

READER'S queries



Division of inheritance between siblings

I am a reader, 18 years old. I am the second of three brothers and two sisters. I lost my dear father and my elder brother in a dangerous road accident. Two months passed without them. Now my question is, how the property of my father will be shared? My elder brother is no more alive. So who will be getting the maximum portion of the property and who got rights to claim my father's property!!! However three of my uncles are trying to take over my father's business! I do have an aunt also!

My mother could not bear this sudden occurrence of the death of my father and brother. She is falling sick day by day! Now my situation is no more controllable! As I am the elder son presently, I have enough responsibilities. Remaining one brother two sisters are still in school. Somehow we have to manage the family financially.

Please help me regarding the property sharing.

Dear reader,

It is really shocking that you have lost your dearest father and elder brother at this early stage of your life. We believe your role is now very important to rebuild your family and law is certainly in your favour. You along with your rest brother, mother and two sisters would inherit the property of your father. Your uncles' effort to capture your father's property has got no legal basis. Your aunt is also not entitled to have any share of your father's property. Your mother would get 1/8 of your father's property. The rest property i.e. 1-1/8=7/8 would be distributed amongst you and your rest brother on the one hand and your two sisters on the other hand as per 2:1 proportion. That means if you divide that property (7/8) in 3 shares, you two brothers would get 2 shares of it and your two sisters would get 1 share of it. The arithmetic would show as follows:

2 sons = 2/3 = 4/6 of 7/8 = 7/12 (7/24 each)
2 Daughters = 1/3 = 2/6 of 7/8 = 7/24 (7/48 each)

Now it's a matter of understanding among your family members as to how the property would primarily be administered and managed.

-Law Desk.

LAW amusements



Surreal law facts

The truth is always stranger than fiction.

\$234-million for a license to use two words

King John V of Portugal, also known as King-Joao, lived from 1689 to 1750. Joao became head of state (king) and chief lawmaker at the tender age of 17. He married his first cousin in 1708, as was the custom at the time.

But just as his reign began, fantastic amounts of gold began to arrive from the new Portuguese conquests in Brazil, of which the King, as of right, took 20% for himself. Historians estimate that because of these new gold mines in South America, the amount of Gold in Europe doubled.

King Joao hardly knew what to do with all this money. He certainly never convoked the senate of noblemen, known as the cortes, to advise him in improving the lot of the Portuguese. Sedgwick wrote of King Joao's:

"... Arbitrary and violent disposition who substituted for the national representation his own absolute and despotic will. The monarch abandoned himself to the unrestrained indulgence of his passions."

A poster-boy for anti-monarchists, John V razed down hundreds of homes in Lisbon and had erected a new palace, a mini-Versailles. Then, he began buying priceless art all over Europe (much of which was lost in the great earthquake and subsequent tsunami of Lisbon in 1755).

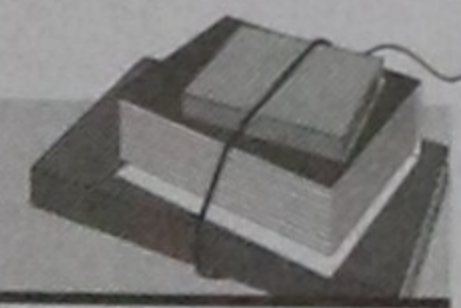
But the real kicker came in about 1741, six years after his mental abilities had been affected by a stroke, and he turned "religious".

He paid the Vatican (Pope Benedict XIV) New World gold valued at \$234-million, for the exclusive license to use two (2) religious words, reifidelissimo (most faithful king) as part of his title!

To the great shame of the Church, this formal title not granted on merit but was based on Portugal's payment of \$234-million dollars in South American gold, all of which was extracted in Brazil using slave labour; and which in one fell swoop, depleted the Portuguese treasury.

Source: www.duhaime.org.

LAW lexicon



United States Court of Appeals for the Armed Forces - Court which hears appeals from court marshal decisions.

United States Court of Claims - Court which hears actions against the U.S. Government.

United States Court of Customs & Patent Appeals - Court which hears appeals from all U.S. customs courts.

United States Court of International Trade - Court which hears cases concerning federal tariff laws.

United States District Courts - Courts which try both criminal and civil actions and admiralty cases.

