



LAW amusements



Interesting laws...

Most lawyers are human and humans make mistakes. Then there are the other type of law error; the kind which results in real loss to a client. Good lawyers can have their confidence fatally wounded by a single typo as can the lives of a client who suffers the consequences of that error. And then there are those who simply should not be practicing law.

In February 2008, federal prosecutors in San Francisco charged baseball home-run king Barry Bonds with having failed steroid testing in November of 2001. This was a sensation as nobody had previously known about any drug test - failed or otherwise - in November 2001, a mere month after Bonds broke Major League Baseball's home run record. But it was a typo - the proper year ought to have been 2000, not 2001. Bonds cried foul but to little avail. The mistake was quickly cleared up and the prosecution not otherwise sidetracked.

During his life and with respect to his estate, one of Andy Warhol's legal advisers was Edward Hayes, a Manhattan lawyer and a former district attorney (and, apparently, the real-life inspiration for the character Tommy Killian in the book *Bonfire of the Vanities*).

One of the assets in the estate was Warhol's Interview Magazine, with a circulation of 160,000 by the time of Warhol's death. The estate sold it based on a down-payment with the balance personally guaranteed by the buyer, in a promissory note, payable not to the estate, but to a company called "Andy Warhol Enterprises Inc."

Hayes dissolved the company a week before the promissory note was signed but neglected to ensure that the personal guarantee was made payable to the estate.

In the result, it was made payable to an in-existent company.

Hayes said it was just a typing error but the court struck the promissory note which then became unenforceable with the balance owing to the estate, some \$7 million, lost.

A few years later, Hayes dodged a bullet when a New York judge inexplicably dismissed the case against him by a former client for malpractice based, in part, on the allegation that Hayes slept through his former client's deposition (called on examination for discovery in Canada).

Rogers Communications Inc. and Alliant (previously New Brunswick Telecom), were Canadian telecommunication giants, the former a purveyor to the consumer, the latter owner of a network of some 100,000 telephone poles. They came to an agreement but with a sleeper typo, and as follows:

"This Agreement shall continue in force for a period of five years from the date it is made, and thereafter for successive five-year terms, unless and until terminated by one year prior notice in writing by either party."

Rogers' lawyers didn't notice the comma anomaly and the company took it to be a locked-up 5-year deal.

Alliant took it for a deal that could be ended on 1-year notice even before the 5th anniversary; and they did so.

In 2006, the Canadian regulator, CRTC, deferred to "rules of punctuation" and ruled in Alliant's favour, and obliging Rogers to yield to Alliant's new rates, a lawyer blooper valued at \$2.3-million.

A year later, the CRTC reversed itself and relied on French version of the contract to determine that it was a 5-year locked-in contract, reversing the onus of the attorney blooper on the shoulders of an anonymous Alliant lawyer.

Source: www.duhaime.org

LAWS FOR everyday life

Bribery: Offeror and recipient both can be charged

BRIBERY refers to the offering, giving, soliciting, or receiving of any item of value as a means of influencing the actions of an individual holding a public or legal duty. This type of action results in matters that should be handled objectively being handled in a manner best suiting the private interests of the decision maker. Bribes can take the form of gifts or payments of money in exchange for favorable treatment, such as awards of government contracts. Bribery constitutes a crime and both the offer or and the recipient can be criminally charged.

The following are some laws which govern bribery offences in Bangladesh.

THE PENAL CODE, 1860 Chapter IXA of offences relating to elections

Bribery Section 171B

(1) Whoever- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery.

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Punishment of bribery

Section 171E Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.-Treating means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

THE REPRESENTATION OF THE PEOPLE ORDER, 1972

Chapter VI - offences, penalty and procedure

Section 73 A person is guilty of corrupt practice punishable

with [rigorous imprisonment for a term which may extend to seven years and shall not be less than two years, and also with fine], if he-

(2) has not any election expenses from any source other than sources specified by the contesting candidate in the statement or the supplementary statement submitted under Article 44AA;

(2A) contravenes the provisions of Article 44B; (2B) is guilty of bribery, personation or undue influence;

(3) makes or publishes a false statement- (a) concerning the personal character of a candidate or any of his relations calculated to adversely affect the election of such candidate or for the purpose of promoting or procuring the election of another candidate unless he proves that he had reasonable grounds for believing and did believe, the statement to be true;

(b) relating to the symbol of a candidate, whether or not such symbol has been allocated to such candidate; or (c) regarding the withdrawal of a candidate;

(4) calls upon or persuades any person to vote, or to refrain from voting for any candidate on the ground that he belongs to a particular religion, community, race, caste, sect or tribe;

