

LAW *amusements*

Outrageous Lawsuits

Live well: Commit a crime!

Inmates at a county jail sued for cruel and unusual living conditions: bunk beds, cells lacking a sink and toilet, and no way to exercise in the winter.

These criminals were awarded \$2 million dollars, paid by the taxpayers of Massachusetts.

Each inmate who was a party to the suit got \$10 tax-free, for each day he was jailed. Their award included damages plus 12% interest from the time the case was settled until the time they collected their windfall. (Source: ATRA)

Grossed-out

A San Diego man filed a \$5.4 million lawsuit in March against the city of San Diego for the "emotional trauma" he suffered at an Elton John-Billy Joel concert, held at a municipal stadium.

Bob Glaser said he was "extremely upset" at the sight of a woman in front of him using a urinal. In the suit, he claimed his rights to privacy were violated when he tried to use the restroom "in front of women in the men's bathroom". The women used the men's facilities because of long lines outside their restrooms. (Source: ATRA and SAALA)

Clap! Clap!

A New York appeals court rejected a woman's lawsuit against the company that makes the device called "The Clapper", which activates selected appliances on the sound of a clap.

She claimed she hurt her hands because she had to clap too hard in order to turn her appliances on: "I couldn't peel potatoes (when my hands hurt). I never ate so many baked potatoes in my life. I was in pain." However, the judge said she had merely failed to adjust the sensitivity controls. (Source: ATRA and SAALA)

IQ warning?

John Carter, a New Jersey man sued McDonald's for injuries he sustained in an auto accident with one of their customers.

He claimed that the customer who hit him did so after spilling the contents of his chocolate shake (which he purchased from McDonald's) onto his lap while reaching over for his fries.

He alleged that McDonald's sold their customer food knowing he would consume it while driving and without announcing or affixing a warning to the effect "don't eat and drive."

The court concluded that McDonald's had no duty to warn customers of obvious things which they should expect to know, but refused McDonald's request for attorney's fees stating that the plaintiff's attorney was "creative, imaginative and he shouldn't be penalized for that."

This case was in the court system for three years, underwent appellate court review and cost McDonald's over \$10,000. (Source: ATRA and SAALA)

Source: www.duhalme.org

FOR YOUR *information*

Law examination tips for problem questions

JUSTIN A SANTIAGO

These again are not an invitation for candidates to write all they know about a particular subject. So, the first three pages of your answer should NOT consist of a potted summary of the law on, for example, secret trusts. The examiner will simply get out a red pen and score through this part of your answer. What you should instead do is identify the broad area of the question ('This is a question on secret trusts') and then the specific issues it raises ('There is a problem as to the timing of the communication of the terms of the half-secret trust'; 'there is a problem as to the lack of written evidence concerning the alleged declaration of trust respecting Blackacre'; 'there is a problem in that the communication was made to only one of two trustees'; etc, etc). Not only have you now got a structure for your answer, but you also have a checklist to which you can refer to ensure that you've not omitted anything important from your answer. There's nothing worse than coming out of the exam room and saying to yourself, 'Oh, I forgot to mention the communication point'. Detailing the issues at the start helps prevent this. Moreover, it demonstrates to the examiner that you are someone who knows what they are talking about.

Source: justin-santiago.blogspot.com

LAW *lexicon*

Securities and Exchange Commission (SEC) - A federal agency which monitors the securities industry.

Self-defence - The claim that an act otherwise criminal was legally justifiable because it was necessary to protect a person or property from the threat or action of another.

Self-incrimination, privilege against - The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The right is guaranteed in the Fifth Amendment to the United States Constitution. Asserting the right is often referred to as "taking the Fifth."

Self-proving will - A will whose validity does not have to be testified to in court by the witnesses to it, since the witnesses executed an affidavit reflecting proper execution of the will prior to the maker's death.

Sentence - The punishment ordered by a court for a defendant convicted of a crime.

Sequester - To separate. Sometimes juries are separated from outside influences during their deliberations. For example, this may occur during a highly publicized trial.

Sequestration of witnesses - Keeping all witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand, and cautioning them not to discuss their testimony with other witnesses. Also referred to as "separation of witnesses."

Service of process - The delivering of writs, summonses, and subpoenas by delivering them to the party named in the document. Also referred to as "service."

Settlement - An agreement between the parties disposing of a lawsuit.

Settlor - The person who sets up a trust. Also referred to as "grantor."