United States Magistrate Judge - Courts given authority by 28 U.S.C. s 636. This court hears all preliminary criminal matters, but does not conduct felony trials, and any pre-trial civil matters referred by the district court. If all parties consent, this court can hear criminal misdemeanour and civil trials.

United States Marshal's Service - Agency which serves civil and criminal process in federal courts.

United States Reports - Publication of court decisions of the United States Supreme Court.

United States Supreme Court - The highest court in the land, established by U.S. Constitution.

Unlawful detainer - A detention of real estate without the consent of the owner or other person entitled to its possession.

Source: Jurist International.

LAWS FOR everyday life



Why is mutation required?

THE success or failure of a system of registration will depend on the completeness and promptness with which mutations are reported. Mutation is any changes that affect entries in the registers, such as changes in the land, in the conditions under which it is held or in the holder of the rights. During the earlier stages of registration, there are likely to be many delays and omissions in reporting mutations, especially those that do not involve a formal transaction, and such delays and omissions will never entirely cease, at least in underdeveloped countries, like Bangladesh, if the duty of reporting is left entirely to the initiative of the persons affected.

Mutation is largely required for maintenance and revision of the record of rights upon transfers and its correction upon inheritance with regards to partition and ownership. Our national legislation, The State Acquisition and Tenancy Act 1950, contains the following provisions with regards to mutation.

THE STATE ACQUISITION AND TENANCY ACT, 1950

Chapter XVII - Maintenance and revision of the record-of-rights

Maintenance of the record-of-rights

143. The Collector shall maintain up-to-date, in the prescribed manner, the record-of-rights prepared or revised under Part IV or under this Part by correcting clerical mistakes and by incorporating therein the changes on account of-

- (a) the Mutation of names as a result of transfer or inheritance;
- (b) the subdivision, amalgamation or consolidation of holdings;
- (c) the new settlement of lands or of holdings purchased by the Government; and
- (d) the abatement of rent on account of abandonment or diluvion or acquisition of land.

Correction of the Record-of Rights upon inheritance

143B. (1) Person acquiring immovable property by inheritance according to



their respective personal laws shall amicably effect partition of the property among them after the death propositus. After such partition, an instrument of partition shall be prepared and signed by all the concerned parties and shall be registered under the Registration Act, 1908.

(2) Upon presentation of the instrument of partition prepared, signed and registered under sub-section (1), the Revenue-officer shall revise the Khatian in accordance therewith.

"Revenue-officer" includes any officer whom the Government may appoint to discharge all or any of the functions of a Revenue-officer under this Act.

Procedure for correction of the record-of-rights

143C. (1) The Revenue-officer on receipt of the notice under section 89 shall open a file for Mutation of record-of rights and shall issue notice to the co-shares of the holding for Mutation.

(2) For this purpose the Revenue-officer shall fix a date for objection if any. If no objection is raised within the stipu-

lated period, the Revenue-officer shall correct the record-of-rights accordingly.

(3) If any objection is filed by any co-sharer of the holding, then the Revenue-officer shall fix a date for hearing both the parties, and after hearing, the Revenue-officer shall pass an order stating the reasons thereof, and the record-of-rights shall be corrected accordingly.]

Section 143B and 143C were added by section 3 of the State Acquisition and Tenancy (Amendment) Act, 2006 (Act No. XXXIX of 2006)

It must be remembered for instance that in countries where customs of inheritance prescribe absolutely the succession to landed property, there is no question of the formalities attached to the proving of a will and that in such countries land will frequently change hands without formal documents of any kind. Again many small sales, mortgages, leases, etc. may be made without written records of any kind. In these circumstances, the habit of prompt reporting may be very difficult to inculcate.

Compiled by Law Desk.

LAW news

Human traffickers exploit economic crisis

THE impact of the global economic crisis in severely reducing legitimate employment opportunities and increasing the vulnerability of millions of people to sexual and labour exploitation is the focus of an OSCE-organised conference that opened in Vienna today.