(5) knowingly, in order to support or oppose a candidate, lets, lends, employs, hires, borrows or uses any vehicle or vessel for the purpose of conveying to or from the polling station any elector except himself and members of his immediate family; or

(6) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

Section 75

A person is guilty of bribery, if he, directly or indirectly, by himself or by any other person on his behalf-

(1) receives or agrees to receive or contracts for any gratification for voting or refraining from voting, or for being or refraining from being a candidate at, or for withdrawing from an election;

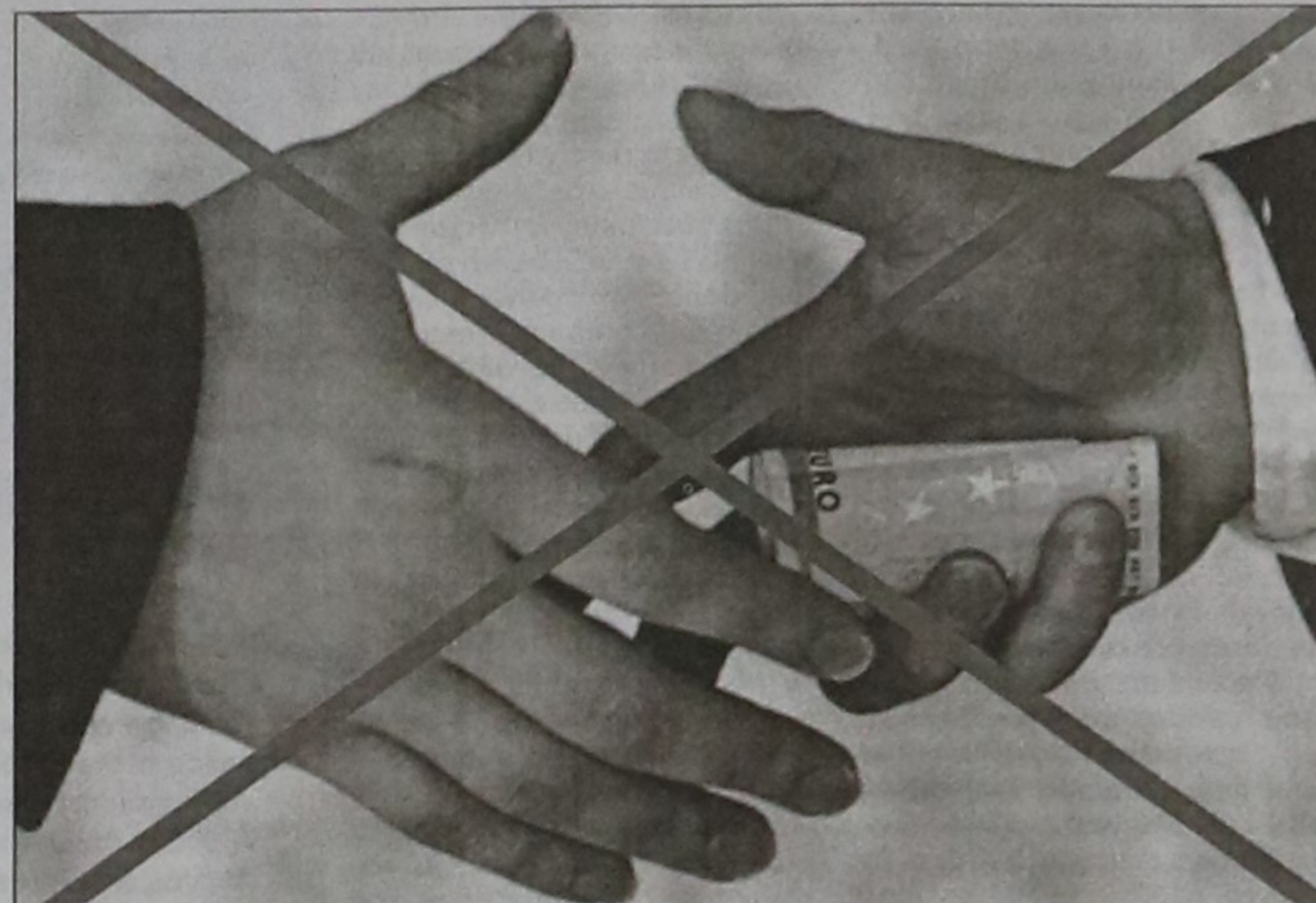
(2) gives, offers or promises any gratification to any person-

(3) (a) for the purpose of inducing- (i) a person to be, or to refrain from being a candidate at an election;

(ii) an elector to vote, or refrain from voting at an election; or (iii) a candidate to withdraw an election; or (b) for the purpose of rewarding-

(i) a person for having been, or for having refrained from being, a candidate at an election;

(ii) an elector for having voted or refrained from voting at an election; or (iii) a candidate for having withdrawn from an election.



