



LAW amusements



Surreal law facts

The truth is always stranger than fiction.

The Alchemy ban

In 1404, in the 5th year of his reign as King of England, Henry IV (1367-1413), passed a law which prohibited alchemy which, as an impossible process, gives that statute the title of the only English law that has never been broken.

The statute:

"It is ordained and established that none from henceforth shall use to multiply gold or silver nor use the craft of multiplication and if any the same do and be thereof attaint, that he shall incur the pain of felony."

The pain of felony meant capital punishment and forfeiture of all the felon's property to the Crown.

Book of murder bound in murderer's skin

William Corder shot and killed his girlfriend in Polstead, England in 1827, and the mother of their illegitimate child. The crime occurred on the grounds of a red barn.

A year later, the body was found and Corder arrested in London, where he had begun a new life, having married.

His murder trial was a sensation. Corder testified on his own behalf and after an implausible story, the jury unanimously found him guilty. His hanging in Suffolk 1828 drew a crowd of 7,000.

Judge Alexander sentenced him to be hung and to be "dissected and anatomised".

The dissection surgeon, George Creed, cut off and dried Corder's skin and used it to bind a copy of the trial transcript, entitled simply Trial Of Corder.

The book is still on display at the Moyse's Hall Museum in Bury St Edmunds, Suffolk (England).

Source: www.duhaime.org.

LAW lexicon



Accused - The name for the defendant in a criminal case.

Action in personam - An action against the person, founded on a personal liability. In contrast to action in rem, an action for the recovery of a specific object, usually an item of personal property such as an automobile.

Action in rem - Proceeding "against the thing" as compared to personal actions (in personam). Usually a proceeding where property is involved.

Accretion - The increase or accumulation of land by natural causes, as out of a lake or river.

Acknowledgment - A formal declaration before an authorized official by the person who executed an instrument that it is his free act and deed; the certificate of the official on such instrument attesting that it was so acknowledged.

Acquittal - A release, absolution, or discharge of an obligation or liability. In criminal law the finding of not guilty.

Source: Jurist International.

RIGHTS corner



Landmark pact indicates global support for indigenous peoples

The international community showed its support for the world's nearly 400 million indigenous people by adopting the landmark 2007 declaration outlining their rights, a United Nations independent human rights said on October 19, 2009.

The adoption of the Declaration on the Rights of Indigenous People came after more than two decades of debate.

"The adoption of the Declaration signals the strong commitment of the international community to remedy the historical and ongoing denial of the rights of indigenous peoples," James Anaya, Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people, told reporters in New York.

The text is based on the principles of equality, self-determination and respect for diversity, which form the "basic tenets of the modern human rights system," he said.

A non-binding text, the Declaration sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues.

The Declaration emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations.

It also prohibits discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them, and their right to remain distinct and to pursue their own visions of economic and social development.



In his briefing to the General Assembly, Mr. Anaya, an unpaid independent expert who reports to the Geneva-based UN Human Rights Council, said that he described the scope of his mandate and the activities he has undertaken since assuming his position last May.

His work, he said, falls within four interrelated areas: promoting good practices; thematic studies; country reports; and responding to cases of alleged gross violations.

In the past year, the expert has wrapped up reports on Brazil and Nepal after visiting the countries, as well as a follow-up trip to Chile. He has also conducted missions to assess indigenous persons' conditions in Australia, Botswana, Russia and Colombia.

Source: UN News Centre.

YOUR Advocate

We are receiving large number of letters everyday regarding day-to-day legal problems. Taking this into consideration, we are now re-introducing 'your advocate' column fortnightly. You can now send in queries regarding the following topics - commercial law, corporate law, family law, land law, constitutional law, banking law, arbitration and intellectual property laws. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Reader's query

Seven years ago my only son died. Since then his wife remarried and she's well settled in the US with my grandson (he's 13 years old). I also have a daughter. My husband in his will had given me the property I currently live in. I would like to give the property solely to my daughter. What would be the best possible way of doing that and whether my grandson would be able to claim it in the future after I have legally given the property to my daughter?

Response

Thank you for the query. It has been understood that you have got the instant property by way of a 'Will' created in your favor by your husband, who is now deceased. Any Muslim person over the age of 18 and who is of sound mind can transfer his property by way of creating a Will or Wasiyat. The Mohammedan law has imposed two types of restrictions on the ability of transferring properties by way of creating a Will. Restriction has been imposed with regard to the amount of property that can be the subject matter of the Will. Secondly, restriction has also been imposed with regard to who can be the beneficiaries under the Will. Accordingly, a Muslim person cannot create a Will or wasiatnama for transferring more than one third of his entire property. Consequently, if the property in issue amounts to one third or less than one third of your husband's entire property, then the same will be allowed. One the other hand, if this is more than one third then, you are required to obtain consent from all the other legal successors of your husband, i.e. at present your daughter and the wife of your son and his son (since your son has died too, their successors has to give consent) and other legal heirs, if any. Your grandson being only 13 will be unable to legally give his consent. Accordingly, his lawful guardian shall have to give consent on his behalf.