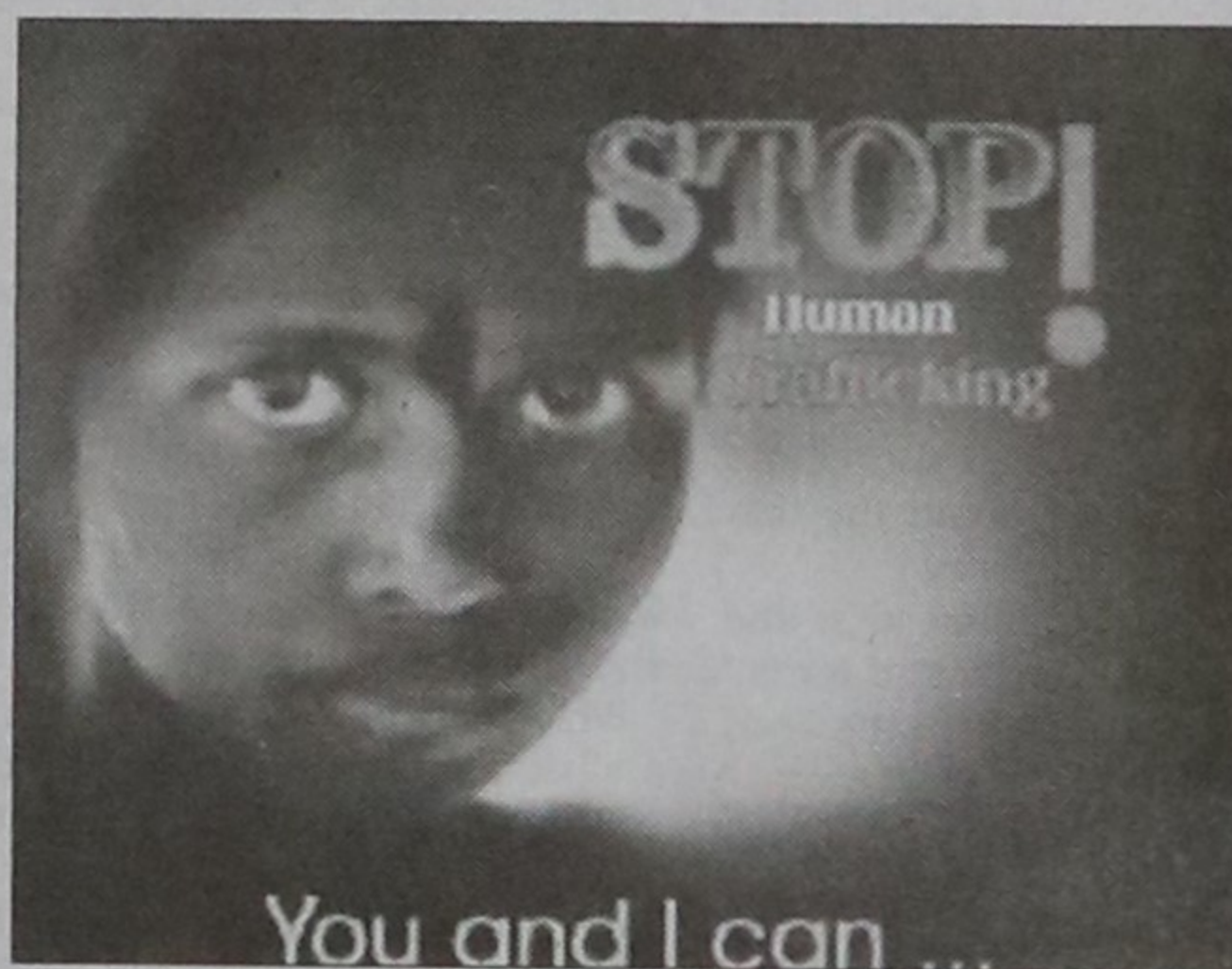
U.S. Secretary of State Hillary Rodham Clinton, in a video address opening the two-day conference, urged OSCE participating States to redouble prevention efforts.

"New economic pressures are likely to aggravate the problem further, so this conference comes at a time of renewed urgency. It is an opportunity to place a renewed focus on prevention and the root causes of trafficking," said Clinton. "Together we must implement a comprehensive approach that both confronts criminals and cares for survivors."

The 9th Alliance Against Trafficking in Persons Conference, focusing on "Prevention of Modern-Slavery", brings together more than 250 experts from governments, international organisations and civil society to discuss the business of trafficking in the context of the economic crisis, which has increased both supply and demand.

