

¹⁹ *Kartar Singh Giani v. Ladha Singh* AIR 1934 Lah 777.

²⁰ Sridhar Madabhushi, ‘Whose Intellect? Whose Property? An Analysis of Copyright and Doctrine of Fair Use with Reference to Print Media’, IV *The Icfai Journal of Intellectual Property Rights*, Issue 2.

²¹ The Constitution of Erewhon, art 19 (1) (a).

²² *Supra* note 12 at 2.

²³ *Malhu Yadav v. State of Bihar* AIR 2002 SC 2137.

MEMORIAL FOR THE APPELLANT

that those pictures were taken by Elizabeth without her consent.²⁴ So, the circumstances prove it to be an offense of theft.²⁵ Elizabeth committed theft as she had no bona fide claim of right²⁶ on those vignettes and still took it to her use without Diana's consent.

5. Furthermore, neither did Diana know about the strategy team's work²⁷ nor did Elizabeth tell her why she needed her help,²⁸ thus there could be no implied consent²⁹ by Diana.

[B] Diana's vignettes are in the possession of Elizabeth.

(i) Taking does not mean asportation but appropriation.

6. The crime of theft implies an invasion of possession.³⁰ Personal property to be the object of theft must be capable of appropriation.³¹ Jurisprudence is settled that to 'take' under the provision of theft does not require asportation or carrying away.³² 'To appropriate' means to deprive the lawful owner of the thing by acquisition.³³ According to Locke's Labour Theory, every person has a property in his person, own labour, and works created through own labour.³⁴ Diana is entitled to get the fruits of her labour.³⁵

(ii) Property stolen is found in recent possession of Elizabeth.

7. Theft in a dwelling house is an aggravated form of theft to give greater security to property deposited in a house.³⁶ When the possession of stolen ornaments was found with the accused soon after the theft it was presumed to be a prima facie evidence of it either being stolen or being received by the accused knowing it to be stolen.³⁷ Since property stolen is found in recent possession of Elizabeth, the court may presume it to

²⁴ Moot Problem, p.no.4, para. 15.

²⁵ *Kobidena v. Nagadurga Pd* 2010 CriLJ 692 (AP) (DP).

²⁶ *Chandra Roy v. Rakhil Chandra Roy* (1899) 4 CWN.

²⁷ Moot Problem, p.no. 2, para. 5.

²⁸ Moot Problem, p.no. 2, para 6.

²⁹ *Edwards v. Ddin* (1976) 3 All E.R. 705 (Q.B.D.).

³⁰ *State of Maharashtra v. Vishwanath Tukaram Umale* (1979) 4 SCC 23.

³¹ *Herman Medina v. People of the Phillipines* G.R. No. 182648.

³² *Ibid.*

³³ Henry Campbell Black, *Black's Law Dictionary*, edn. 6th, St. Paul, Minn. West Publishing Co.,1990.

³⁴ Locke *Second Treatise of Government* chapter V. para 27.

³⁵ Hugh Breaky, *Natural Intellectual Property Rights and the Public Domain*, available at: https://www.jstor.org/stable/40660697?seq=8#metadata_info_tab_contents (last visited on November 1, 2019).

³⁶ K I Vibhute, *PSA Pillai's Criminal Law* 888, (Lexis Nexis, Haryana, 14th edn., 2019).

³⁷ *Limbaji v. State of Maharashtra* (2001) 10 SCC 340.

MEMORIAL FOR THE APPELLANT

have been stolen by her.³⁸ Elizabeth must give a reasonable explanation of the possession of vignettes.³⁹ Elizabeth has not given any account as to how she came across the property.⁴⁰ The time factor between theft and recovery of material depends upon the nature of stolen articles and facts of each case.⁴¹ The fact of the discovery of vignettes upon publication on the BFG Reader app under Elizabeth's name in a matter of just 12 days is conclusive proof of her guilt.⁴² Since no reasonable explanation is given by Elizabeth regarding the recent possession of the vignettes, the court may presume that she has stolen them.⁴³ It is also a relevant fact Elizabeth had visited Diana's house on May 19 where she was found peering at the vignettes.⁴⁴

[C] Elizabeth has stolen Diana's 'personal data'.