So far as the restriction with regard to the beneficiaries under the Will is concerned, any Will made in favor of any legal successor shall not be valid, unless all the other legal successors consent to the same after the death of the testator, i.e. person creating the Will. Accordingly, you are required to obtain consent of all the legal heirs of your husband.

In the light of the above, you are advised to file a 'Probate Case' before the District Delegate Court adding the legal heirs as opposite parties to the said suit. Probate is the legal process of administering the estate of a deceased person by resolving all claims and distributing the deceased person's property under the valid Will. If the heirs do not object to the said transfer of the instant property by the Will, then the Will shall be valid and you will lawfully hold the title of the property.

Thereafter, you can lawfully pass the title of the property to your daughter following the proper procedure of transferring the same. If you simply transfer the title of the property to your



daughter without filling the Probate case and obtaining judgment in your favor, then the possibility of disputes with regard to your daughter's title in the property will always remain.

On the other hand, if the suit is contested and the legal heirs refuse to give consent, then the Will shall not be considered valid and the property in issue shall be distributed to all the legal heirs of your deceased husband as per the law of succession. Even in such a situation, you being one of the legal heirs of both your husband and your son both of whom have now died will be the lawful owner of some portions of the property. Accordingly, you will be able to transfer the said portion to your daughter after doing the proper demarcation.

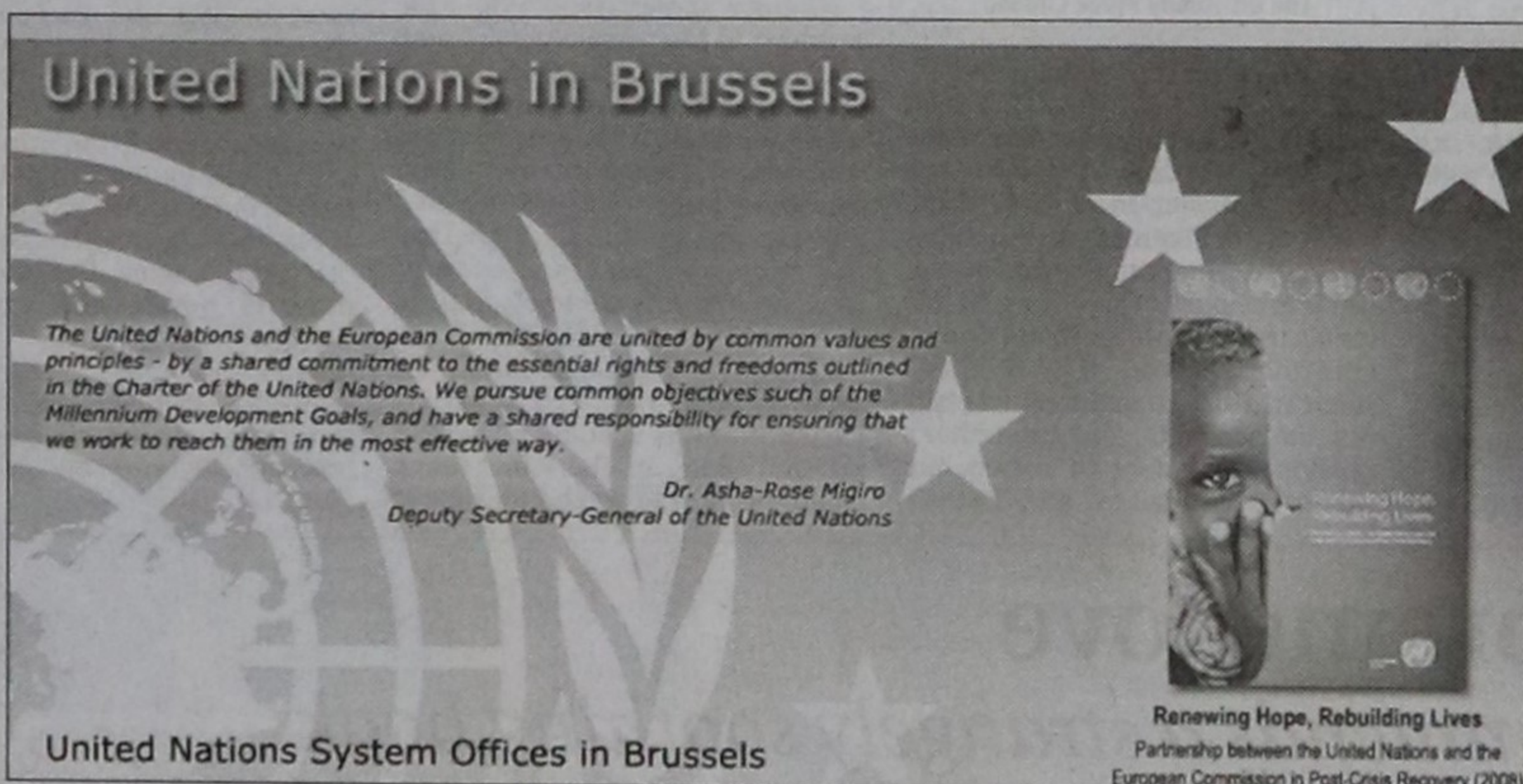
I hope that the aforesaid advice will help you to understand your legal position with regard to the instant property. You are further advised to consult with a lawyer, who is expert in dealing with property for the purpose of filing the case and after obtaining the judgment for transferring the same to your daughter.