"Widespread unemployment, a drastic decline in opportunities and a loss in remittances from labour migrants result in desperate situations both in countries of origin and of destination, where people have few viable alternatives and are prone to take more risks," said Eva Biaudet, the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

"In the context of our global economic crisis, empirical evidence on the extent of trafficking and the effectiveness of our efforts is more necessary than ever. We must prevent the root



causes of trafficking such as unemployment, all forms of discrimination, corrupt practices and the demand for commercial sex and exploitative labour, before trafficking occurs, but also to prevent re-trafficking by having strong protections in place."

Conference participants will also discuss current best practices using a human rights approach, including the media's role in preventing trafficking. Investigative journalists, documentary filmmakers and photographers will take part in a panel discussion on the media's role and responsibility in covering human trafficking.

Source: The United Nations Global Initiative to Fight Human Trafficking.

RIGHTS corner



UN adopts resolution on responsibility to protect

THE General Assembly has recently adopted by consensus its first resolution on the responsibility to protect, agreeing to hold further discussions on the international understanding to intervene to stop atrocities when taking place.

The resolution noted "with appreciation" Secretary-General Ban Ki-moon's July report calling for speedy action "to turn the promise of the responsibility to protect into practice." Agreed at a summit of world leaders in 2005 and sometimes known as "R2P", it holds States responsible for shielding their own populations from genocide, war crimes, ethnic cleansing, and related crimes against humanity and requires the international community to step in if this obligation is not met. "It is most significant that this resolution was adopted by consensus," Mr. Ban said in a statement.

He said he looked forward to further deepening the dialogue on how best to implement R2P. "It was heartening to hear so many Member States, from every part of the world, reaffirm in a constructive and forward-looking debate the commitment made in 2005," he added. "I found the statements by Member States that had suffered such traumas to be particularly meaningful."

Mr. Ban asked his Special Adviser Edward Luck and Special Adviser on the Prevention of Genocide Francis Deng to continue their wide-ranging consultations with Member States, relevant departments and agencies, regional and sub-regional organisations, and civil society on the many implementation questions

still outstanding.

"In all our efforts, we should be guided and united by the ultimate purpose of the responsibility to protect: to save lives by preventing the most egregious mass violations of human rights," he added. In July outgoing Assembly President Miguel D'Escoto, a former Nicaraguan foreign minister, warned that could pose a threat to national sovereignty. He told the Assembly that the legacy of colonialism gave "developing countries strong reasons to fear that laudable motives can end up being misused, once more, to justify arbitrary and selective interventions against the weakest States."

Citing the case of Iraq as an example of the lack of accountability for "those who might abuse the right that R2P would give nation States to resort to the use of force against other States," he also questioned whether adoption of R2P in the practice of collective security would undermine respect for international law.

The principle is "applied selectively, in cases where public opinion in P5 States (the five permanent members of the Security Council: China, France, Russia, the United Kingdom and the United States) supports intervention, as in Darfur, and not where it is opposed, as in Gaza," he said, referring respectively to the conflict between the Government and rebels in Sudan and Israel's campaign against Hamas in Gaza last December and January.

Source: UN News Center.

LAW week



Attach properties of Rid Pharma officials

A Dhaka court ordered attachment of movable and immovable properties of five officials of Rid Pharmaceuticals Ltd, including its managing director, in a case filed against them for manufacturing toxic Paracetamol syrup that claimed at least 28 children's lives. The children died of renal failures, caused by intake of Rid's Paracetamol syrup and suspension, across the country from June to August. Judge Golam Mortuza Majumder of the Drug Court passed the order after Brahmanbaria police submitted reports on the arrest warrants issued earlier against them.

-The Daily Star, Sept 17, 2009.

123 more cases to be dropped

The decision to withdraw 123 more 'politically motivated' cases filed during the last BNP-Jamaat coalition and the subsequent caretaker rule. The decision came at a meeting of the government's scrutiny committee for recommendation of withdrawal of the politically motivated cases with its head State Minister for Law Qamrul Islam in the chair. "As many as 241 applications were placed at the seventh meeting and of them 123 cases have been recommended for withdrawal," said Quamrul while briefing newsmen after the meeting at the home ministry. -The Daily Star, Sept 17, 2009.