8. Personal data is the information that relates to an identified or an identifiable individual,⁴⁵ which also includes that person's views on something.⁴⁶ Information regarding one's sexual preferences or practices is sensitive information,⁴⁷ which can only be collected by consent.⁴⁸ Collecting such information without prior permission of the holder would be a violation of privacy.⁴⁹ Furthermore, Article 8 of the European Union Directive states that personal data revealing data concerning health or sex life of a person is a special category of data.⁵⁰ Diana was a member of the LGBTQ community and the vignettes about her life were published under Elizabeth's name, without her consent.⁵¹

³⁸ Erewhon Evidence Code, 1973 s.114 (a).

³⁹ Lord Simonds, 10th *Halsbury's Laws of England* 813, (Butterworths, London, III Edn.).

⁴⁰ *Kachirji Hariji v. State of Gujarat* AIR 1969 Guj 100.

⁴¹ *Alisher v. State of U.P.* (1974) 4 254.

⁴² *Ayodhya Singh v. State of Rajasthan* (1972) 3 SCC 885.

⁴³ *Limbaji v. State of Maharashtra* AIR 2002 SC 491.

⁴⁴ Erewhon Evidence Code, s. 6.

⁴⁵ "What Is Personal Data?" (Ico.org.uk, April 24, 2019) <<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/>> accessed November 17, 2019.

⁴⁶ *H v. W* 2013 (2) SA 530 (GSJ).

⁴⁷ Personal Information Protection and Electronic Documents Act 2000 SC 2000, c 5 (Canada) sch 1, cl 4.3. , available at: <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/6-the-privacy-act-some-important-definitions/sensitive-information/> (last visited on November 20, 2019).

⁴⁸ "Report of the Group of Experts on Privacy", Government of India, Planning Commission p.no. 14.

⁴⁹ APEC Privacy Framework, Para. 18.

⁵⁰ European Parliament, "Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data", Directive 95/46/EC (1995), art. 8.

⁵¹ Moot Problem, p.no. 2, para. 5.

MEMORIAL FOR THE APPELLANT

(i) Diana's privacy is infringed

9. The right to privacy is an inalienable human right which inheres in every person because he or she is a human being.⁵² It is also recognized as an independent personality right.⁵³ Privacy is an individual condition of life characterized by seclusion from the public and publicity.⁵⁴ Elizabeth unlawfully intruded into the personal privacy of Diana.⁵⁵ The complainant was developing content to publish the series of vignettes pseudonymously⁵⁶ and thus did not want to reveal her identity as a member of the LGBTQ community. The reading of private documents is a wrongful intrusion.⁵⁷

ISSUE II: THE CRIMINAL PROCEEDING AGAINST ELIZABETH IS VITIATED.

It is humbly submitted that the investigation in the case was lawfully conducted by the police authorities without causing any prejudice to the accused.

[A] The search and seizure were legal

[B] The investigation was free, fair and judicious.

[A] The search and seizure were legal.

10. If there are reasonable grounds for believing that a thing is necessary for further investigation, then the officer in charge can search a place without having a warrant by citing the importance of that thing.⁵⁸ This makes the search legal,⁵⁹ but the reason must be recorded prior to such a search.⁶⁰ The investigating team cited the possibility of destruction of evidence by Elizabeth,⁶¹ which is a reasonable ground.

11. The power to search is incidental to the investigation, which gives authority to the officer to investigate.⁶² The search without a warrant is not in contravention with

⁵² *Justice K.S. Puttaswamy Retd. v. Union of India* (2017) 10 SCC 1.

⁵³ *Burnstain v. Bester* 1996 (2) SA 751 (CC).

⁵⁴ *US v. Dionisio* [1973] US SC 23.