Omar H. Khan is a Barrister-at-Law of the Hon'ble Society of Lincoln's Inn and an advocate of the Supreme Court of Bangladesh.

GOOD NEWS



First UN human rights office opens in European Union



The UN High Commissioner for Human Rights Navi Pillay on October 14, 2009 opened the first ever UN human rights office in the European Union, and said she hoped this development would mark a new era of closer cooperation between the UN human rights system and European institutions based in Brussels, Strasbourg and Vienna, as well as with individual EU states.

The new Brussels office is the 11th regional office set up by the Office of the High Commissioner for Human Rights (OHCHR), which is headquartered in Geneva but has never before opened a national or regional office in Western Europe.

"OHCHR was only founded 16 years ago, so it is still a young organization," Pillay said. "We already have 10 other regional offices in Africa, the Middle East, Latin America and Asia, and we are now present in 55 countries around the world in all. Europe was in many ways the missing piece in the puzzle, so it is a real pleasure for me to open the office at the EU's headquarters here in Brussels."

Pillay said the prime objectives of the new Regional Office will be to strengthen engagement with European countries in the implementation of international human rights standards as well as to forge stronger partnerships with regional organiza-

tions such as the European Union and its relevant institutions, including the Fundamental Rights Agency. The office would also work with the Council of Europe in Strasbourg, she said.

The new office will help to promote and follow up on human rights standard-setting, policy making and implementation in Europe, as well as address the EU's role in human rights promotion, protection and empowerment around the world.

"The EU is, of course, already an important partner for us, both as a donor and as a strong moral voice on many human rights problems facing people all over the world," Pillay said. "When the EU speaks, people listen. When the UN speaks on human rights issues, people also listen, and when we are in tune we can be an important force for change."

She noted that EU countries themselves face a number of human rights challenges.

"This office will help EU countries in their efforts to combat racism and discrimination, and to tackle human rights violations related to migration and poverty, as well as deficits in other economic and social rights, particularly for minorities such as the Roma," she said. "A particular challenge in recent years has been ensuring that counter-terrorism measures do not

undermine human rights standards."

"We will also seek to ensure the integration of the UN's human rights principles in external EU policies and activities," she said, citing technical assistance, peace-keeping and peace-building operations, development and mediation efforts as well as EU trade initiatives.

During her Brussels visit the High Commissioner also took part in a joint OHCHR-EU conference on combating all forms of discrimination with a particular focus on discrimination based on race, gender and disabilities. She held meetings with EU Commissioner for External Relations Benita Ferrero-Waldner, President of the European Parliament Jerzy Buzek and other senior EU officials and parliamentarians, as well as with the Belgian Foreign Minister Yves Leterme and representatives of the 23 other UN organizations already based in Brussels.

During her meeting with M. Leterme, the High Commissioner thanked the Government of Belgium for enabling OHCHR to set up the new Regional Office in Brussels. She also paid tribute to the role of the Swedish Government, which currently holds the EU Presidency.

Source: Office of the High Commissioner for Human Rights.

LAW week



43 canals demarcated, grabbers identified

The Land Survey Department of the land ministry has finally demarcated the capital's 43 canals lost to grabbers and identified persons and institutions that encroached upon the water bodies. On receiving the list of canals and grabbers, the parliamentary standing committee on land ministry at a meeting decided to take up the issue to Prime Minister Sheikh Hasina for her directives as it believes it will be a troublesome task to recover the canals and need a concerted efforts. According to the Land Survey Department, influential individuals grabbed most of the canals where they erected multi-storey buildings for markets, educational institutions and residences. - *The Daily Star*, Oct 22, 2009.