BDR trial finalised

The government y decided to try the heinous offences like killings, attempt to murder, looting and arson committed during the February 25-26 BDR mutiny at the speedy trial tribunal under the penal code. Other offences like breaking discipline and violating superiors' orders at the Pikhana BDR headquarters and other BDR stations across the country will be tried under the BDR laws. The maximum punishment under the penal code is death penalty while under the BDR laws it is seven years' imprisonment. The decisions were made at an inter-ministerial meeting at the law ministry. -The Daily Star, Sept 16, 2009.

First bail granted in BDR case

A High Court (HC) division bench for the first time granted bail to one of the 1988 accused in Pikhana carnage case. The bench comprising of Justice AFM Abdur Rahman and Justice SM Emdadul Haque on August 23 granted bail to Al Amin, son of Mahmudur Rahman of Shathia in Pabna district, for a period of six months. The bail order came after Amin's lawyers filed a criminal miscellaneous case with the HC against the rejection order of the lower court. Additional Chief Metropolitan Magistrate Ehsanul Haque, after scrutinizing the bail order of the HC, asked the lawyers of the accused to furnish a bail bond. Advocate Abdul Hannan furnished the bail bond following the order. -The Daily Star, Sept 16, 2009.

Lawmakers' desire to be municipality adviser over

The House passed the Local Government (municipality) bill rejecting a parliamentary body's recommendation for making the MPs advisers to the municipalities in their respective constituencies. The parliament also dropped a provision from the original bill dissolving two deputy mayoral posts in each municipality. The parliamentary standing committee on LGRD and cooperatives ministry in its scrutiny report made the recommendation for making lawmakers advisers to the municipalities concerned. -The Daily Star, Sept 15, 2009.

Appeal against acquittal of 6

The government filed separate appeals with the Supreme Court (SC) against the High Court (HC) verdict that acquitted six former military men of charges in the jail killing case. Advocate-on-record for the attorney general's office Mushfiqur Rahman filed the leave-to-appeal petitions on behalf of the government with the appeal section of the SC in the morning. Attorney General Mahbubey Alam told The Daily Star that his office would take an initiative for hearing appeals at the SC after disposal of long pending Bangabandhu Sheikh Mujibur Rahman assassination case. -The Daily Star, Sept 15, 2009.

Law secy says sorry

Law Secretary Kazi Habibul Awal apologised to a parliamentary committee for his role in sending two district judges into retirement without following due legal procedure. He promised that such incident will not occur in the future. "Since I am the secretary (of the law ministry), I am taking all responsibility for whatever happened - right or wrong. Forgive me and forget if there was anything wrong," Awal was quoted by a lawmaker as telling a meeting of the parliamentary body. -The Daily Star, Sept 14, 2009.

Bill seeks executive magistrates' power

A bill seeking ratification of the mobile court ordinance was placed in parliament for continuation of the authority of executive magistrates to take cognizance of offences and hold trial of those including electoral offences. But empowering the executive magistrates to hold trials of electoral offences runs counter to a Supreme Court (SC) opinion. Now it depends on the House whether it would uphold the SC's opinion or approve the proposal for empowering the executive magistrates to hold trial of electoral offences. -The Daily Star, Sept 14, 2009.

Govt moves to sue hill plunderers

State Minister for Forest and Environment Hasan Mahmud said the government will take legal actions against those involved in hill cutting in the port city. No body would be allowed to cut hills causing environmental damage, he said. The state minister was talking to the journalists after visiting different areas including Lalkhanbazar, Motijharna, South Khulshi and Bayezid. These areas have seen a number of hills levelled for last couple of months. He directed the officials of Department of Environment to lodge cases immediately against the contractors engaged in levelling hills. -The Daily Star, Sept 13, 2009.

Noise pollution falls on deaf ears

As the rules to reduce the level of noise pollution have never been implemented, the sound pollution continues to create public nuisance and pose serious health hazards to urban population. To cut the growing levels of noise pollution created by motor vehicles, industries and amplifiers, the government in 2006 formulated the Noise Pollution Control Rules under the Environment Conservation Act of 1995. People, especially in Dhaka are suffering from noise pollution beyond permitted level but Department of Environment (DoE) has not yet taken any legal action against offenders making a mockery of those rules. DoE Deputy Director Sukumar Biswas said, "We have not yet filed any regular case with the environment court under the noise pollution control rules." -The Daily Star, Sept 12, 2009.

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; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net