Source: Jurist International

LAWS FOR *everyday life*

Legislations to minimise water pollution

WHEN toxic substances enter lakes, streams, rivers, oceans, and other water bodies, they get dissolved or lie suspended in water or get deposited on the bed. This results in the pollution of water whereby the quality of the water deteriorates, affecting aquatic ecosystems. Pollutants can also seep down and affect the groundwater deposits.

Water pollution has many sources. The most polluting of them are the city sewage and industrial waste discharged into the rivers. The facilities to treat wastewater are not adequate in Bangladesh. The following are some of the governing legislations which penalise those who pollute our water bodies.

THE PROTECTION AND CONSERVATION OF FISH ACT, 1950

Power to make rules

3. (1) The Government may make rules for the purposes hereinafter in this section mentioned.

(2) The Government may, by notification, apply such rules or any of them to any water or waters.

(3) Such rules may-

(a) prohibit or regulate all or any of the following matters, that is to say,-

(i) the erection and use of fixed engines;

(ii) the construction, temporary or permanent, of weirs, dams, bunds, embankments and other structures;

(iii) the use or method of operation of any kind of fishing net and the size of the mesh of any fishing net;

(iv) the manufacture, import, marketing, carrying, transporting or possessing of such fishing nets, traps, gears and other contrivances as may be specified in the rules;

(b) prohibit the destruction of, or any attempt to destroy, fishes by explosives, gun, bow and arrow in inland water or within coastal territorial waters;

(c) prohibit the destruction of, or any attempt to destroy, fishes by the poisoning of waters or the depletion of fisheries by pollution by trade effluents or otherwise;

(d) prescribe the seasons during which the killing or catching of fishes of any prescribed species shall be prohibited;

(e) prescribe a minimum size below which no fish of any prescribed species shall be killed or sold;

(f) prohibit all fishing in all waters or in any specified waters for a specified period;

(g) prohibit the destruction of or any attempt to destroy fishes by drying or dewatering of any fishery;

Provided that the Government may for the purpose of pisciculture, collection of data and scientific investigation for biological study on fish permit the catching of fishes in any closed season or in any prohibited water or below the prescribed minimum size and disposal thereof subject to the condition of the licence issued for the purpose.

(4) In making any rule under this sec-



tion, the Government may provide for-

(a) the seizure, removal and forfeiture of any fixed engine (finishing net, Current Jal) or any other contrivance erected or used for fishing in contravention of the rules;

(b) the forfeiture of any fishes taken by means of any such fixed engine (finishing net, Current Jal) or any other contrivance; and

(c) the procedure for disposal of forfeited fixed engine, fishing net (Current Jal) or other contrivance or forfeited fish.]

(5) The power to make rules is subject to the condition of previous publication; and the date to be specified under clause

(3) of [section 23 of the General Clauses Act, 1897] shall not be less than two months from the date on which the draft of the proposed rules was published.

(6) All such rules shall be published in the official Gazette and shall, unless some later date is appointed, come into force on the date of such publication.

THE TERRITORIAL WATERS AND MARITIME ZONES ACT, 1974

Control of pollution

8. The Government may, with a view to preventing and controlling marine pollution and preserving the quality and ecological balance in the marine environment in the high seas adjacent to the territorial waters, take such measures as it may deem appropriate for the purpose.

Power to make rules

9. (1) The Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide-

(a) for the regulation of the conduct of any person in or upon the territorial waters, contiguous zone, economic zone, conservation zone and continental shelf;

(b) for measures to protect, use and

exploit the resources of the economic zone;

(c) for conservation measures to protect the living resources of the sea;

(d) for measures regulating the exploration and exploitation of resources within the continental shelf;

(e) for measures designed to prevent and control of marine pollution of the high seas.

(3) In making any rule under this section the Government may provide that a contravention of the rule shall be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand takas.

THE CHITTAGONG PORT AUTHORITY ORDINANCE, 1976

Chapter VI - Penalties and procedure

Penalty for pollution etc

41A. Any person who throws or allows to fall into the water, shore, bank or land within the limits of the Port any goods, ballast ashes or any other thing whatsoever causing pollution of the water or environment shall be punishable with fine which may extend to one lakh Taka.

The effects of water pollution are not only devastating to people but also to animals, fish, and birds. Polluted water is unsuitable for drinking, recreation, agriculture, and industry. It diminishes the aesthetic quality of lakes and rivers. More seriously, contaminated water destroys aquatic life and reduces its reproductive ability. Eventually, it is a hazard to human health. Nobody can escape the effects of water pollution.