Trial in 6 divisional courts by early Nov

Law Minister Shafique Ahmed said six separate courts would be constituted in six divisional headquarters to begin Bangladesh Rifles (BDR) mutiny trial at the end of this month or beginning of November. Briefing newsmen at his secretariat office, the minister said the BDR Director General Maj Gen Mainul Islam would lead the mutiny trial in the new courts. He said government-appointed lawyers and the Attorney General's office would assist chief of the border guards so that the trial is fair and transparent. - *The Daily Star*, Oct 22, 2009.

No conspiracy; it was army revolt

The August 15 killings were a revolt by army men, not any conspiracy, and the case should be tried afresh by a military court, a lawyer for Bangabandhu murder convicts told the Supreme Court. Abdullah-al Mamun, counsel for Bazlul Huda and AKM Mohiuddin, claimed all army personnel supported the revolt so that Bangabandhu Sheikh Mujibur Rahman could not make a particular announcement at a programme on Dhaka University campus on August 15, 1975. Summing up his arguments, he said their intention was not to kill Bangabandhu, then president of the republic, or his family. - *The Daily Star*, Oct 21, 2009.

Court asks CID to probe afresh

A Dhaka court ordered a re-investigation into a case filed on charges of attempt to murder on Prof Humayun Azad in February 2004. First Additional Chief Metropolitan Magistrate Ehsanul Haque passed the order following a petition submitted by Monjur Kabir, complainant of the case. The court directed additional inspector general of Criminal Investigation Department (CID) to carry out the investigation in efforts to find out real culprits and submit a report to the court by December 30. - *The Daily Star*, Oct 21, 2009.

Rid Pharma boss lands in jail

A Dhaka court sent Managing Director of Rid Pharmaceuticals Limited Mizanur Rahman to jail in a case filed for manufacturing toxic paracetamol syrup that claimed lives of at least 28 children across the country. Judge ANM Bashir Ullah of the Metropolitan Sessions Judge's Court passed the order after Mizanur surrendered before the court. He said charges were brought against him because of his "heinous" acts and rejected his bail prayer. He had a role in the preparation of paracetamol syrup that led to the death of the infants, the judge added. - *The Daily Star*, Oct 20, 2009.

HC reprimands Huda's counsel

The Supreme Court reprimanded barrister Abdullah-al Mamun, counsel for two of the five convicts in Bangabandhu assassination case, for placing irrelevant arguments before the court and giving wrong information to the media about it. The five-member bench of the Appellate Division headed by Justice Md Tafazzul Islam expressed annoyance with Mamun for repeating his arguments and directed him to finish his arguments. Mamun, who told the media on Sunday that the court obstructed him from placing arguments, apologised to the court for his remarks. - *The Daily Star*, Oct 20, 2009.

AL's Jasim to lose JS membership

The Supreme Court upheld the High Court verdict that declared illegal the parliament membership of Maj (ret) Jasim Uddin, who was elected from Bhola-3 constituency on Awami League nomination. Jasim Uddin had participated in the December 29 parliamentary election before completion of five years of his compulsory retirement from the defence service. A five-member bench of the Appellate Division headed by Chief Justice MM Ruhul Amin passed the verdict, dismissing Jasim's appeal against the HC verdict. - *The Daily Star*, Oct 19, 2009.

Explain legality of proceedings against Tarique

The High Court (HC) issued a rule upon the government and Anti-Corruption Commission (ACC) to explain why the proceedings against Tarique Rahman, elder son of BNP Chairperson Khaleda Zia, in Zia Orphanage Trust embezzlement case should not be quashed. Upon a petition filed by Tarique, now in London, an HC bench comprised of Justice Syed Muhammad Dastagir Husain and Justice Md Rais Uddin issued the rule. Earlier, the same bench issued a similar rule upon the government and ACC to explain why the proceedings against former prime minister Khaleda Zia in the case should not be quashed. - *The Daily Star*, Oct 19, 2009.

42 MPs never paid income tax

Forty-two out of 345 lawmakers, including three state ministers, have never paid any income tax, claiming they do not have taxable income. Sources at the Election Commission and the National Board of Revenue said most of these lawmakers have Tax Identification Numbers (TINs) but they do not pay any tax. A few do not even have their TINs. The 42 in question are from both the treasury and the opposition benches. - *The Daily Star*, Oct 18, 2009.

30pc posts to go to war heroes' children

The government has taken initiatives to introduce 30 percent quota for the children of freedom fighters in the recruitment, rules for assistant judges. The initiative was taken, as a number of candidates from the families of freedom fighters could not qualify in the examinations for the offices of assistant judges. When the matter was brought to the notice of the law ministry that there is a rule of 30 percent quota for the children of freedom fighters in the government service the ministry took the decision, sources said. The government has recently withheld its decision to recruit 101 assistant judges to the lower court through the Bangladesh Judicial Service Commission (BJSC), sources said. - *The Daily Star*, Oct 18, 2009.

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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