⁵⁵ *Financial Mail (pty) Ltd. v. Saje Holdings (pty) Ltd.* 1993 2 SA 451.

⁵⁶ Moot Problem p.no. 2, para. 5.

⁵⁷ *Reid-Dali v. Hickman* 1981 2 SA 315 (ZA) 323.

⁵⁸ Erehwon Procedural Code, 1973, s.165.

⁵⁹ *Sitaram* AIR 1944 P 222; *Ram Parbes* AIR 1944 P 228; *Hiralal* AIR 1935 N 237; *Emperor v. Mohammad Shah* AIR 1946 Lah 456; *Sanchaita Investment v. State* AIR 1981 Cal157.

⁶⁰ *Asandas* AIR 1933 SC 240.

⁶¹ Moot Problem p.no.3, para 10.

⁶² *State v. Santprakash* 1976 CrLJ 274 FB.

MEMORIAL FOR THE APPELLANT

Article 20(3) of the Constitution of Erewhon.⁶³ The investigating authority can search for Elizabeth's digital devices.⁶⁴ A reasonable belief was based on the information given by Diana about the incident of May 19, 2019.⁶⁵

[B] The investigation was free, fair and judicious.

12. "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person other than a Magistrate who is authorized by a Magistrate in this behalf.⁶⁶ The power is vested in the investigating team to investigate the case where they suspect the commission of an offense⁶⁷ and to bring out the real unvarnished truth.⁶⁸ And in normal circumstances, the court should not interfere in the investigation done by the investigating team.⁶⁹ Proper investigation is to bring out the truth to light so justice is not only done at the stage of the investigation but also at the stage of trial.⁷⁰ The power to investigate is solely vested with the investigating officer that how the investigation is to be done.⁷¹

13. In the instant case, the correct process of investigation for a cognizable offense is followed by the investigating team.⁷² An irregularity, if any, cannot affect the credibility of any evidence⁷³ and the court must examine it carefully.⁷⁴ The investigation done by the investigating officer should win the heart of the complainant⁷⁵ that is Diana. It is Diana's fundamental right to have a fair investigation and which was guaranteed and done by the investigating team.⁷⁶ Also, Elizabeth was served a notice to appear for questioning,⁷⁷ according to the provisions of law⁷⁸ which shows that the investigation was free, fair and judicious.

⁶³ *Swarnalingam Chettiar v. Asst. Inspector of Labour* AIR 1955 Mad 685.

⁶⁴ *Paresh* AIR 1927 C 93.

⁶⁵ *Khaliqan v. Emperor* AIR 1945 Oudh 170.

⁶⁶ Erewhon Procedural Code 1973, s.2(h).

⁶⁷ *King Emperor v. Khwaja Nazir Ahmad* (1944) 71 IA 203).

⁶⁸ *State of Gujarat v. Kishanbhai* (2014) 5 SCC 108.

⁶⁹ *S.M. Datta v. State of Gujarat* (2001) 7 SCC 659.

⁷⁰ *Mithilesh Kumar Singh v. State Of Rajasthan* (2015) 9 SCC 795.

⁷¹ *Sidhartha Vashisht v. State (NCT of Delhi)* (2010)6 SCC 1.

⁷² *H.N. Rishbud v. State of Delhi* 1955 SCR (1)1150.

⁷³ *Sundar Singh v. State of U.P.* AIR 1956 SC 411 (415).

⁷⁴ *State of Karnataka v. K. Yarappa Reddy* 1999 (3) SCR 359.

⁷⁵ *Mohamed Maraikkayar v. The Director General of Police and ors.* 2014 SCC Mad 9759.

⁷⁶ *Major Gurjinder Singh Benipal v. State Of Punjab* (2011) 3 SCC 530.

⁷⁷ *Queries and Clarifications*, A. 39.

⁷⁸ Erewhon Procedure Code, 1973, s.41A.

MEMORIAL FOR THE APPELLANT

ISSUE III: THE EXCLUSION OF ELIZABETH'S FINGERPRINTS AND HER MOBILE PHONE FROM THE EVIDENCE IS UNLAWFUL.

