

## ABDUCTION AND KIDNAPPING

### [Sections 363, 364 to 374, P.P.C. & Sections 552 Cr.P.C.]

S. 12---Penal Code (XLV of 1860), Ss.359 & 362---'Kidnapping', and 'abduction'---Distinction---In kidnapping a minor person or person of unsound mind was removed from the lawful guardianship; and was simply taken away, or enticed to go away with the kidnapper---In abduction, force, compulsion or deceitful means were used---In kidnapping the consent of the kidnapped was immaterial, while in abduction consent would condone the offence---In kidnapping intent of accused was irrelevant, but in abduction, it was the all important question---Kidnapping was not a continuous offence, but in abduction whenever an abductee was removed from one place to another, it was an offence.

(2012 PCrLJ 530 FEDERAL-SHARIAT-COURT)

S. 362---Abduction---Abduction is committed when a person is taken from one place to another either by "force" or by "deceitful means"---Where the accused had neither used force nor ordered its use and undisputedly no deceitful means were used, element of "abduction" was not proved..(2009 PLD 814 SUPREME-COURT) Mian MUHAMMAD NAWAZ SHARIF Vs State

### PASSAGE OF MONEY OF RANSOM

Ss. 365 & 365-A---abduction and abduction for ransom--- Prosecution was not obliged to make middle man as approver or to explain as to from where ransom amount was drawn or to produce the bank manager---Passage of money was not a pre-requisite to prove S.365-A, P.P.C.--. ( 2012 SCMR 721 SUPREME-COURT ) MUHAMMAD RIAZ VS BILQIAZ KHAN

### QUANTUM OF SENTENCE IN OFFENCE 'ABDUCTION FOR RANSOM'

S. 365-A --- If prosecution proves its case, the court is bound to award death penalty and in case of extenuating circumstances, life imprisonment coupled with forfeiture of property but it cannot award a sentence lesser than the sentence provided in law. (2012 SCMR 140 SUPREME-COURT) JAVED IQBAL VS State

Intention u/S. 366, PPC is to be inferred that the girl was abducted for illicit intercourse. Burden lies on the accused to rebut the presumption. **(DB) PLD 1959 Dac 956 Siddiq.**

**Offence of kidnapping complete as soon as girl under 16 years removed** from the lawful guardianship. Consent of such girl to marriage with kidnapper cannot absolve the kidnapper of the offence under section **363, P.P.C. 1977 P Cr.L.J. 941. Manzoor.**

Simple abduction as defined u/S. 362, PPC is not an offence (DB) PLD 1962. Lah. 733  
Muhammad Hussain.

**Consent of minor girl.** Minor girl taken away at her own request and illicit intercourse had with her. Conviction u/S. 366 proper but sentence reduced from 5 years to 3 years. PLD 1962 Kar. 886  
Abdul Hamid.

Girl under 17 years left with the accused of her own accord and had sexual intercourse of her own free will. Sentence 3 years R.I. PLD 1963 Kar. 130 Ansar Hussain.

Prosecutrix below 16 years of age at the time of abduction held, her willingness to accompany the accused is of no consequence. PLJ 1989 Cr. C (Lah.) 575 Ghulam Hussain.

Removal of girl under 16 years and her marriage with the accused, even with her consent does not absolve the accused of offence under section 363, PPC which is completed as soon the girl is removed out of the legal guardianship PLJ 1977 Lah. 250 Manzoor.

Abductee's conduct in going quietly and travelling in a bus shows that she had accompanied the accused and that she had not been abducted. PLJ 1983 FSC 157. Habib Ullah etc.

Suggestion to go away from the girl. If the suggestion to go away with the accused came from the girl only, and he took the mere passive part of yielding to such suggestion, he is entitled to an acquittal.. PLD 1959 Kar. 635 Abdul Rashid.

When abduction is complete. The act of abduction is not a continuous offence. When once the boy or girl is taken out of the keeping of the lawful guardian the act is completed one. The question whether such taking was or was not complete is a question of fact in each case. A minor girl was taken away from the house of her husband to the house of R and kept there for 2 days. Then one M took her from there to his own house and kept her for 20 days. From there M and the accused took her to Calcutta. Held, the accused could not be found guilty under section 363, as the offence had already been completed. (DB) PLD 1960 Dac. 920. Naushar. (SC) PLD 1967 SC 363 Muhammad Razzak.

Abduction or kidnapping is complete when the minor has been transferred from the custody of the guardian to the custody of a person not entitled to it. It is not a continuous offence.. (SC) PLD 1967 SC 363. Mohd Razzak etc.

Kidnapping and abduction. Taking of complainant from phattak to another nearby place does not include act of abduction PLJ 1984 FSC 84. Shafa Ullah.

Abduction for murder. Whether deceased actually done to death and if so by whom not gravamen of offence u/S. 364, PPC. Evidence direct and circumstantial of deceased having been induced to accompany accused on false representation made with a view to put in danger of deceased being murdered is enough. Held, offence u/S. 364, PPC brought home to the accused. 7 years RI upheld. Offence u/S. 302 not proved. (SC) PLD 1976 SC 404. Abdul Sattar. PLJ 1976 SC 258.

Girl's age not with accuracy to be below 16 years, conviction for kidnapping could not be maintained. (DB) PLD 1950 Dacca 23, Santosh Kumar v. Crown.

Abduction of grown-up girl. Allegation of the use of force requires corroboration. PLD 1959 Kar. 635. Abdul Rashid.

Substantial corroboration of abductee's statement not a must for offence u/S. 366, PPC. (DB) PLD 1958 Dac 400 Shah Alam v. Crown.

Father legal guardian of son. Removal of son by father from the hizanat of his mother cannot make father liable under section 363, PPC. Proceedings quashed. 1971 P.Cr.LJ 252 Bashir Ahmad 1971 P.Cr.LJ 982. Asghar Ali.

Abduction by father. Where father abducted his married daughter forcibly in order to sell her, held, contention that father could not abduct his own daughter is without force. 1980 P.Cr.L.J. 890 Hamal etc.

Guardianship from which the girl was taken must be stated in the charge. (DB) PLD 1959 Dac. 750 Ear Ali.

Forcibly taking to husband. Accused forcibly trying to take woman to her husband's house to compel her to live there against her will is not guilty of abduction. PLD 1960 Lah. 53 `Nura. Abduction and rape..

Superdari of abductee. Investigating officer cannot hand over an adult married woman to a person against her wishes. PLD 1962 Q 108 Mohd Sharif v. Lal Mohd.

For offences under section 11 of Hudood Ordinance VII of 1979 See Hudood cases.

When no force is used conviction u/S. 364 PPC is not sustainable. Conviction set aside. NLR 1994 Cr. 399, Mir Azam.

Recovery of female from the custody of her husband u/S. 552 Cr.P.C. On the order of the District Magistrate, held to be an abuse of the process of the Court, unlawful and without authority. Held, the D.M. could not interfere in the matrimonial life of the spouses, PLJ 1996 Cr.C (Lah) 1517, Rasul Bakhsh.

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