Explanation In this article "gratification" includes a gratification in money or estimable in money and all forms of entertainment or employment.

THE CODE OF CRIMINAL PROCEDURE, 1898 Part VI - proceedings in prosecutions Chapter XXII of summary trials

Power to try summarily Section 260

(1) Notwithstanding anything contained in this Code,-

(a) the Metropolitan Magistrate 2

(b) 3 [any 4 Magistrate] of the first class 5, and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class 6, 7 [shall] try in a summary way all or any of the following offences:-

(a) offences not punishable with death, transportation or imprisonment for a term exceeding 8 [two years];

(b) offences relating to weights and measures under sections 264, 265 and 266 of the Penal Code;

(c) Hurt, under section 323 of the same Code;

(d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed 9 [ten thousand taka];

(e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed 10 [ten thousand taka];

(f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed

11 [ten thousand taka]; (g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed 12 [ten thousand taka];

(h) mischief, under 13 [sections 426 and 427] of the same Code;

(i) 14 [criminal trespass, under section 447, and] house trespass, under section 448, and offences under sections 451, 453, 454, 456 and 457 of the same Code;

(j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, 15 [and offences under sections 509 and 510] of the same Code;

(k) abetment of any of the foregoing offences; (l) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(m) offences under section 20 of the Cattle-trespass Act, 1871: Provided that no case in which a Magistrate exercises the special powers conferred by section 17 [33A] shall be tried in a summary way.

(2) [Omitted by section 22 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).]

Compiled by Law Desk.

LAW week

Half of the Ordinances left out

The special committee of the parliament Okayed for ratification only 44 of the 122 ordinances promulgated just before and during the immediate past caretaker government's regime. The committee will keep scrutinising the rest of the ordinances to decide which of those also deserve ratification. The Right to Information (RTI) Ordinance, and the Human Rights Commission Ordinance are among the ordinances chosen for ratification, according to committee sources.

Although the RTI Ordinance was not on the short list of 50, earlier prepared by an expert committee for ratification, Special Committee Chairman Advocate Rahmat Ali yesterday in the meeting personally urged the law ministry to include that on the new short list of 44. -The Daily Star, February 04, 2009.

Call to stop harassment of migrant workers in Malaysia

Speakers at the press conference demanded to an end to harassment and corruption in sending workers to Malaysia. They demanded punishment to the corrupt government officials and recruitment agencies for their treacherous activities to the hapless migrant workers. The speakers placed a 6-point demand at the press conference organised by Bangladesh Development Partnership Centre (BDPC) at Dhaka Reporters' Unity auditorium in the city. They also urged government to take an effective initiative to return the illegal migrants and trafficked people who are confined in different jails and detention camps in Malaysia for carrying forged documents. -The Daily Star, February 04, 2009.

Call to implement women development policy

Bangladesh Mahila Parishad (BMP) leaders urged the government to implement the Women Development Policy of 1997 as soon as possible to ensure gender equality politically, socially and economically for establishing the rule of law in the society. A 10-member delegation led by BMP President Ayesha Khanam and General Secretary Maleka Banu made the appeal after placing a 13-point demand before Law, Justice and Parliamentary Affairs Minister Shafiq Ahmed at his secretariat office yesterday morning. State Minister for Law, Justice and Parliamentary Affairs Quamrul Islam was also present at the meeting. The law minister assured the woman leaders that his ministry will extend all cooperation in this regard, adding that he would discuss the issues with Prime Minister Sheikh Hasina who is in charge of the Woman and Children Affairs Ministry. -The Daily Star, February 04, 2009.

Prime Minister wants Anti Corruption Commission reconstituted

Prime Minister Sheikh Hasina yesterday told the Jatiya Sangsad that the Anti-Corruption Commission (ACC) would be reconstituted, and accountability and transparency of its activities ensured. "Steps will be taken for smooth functioning of the ACC without political interference," Hasina

assured the House during question-answer session. The government will do everything required to free the society of corruption, she said. Replying to lawmakers' queries, the PM also unveiled her government's plans to build digital Bangladesh by 2021 by implementing a large number of measures on information technology (IT), which would also generate employment and help fight corruption. -The Daily Star, February 05, 2009.