It is humbly submitted that the exclusion of Elizabeth's fingerprints and the mobile phone is unlawful because of the following averments:

[A] The Doctrine of the *fruit of the poisonous tree* is not applicable.

[B] The evidence was obtained following the due procedure.

[C] The evidence submitted in the court is admissible.

[D] The Trial Court consequently erred in giving a reasoned judgment.

[A] The Doctrine of the *fruit of the poisonous tree* is not applicable.

14. The doctrine of the *fruit of the poisonous tree*⁷⁹ is very similar to the exclusionary rule followed in the United States.⁸⁰ This doctrine was first held applicable to Fourth Amendment violations of the Constitution of America⁸¹. Evidence inadmissible under an evidentiary exclusionary rule is the one which is derived from or gathered during an illegal action.⁸² Since the investigating team has not taken recourse to any illegality, the rule doesn't apply.

15. A technical violation of the statutory provisions regulating police activity does not amount to exclusion of evidence.⁸³ The only test to be applied in determining the admissibility of the evidence is its relevance, and not how the evidence was obtained.⁸⁴ Hence, it is irrelevant how the photos have been collected by the investigating team.⁸⁵ A document procured by improper or illegal means could not bar its admissibility if its genuineness and relevance are proved.⁸⁶ Common-law courts have constantly rejected the exclusion of evidence,⁸⁷ based on this doctrine.⁸⁸ Failure on the part of investigating officers to comply strictly with the provisions would not

⁷⁹ *Silverthorne Lumber Co. v. United States* 251 U.S. 385.

⁸⁰ *Nardone v. United States*, 308 U.S. 338 (1939).

⁸¹ *Wong Sun v. United States* 371 U.S. 471.

⁸² Bryan A. Garner, *Black's Law Dictionary* 647, (West Publishing Co., U.S.A, 9th edn.).

⁸³ *United State v. Grady* 185 F.2d 273

⁸⁴ *Kuruma v. The Queen* [1954] UKPC 43.

⁸⁵ Moot problem p.no.4, para15.

⁸⁶ *Magraj Patodia v. R K Birla* 1971 AIR 1295.

⁸⁷ *A.K. Gopalan v. State of Madras* [1950] S.C.R. 88.

⁸⁸ *M.P. Sharma v. Satish Chandra* [1954] S.C.R. 1077.

MEMORIAL FOR THE APPELLANT

vitiating the trial and conviction of the accused.⁸⁹ Any act of commission or omission of the investigating officer cannot go to the advantage of the accused.⁹⁰

16. The procedure followed by the investigating team was the procedure established by law.⁹¹ There must be a crucial relationship between the illegal search and the evidence obtained⁹² and in this case, the search is legal. Hence, the *fruit of the poisonous tree* doctrine is not applicable.

[B] The evidence was obtained following the due procedure.

(i) There has been no violation of Article 20(3).

17. The collection of fingerprints is an essential part of any investigation⁹³ and the police do not need to apply before the magistrate for the same.⁹⁴ Hence, the court or any investigating authority can direct a person to submit their biometric for corroboration of evidence and it does not violate their right under Article 20(3).⁹⁵ Moreover, the use of that evidence for corroboration of a fact that is within the knowledge of the investigator is not prohibited by Article 20(3).⁹⁶ Therefore, the police rightly directed Elizabeth to submit her fingerprints.⁹⁷

(ii) The State can produce the photographs in court.

18. The Police officer had legitimate reasons to inspect Elizabeth's phone⁹⁸ and it wasn't a breach of data, rather it was a necessity.⁹⁹ Also, the relation between the information and offense can be established by any kind of evidence.¹⁰⁰ So, when Elizabeth was asked for her fingerprints during the interrogation,¹⁰¹ it was to prove that she had clicked the photographs of Diana's work by her phone without her consent and published the same in the beta version of the BFG Reader App. Therefore, the evidence was obtained from Elizabeth according to the procedure established by law.