The individual and the community can help minimize water pollution. By simple housekeeping and management practices the amount of waste generated can be minimized.

-Compiled by Law Desk.

HUMAN RIGHTS *advocacy*

Freedom of expression

ARTICLE 19 Bangladesh recently launched a new handbook on the Right to Information, in question-and-answer format, for the media and legal sectors in Bangladesh on World Press Freedom Day.

AS the global media and human rights communities mark the event of World Press Freedom Day, ARTICLE 19 calls attention to the ongoing need to ensure that freedom of expression is safeguarded and enhanced in all parts of the world.

The theme for UNESCO World Press Freedom Day 2009 is "Fostering Dialogue". In line with this topic, ARTICLE 19 continues to fulfil its core mandate by working closely with partners from the media and civil society to promote the right to freedom of expression in various parts of the world.

Camden Principles: ARTICLE 19 launched the Camden Principles on Freedom of Expression and Equality, a groundbreaking document that will guide legislators, policy-makers and civil society in balancing the mutually enforcing rights to freedom of expression and equality. A key principle of the document is to "promote dialogue among different communities" and addresses a number of global requirements for media diversity.

Africa: In April, ARTICLE 19 East Africa co-ordinated a gathering of media professionals, human rights defenders, academic and community representatives in Kenya which developed the Machakos Declaration on Freedom of Expression. This document affirms the fundamental principles of free expression enshrined in international human rights frameworks and recognises that freedom of expression is crucial for democratic reform, good governance and poverty reduction.

This comes at an important time for Kenya, where an uneasy coalition government is in office after the post-election violence in 2007. The Machakos meeting recognised that not all elements of the media had reported the elections and subsequent violence objectively; indeed some segments had worsened the situation through biased and unprofessional reporting. It is critical for the democratic future of Kenya that the media is given the freedom to report independently on societal events, and that it also acts responsibly to provide balanced and fair reporting.

There is an ongoing constitutional review process and ARTICLE 19 is actively working with partners to ensure reform of existing freedom of information legislation and broadcast-



ing legislation, in order to provide a more enabling framework for the media.

Asia: ARTICLE 19 Bangladesh recently launched a new handbook on the Right to Information, in question-and-answer format, for the media and legal sectors in Bangladesh on World Press Freedom Day. This forms part of the organisation's continued work in this country to promote freedom of information and strengthen the ability of the media to report on issues of importance.

At the event on Sunday 3 May, ARTICLE 19 also presented awards to a group of women journalists, drawn from grassroots and community media structures, who have recently undergone a fellowship programme through ARTICLE 19. This programme is helping to promote diversity in the media and empower locally-based journalists to better report stories within their own communities and in the national press.

Latin America: Throughout 2009 ARTICLE 19 Mexico is running a campaign to protect journalists titled "What you don't know can hurt you". Part of the campaign will this year include an international seminar bringing together different stakeholders to discuss how best to document and raise alerts on abuses against journalists and to publish a "Protocol to Monitor, Document and Follow up on Aggressions against Journalists" for Mexico. A website together with television and radio spots are also being launched to widen understanding of the situation and identify the best way to support a free press.

Source: ARTICLE 19, a human rights pioneer, defends and promotes freedom of expression and freedom of information all over the world.

LAW *week*

Killer pesticides

Excessive use of pesticides on farmlands in two villages of Dhamrai upazila caused death of at least three children last month. It also killed a number of calves, dogs and fowls. Besides, 13 more children, all aged below seven, were hospitalised, while some farmers fell sick during the same period. A committee formed by the Institute of Epidemiology, Disease Control and Research (IEDCR) under the health ministry reveals this in a primary investigation report. Talking about reasons behind the recent deaths in Dhamrai's Malancha and Naogakaith villages, IEDCR Director Dr Mahmudur Rahman told The Daily Star, "We are sure it was pesticide poisoning. And we think it's happening in other parts of the country as well." - *The Daily Star*, May 5, 2009.

ACC act to be reviewed

The cabinet decided to review the Anti-Corruption Commission (ACC) Act, 2004 and bring four longstanding proposed amendments to strengthen the law and make it more effective. ACC Secretary Khandaker M Asaduzzaman confirmed The Daily Star about the cabinet decisions. However, Law Minister Shafique Ahmed at his secretariat office said the government would not bring basic changes to the Act. Sources say the cabinet had earlier instructed the anti-graft watchdog to scrutinise its Act and forward a list of recommendations. The law minister said the cabinet agreed to most of the proposals, which would be tabled as bills before parliament and sent to the parliamentary standing committee for examination. - *The Daily Star*, May 5, 2009.