Extra-judicial killing to be stopped said Foreign Minister

Foreign Minister Dipu Moni has said that the government would show "zero tolerance" to extra-judicial killing or torture and death in custody. "We do not condone any such incident and will bring the responsible officials to justice," the foreign minister said in response to questions at the Universal Periodic Review of Bangladesh at the Human Rights Council in Geneva yesterday. Dipu Moni said, "Poverty is both a cause and consequence of violation of human rights. Eradication of poverty, therefore, is the top priority of the government". During the question-answer session, the foreign minister enumerated the steps taken by the government to protect and promote human rights in Bangladesh, including the establishment of the National Human Rights Commission last year. -The Daily Star, February 05, 2009.

2-yr CG rule was 'doctrine of necessity'

The two-year rule of the immediate past caretaker government was the "doctrine of necessity" for continuing the administration to run the country, said Law, Justice and Parliamentary Affairs Minister Shafiq Ahmed. He said it did not suspend the constitution and tried to stay near the line of the constitution, but the present government would not give all its actions legitimacy since most ordinances promulgated during the rule of that caretaker government were not constitutional. "Extra-constitutional actions were carried out in the country during 1975-1979 and 1982-1986. Martial law decrees were established in those periods and the constitution remained suspended. We could not settle those disputes," Shafiq said. -The Daily Star, February 06, 2009.

Human rights bodies concerned

Human Rights Forum on Universal Periodic Review (UPR), Bangladesh yesterday expressed frustration as the government did not make any clear pledge to implement the CHT Treaty and ensure rights of women as well as the minorities in the UN Human Rights Council. However, the forum welcomed the government pledge on holding the trial of war criminals and removing the culture of injustice, says a press release. A seven-member team of the forum consisting 17 non-government human rights organisations led by its Convener Sultana Kamal participated in the review of the country's human rights situation. -The Daily Star, February 06, 2009.

US to help strengthen law enforcement agencies

The United States offered to assist Bangladesh government in strengthening the country's law enforcing agencies, including Rab and police, under a joint action plan to control "terrorism and militancy". A four-member delegation of the US Justice Department gave the proposal at a meeting with Law, Justice and Parliamentary Affairs Minister Shafiq Ahmed at his office in the city yesterday, as the two sides discussed a wide range of issues. -The Daily Star, February 09, 2009.

LAW lexicon

Product liability - Legal responsibility of manufacturers and sellers to buyers, users, and bystanders for damages or injuries suffered because of defects in goods.

Promissee - An individual to whom a promise is made.

Promisor - An individual who makes a promise.

Promissory estoppel - A promise which estops the promisee from asserting or taking certain action.

Property tax - A tax levied on land and buildings (real estate) and on personal property.

Proprietor - Owner; person who has legal right or title to anything.

Prosecutor - A trial lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of deciding who and when to prosecute.

Proximate cause - The last negligent act which contributes to an injury. A person generally is liable only if an injury was proximately caused by his or her action or by his or her failure to act when he or she had a duty to act.

Proxy - The instrument authorizing one person to represent, act, and vote for another at a shareholders' meeting of a corporation.

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Source: Jurist International.

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: LawDesk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; e-mail: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net

LAW event

Launching of the journal Law and Development

Journal of Law and Development, a biannual publication of the LawDev (Bangladesh) was officially launched at a ceremony held at Bangladesh National Museum Poet Sufia Kamal Auditorium on February 10, 2009.

The occasion was graced with the presence of Professor Emajuddin Ahamed, former Vice Chancellor of the University of Dhaka; Dr. Borhan Uddin Khan, Dean, Faculty of Law, University of Dhaka; and Dr. Shahdeen Malik, Director, School of Law, BRAC University. Dr. Tureen Afroz, Barrister-at-Law, the Executive Director, LawDev (Bangla-



desh) and the Editor of the Journal made the welcome address and spoke about the importance of publishing a research journal dealing with law and development issues. Dr. Shahdeen Malik elaborately discussed the relation between law and development and its evolution over the years. Dr. Borhan Uddin Khan made an exhaustive critique on the journal. Mr. Mohsin Ali Khan, former ambassador, chaired the ceremony and made his concluding remarks while Mr. Mahmud Karim, Attorney-at-Law, gave vote of thanks to the enlightened audience.

About LawDev (Bangladesh)

LawDev (Bangladesh) a law and development policy research institute started its journey in July 2006 under the leadership of Barrister Tureen Afroz. It got registered as a trust in 2008. LawDev is involved in policy research on various aspects of law. LawDev researchers presented their scholarly research works at various national and international conferences. It also regularly publishes its research works in reputed publications of country and abroad. LawDev is actively involved in consumer movement activities at national level.

-Law Desk.