⁸⁹ *State of Kerala v. Alasserry Mohammed* A.I.R. 1978 S.C. 933.

⁹⁰ *Jai Prakash v. State of Uttar Pradesh* 2019 SCC OnLine SC 1525.

⁹¹ The Constitution of Erehwon, art. 21.

⁹² *Rogers v. Superior Court* 46 Cal.2d 3.

⁹³ *State of Bombay v. Kathi Kalu Oghad* AIR 1961 SC 1808.

⁹⁴ *Bharama Parasram Kudhachkar v. State of Karnataka* (2014) 14 SCC 431.

⁹⁵ *State of U.P. v. Sunil* 2017 SCC OnLine 520.

⁹⁶ *Selvi v. State of Karnatak* (2010) 7 SCC 263.

⁹⁷ Moot Problem p.no.4, para14.

⁹⁸ *South Lenarkshire Council v. Scottish Information Commissioner* [2013] UKSC 55.

⁹⁹ *Michael Cooper v. National Crime Agency* [2019] EWCA Civ 16.

¹⁰⁰ *Kuruma S/o Kaniu v. The Queen* [1955] 1 AELR 236.

¹⁰¹ Moot Problem, p.no.4, para. 14.

MEMORIAL FOR THE APPELLANT

[C] The evidence submitted in the court is admissible.

19. When an original document is such whose certified copy is permitted by the Erewhon Evidence Code, it can be produced before the court as evidence.¹⁰² Since mere production of it does not establish the authenticity of those copies, they must be verified by comparison with the original documents¹⁰³ as per Section 67 of the Erewhon Evidence Code, 1973 which in the present case matched with the printouts obtained from Diana.¹⁰⁴ And after such assurance, and that the certified copy is executed as per the provisions of law,¹⁰⁵ the court shall presume the certified copy to be admissible by law.¹⁰⁶ Media generated through mobile phones can be submitted like other secondary evidence¹⁰⁷ in the form of printouts which must be duly certified.¹⁰⁸ The police have to give a copy of the document in their possession to the person who has a right to inspect them¹⁰⁹ but such a copy can be given only of a public document.¹¹⁰ Private documents when filed, are kept as evidence of something written or done and thus, become a public record¹¹¹ and certified copies of such documents are very well admissible in the court of law.¹¹² Furthermore, Section 77 of the Erewhon Evidence Code provides for the production of certified copies as proof of the contents of the public document.¹¹³ Hence, the production of certified copies of the photographs obtained from Elizabeth's phone fulfill the criteria laid down in the Act¹¹⁴ and is therefore admissible in the court of law.

[D] The Trial Court consequently erred in giving a reasoned judgment.

20. When the trial court had not taken evidence into consideration and had given ambiguous reason to back its judgment then it is an unreasoned judgment.¹¹⁵ The concept of reasoned judgment is a part of basic rule of law and it is a requirement of

¹⁰² Erewhon Evidence Code, 1973, s.65(f).

¹⁰³ *Jamuna Prasad v. Shivnandan* Special Appeal No. 469 of 1994.

¹⁰⁴ Moot Problem p.no. 4, para 15.

¹⁰⁵ *Bhinka v. Charan Singh* 1959 AIR 960.

¹⁰⁶ Erewhon Evidence Code, 1973, s.79.

¹⁰⁷ *Kamal Patel v. Ram Kishore Dogne* 2016 SCC OnLine MP 938.

¹⁰⁸ *State (NCT of Delhi) v. Navjot Sandhu* 2005 11 SCC 600.

¹⁰⁹ Erewhon Evidence Code, 1973, s.76.

¹¹⁰ Erewhon Evidence Code, 1973, s.74.

¹¹¹ Erewhon Evidence Code, 1973, s.74 (2).

¹¹² *Narattam Das v. Md. Masadharali* (1991) 1 Gau LR 197

¹¹³ *Parkash Rai v. J.N. Dhar* AIR 1977 Delhi 73.