Khaleda won't be evicted now

A High Court bench accepted BNP chief Khaleda Zia's writ petition challenging legality of the government decision cancelling allotment of her Dhaka Cantonment house and adjourned its hearing after two other benches felt embarrassed to hear the petition. The HC bench of Justice Zinat Ara and Justice Abdul Hakim adjourned the hearing on assurance by the attorney general that the government would not move in a week to evict Khaleda from that house. The HC bench fixed May 10 for next hearing. Attorney General Mahbubey Alam gave the assurance to the HC bench of Justice Zinat Ara and Justice Abdul Hakim when Khaleda's counsels moved a writ petition that sought a stay order on the government's cancellation order. - *The Daily Star*, May 4, 2009.

Govt seeks withdrawal of appeal against HC verdict

The attorney general's office prayed to the Supreme Court for withdrawing the pending leave-to-appeal petitions against the High Court judgment that had declared illegal the fifth amendment to the constitution which endorses late president Ziaur Rahman's takeover and all acts since August 15, 1975. Attorney General Mahbubey Alam made the prayer on behalf of the government while Additional Attorney General M Enayetur Rahim moved a similar prayer on behalf of Bangladesh Muktiyoddha Kalyan Trust. The BNP-Jamaat coalition government and Bangladesh Muktiyoddha Kalyan Trust had filed two separate leave-to-appeal petitions with the SC against the HC verdict, which came on August 29, 2005 following a writ petition filed by Bangladesh Italian Marble Works Company (BIMWC). - *The Daily Star*, May 4, 2009.

Dropping of 11 cases against Hasina on cards

The metropolitan public prosecutor (MPP) is going to recommend withdrawal of the nine remaining cases against Prime Minister Sheikh Hasina as the government law official has found that the cases were filed for "political harassment". "I have examined the documents of the cases and found that those were filed with political motive to harass her [Hasina]. I will send my opinion in a couple of days for withdrawal of the cases," MPP Abdullah Abu told The Daily Star over telephone. He has already suggested that the Meghnaghat power plant and Bepza corruption cases against the Awami League chief be dismissed as those were filed by the BNP-led government for "political harassment". - *The Daily Star*, May 3, 2009.

Govt moves to probe post-polls violence of 2001

The present government is actively considering formation of an enquiry commission to probe the 2001 post-elections violence and taking actions against the persons responsible for the violent incidents. The government has informed this to the High Court (HC) through an affidavit in reply to its (HC) rule that came upon a writ petition challenging the inaction of the law enforcement agencies to prevent the criminal activities taking place immediately after the 8th parliamentary polls in 2001. In the reply submitted to the HC through the attorney general's office on April 15, the government said the perpetrators of the alleged offences had the blessings of the government elected in 2001 polls and thereafter, an interim government ruled for two years. - *The Daily Star*, May 3, 2009.

Khaleda, sons apply for case withdrawal

BNP Chairperson Khaleda Zia and her family members appealed to the government for withdrawal of 20 cases filed against them during the last caretaker government rule. Their petitions follow those filed by Prime Minister Sheikh Hasina last month for quashing of 11 cases against her. Khaleda, also former prime minister, stands accused of graft in four cases. Her elder son Tarique Rahman faces 11 cases—seven on extortion, three on graft and one on tax evasion charges, while her younger son Arafat Rahman Koko is accused in five cases—three on graft and one each on money laundering and extortion charges. - *The Daily Star*, May 1, 2009.

Govt to ensure minority rights, CHT peace treaty: PM

Prime Minister (PM) Sheikh Hasina said her government would repeal all laws and rules discriminatory to minority communities, including indigenous people, as it believes in freedom of all religious faiths and equal opportunities for all. She spoke about her government's stand on free practice of all religions, democratic governance and an equal opportunity social milieu while talking to Vice-Admiral of French Navy and Commander of the Joint Forces in the Indian Ocean region Gerard Valin when he called on her at the Prime Minister's Office. Hasina categorically said the government would ensure protection of freedom of all religions and the minority groups' freedom of expression in the country. "The present government believes in peace and prosperity of the mass people, freedom of all religions and equal rights of people of all walks of life." - *The Daily Star*, April 30, 2009.

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