¹¹⁴ Erewhon Evidence Code, 1973, s. 65.

¹¹⁵ *K. Balakrishnan v. S. Dhanasekar* 2018 (2) CTC 859

MEMORIAL FOR THE APPELLANT

procedural law.¹¹⁶ The reason should not be ambiguous and it should link the material on record and the conclusion on which the court had arrived.¹¹⁷ There must be an application of laws in the facts that have been produced before a court¹¹⁸ which has been lacking in this case.¹¹⁹

21. God himself did not pass the sentence against Adam without giving a valid reason.¹²⁰ It is a principle of natural justice that the court should give a reasoned judgment.¹²¹ Non-compliance with this cardinal principle¹²² leads to the denial of justice.¹²³ Giving an ambiguous reason is a violation of fair play and natural justice.¹²⁴ And in a case where there is a serious violation of natural justice, the court can declare the action as invalid.¹²⁵ Hence, the unreasoned judgment given by the trial court must be overruled.

ISSUE IV: THERE HAS BEEN NO SUPPRESSION OF EVIDENCE BY THE PROSECUTION.

It is humbly submitted that the prosecution has not suppressed any material evidence because of the following averments:

- [A] The Appellant did not rely upon the text messages.
- [B] Burden to prove the fact asserted is on the respondent.
- [C] The appellant did not withhold any material evidence.

[A] The Appellant did not rely upon the text messages.

22. The prosecution is directed to produce only such evidence on which the prosecution's case relies upon,¹²⁶ and according to Section 207 of Erewon Procedure Code, 1973, it is obliged to furnish to the accused copies of the same.¹²⁷ It is required of the investigating officer to submit all those documents before the judge on which the prosecution proposes to rely its case,¹²⁸ and then the magistrate can consider only

¹¹⁶ *Asst. Commissioner v. M/S.Shukla & Brothers* SLP No. 16466 of 2009.

¹¹⁷ *Commissioner of Income Tax v. Surendra Singh Pahwa* AIR 1995 All. 259.

¹¹⁸ *Swaran Lata Ghosh v. H.K. Banerjee* (1969) 1 SCC 709.

¹¹⁹ Moot problem, p.no. 5, para. 21.

¹²⁰ *Cooper v. Wandsworth Board of Works* [1863] 143 ER 414.

¹²¹ *Ravi Yashwant Bhoir v. Collector* (2012) 4 SCC 407.

¹²² *State of Orissa v. Dhaniram Luhar* 2004 CriLJ 1385

¹²³ *S.N. Mukherjee v. Union of India* (1990) 4 SCC 594.

¹²⁴ *State Board of Secondary and Higher Secondary Education Maharashtra v. K.S. Gandhi* (1991) 2 SCC 716.

¹²⁵ *M/s Sesa Goa Ltd. v. State Of Goa* 2013 SCC OnLine NGT 27.

¹²⁶ Erewon Procedure Code, 1973, s.173(5)(a).

¹²⁷ *Dharambir v. Central Bureau of Investigation* 2008 SCC OnLine Del 336.

¹²⁸ *Vinay Tyagi v. Irshad Ali alias Deepak* (2013) 5 SCC 762.

MEMORIAL FOR THE APPELLANT

such documents apart from the charge sheet of the case at the preliminary stage.¹²⁹ Though the remaining documents can be produced subsequently¹³⁰ on the court's direction for an examination of the evidence on record to give a chance to the accused to explain the circumstances going against him¹³¹; the trial court in the instant case did not direct so.¹³² And even if on the insistence of the accused, the court examines the viability of the evidence, it will do so considering the prosecution's case and its reliance upon such evidence.¹³³

[B] Burden to prove the fact asserted is on the respondent.

23. Whoever claims a legal right before a court depending upon the existence of certain facts that he asserts and prays to the court to give a judgment in his favour, must prove those facts and hence, owns the burden of proof.¹³⁴ *Onus probandi* means the person who suggests a fact to be proved must adduce some evidence to prove it.¹³⁵ The burden of proof lies on the person whose claim would fail if no evidence is given on either side.¹³⁶ After the plaintiff discharges his onus in a proceeding, it is on the respondent on whom the burden is cast upon to deny the charges filed against him.¹³⁷ Until the respondent provides evidence to support his claim, the decision shall be decreed in the favour of plaintiff.¹³⁸ In view of both the above provisions the burden of proof obviously lies on Elizabeth who wants those text messages to be produced in the court.¹³⁹ Also, since the onus of introducing evidence to prove a fact constantly does shift during a proceeding so, when Diana proved her story by submitting the relied upon evidence in court, it raises a presumption in her favour and the burden shifts to the respondent.¹⁴⁰

¹²⁹ *In re Pradip Kumar Patra v. State of West Bengal* 1996 SCC OnLine Cal 201.

¹³⁰ *Narendra Kumar Amin v. Central Bureau of Investigation* (2015) 3 SCC 417.

¹³¹ Erehon Procedure Code, 1973, s.313.

¹³² Moot Problem p.no. 5, para. 20.

¹³³ *Karanit Singh v. State Rep* CRL.OP.No.1387 of 2011.

¹³⁴ Erehon Evidence Code, 1973, s.101.

¹³⁵ Onus Probandi , Merriem Webster, available at <https://www.merriam-webster.com/dictionary/onus%20probandi> (last visited on November 5).

¹³⁶ Erehon Evidence Code, 1973, s.102.

¹³⁷ *Anil Rishi v. Gurbaksh Singh* (2006) 5 SCC 558.

¹³⁸ *Lal Girwar Lal v. Dau Dayal* AIR 1935 All 509.

¹³⁹ *The Special Officer, Vellore v. The Presiding Officer Labour* (2005) 2 MLJ 132.

¹⁴⁰ *O.Babu Reddy v. B.Prabhakara Reddy* S.A.No.1834 of 1998.

MEMORIAL FOR THE APPELLANT

[C] The appellant did not withhold any material evidence.

24. Only when a party proposes to give evidence of a certain fact, can a judge decide upon its relevancy and if the judge finds it relevant, he shall then admit the evidence.¹⁴¹ No other party to the case except the judge can decide the relevance of proposed evidence and on finding it relevant he may allow the party to proceed with it.¹⁴² The appellant never relied upon the said conversation and therefore never proposed the same in court. Thus, the question of relevancy of that conversation could never arise. Also, the condition laid down by law to issue a direction to produce the evidence, regarding the said fact, which is withheld is that it should affect the case to a degree that affects the guilt of the accused¹⁴³ which needs to be proved by the respondent.¹⁴⁴ Hence, there has been no suppression of evidence by the appellant.

¹⁴¹ Erehon Evidence Code, 1973, s.136.

¹⁴² *G.Venkatarayanan v. The Inspector of Police* [2010] 2 S.C.R. 583.

¹⁴³ *Brady v. Maryland* 373 U.S. 83 (1963).

¹⁴⁴ *Supra* note 131 at 11.

MEMORIAL FOR THE APPELLANT

PRAYER FOR RELIEF

WHEREFORE IN THE LIGHT OF ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, IT IS HUMBLY PRAYED THAT THIS HONORABLE COURT MAY BE PLEASED TO DECLARE THAT:

- a. Elizabeth is guilty of theft in a dwelling house under Section 380 of Erewhon Penal Code.
- b. The investigation was free, fair and judicious.
- c. The certified copies of the printouts of the photographs are admissible in the court of law.
- d. The appellant did not suppress any material evidence.

**AND PASS ANY OTHER ORDER, DIRECTION, OR RELIEF THAT IT MAY DEEM
FIT IN THE INTEREST OF JUSTICE, FAIRNESS, EQUITY AND GOOD
CONSCIENCE**

**FOR THIS ACT OF KINDNESS, THE APPELLANT AS IN DUTY BOUND SHALL
FOREVER PRAY.**

Counsels for the Appellant