



LAW amusements



Surreal law facts

The truth is always stranger than fiction.

News for the condemned

In Paris, on every day of the French Revolution that the guillotine was scheduled to fall, a newspaper for all those being held on death row was published.

The Journal des Racourcis was published from June 1877 to 1878.

US Supreme Court: non-lawyers can apply

United States Supreme Court judges are not required by law to be lawyers. But only three members have ever been appointed outside the pool of practising lawyers, lower-court judges or law school professors - all lawyers and attorneys.

According to University of Richmond law professor John Paul Jones:

"No prior experience as a judge, no expertise as a constitutionalist - indeed, no training in the law at all, is formally necessary."

The Supreme Court Historical Society writes:

"The president's choices for appointment to the Court have all been lawyers, although there is no constitutional or legal requirement to that effect."

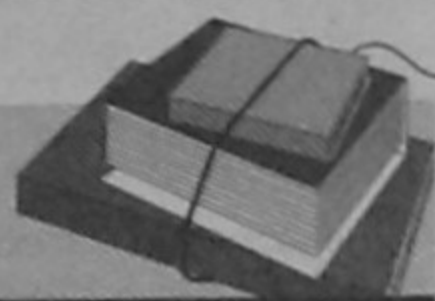
Lawmaker elected 28 times

The Greeks thought they had this democracy thing all figured out. Hold elections once in a while and soon enough, you're bound to clean the slate of old wood.

Not so in North Carolina two hundred years ago where Wilkes County elected war veteran James Wellborn (1767-1854) as Senator in 1796, and then re-elected him again 27 times between 1797 and 1835.

Source: www.duhaime.org

LAW lexicon



Action Case - Cause, suit, or controversy disputed or contested before a court of justice.

Additur - An increase by a judge in the amount of damages awarded by a jury.

Adjective law - Also, procedural law. That body of law which governs the process of protecting the rights under substantive law.

Adjudication - Giving or pronouncing a judgment or decree. Also the judgment given.

Administrative agencies - Agencies created by the legislative branch of government to administer laws pertaining to specific areas such as taxes, transportation, and labour.

Administrator - 1. One who administers the estate of a person who dies without a will.; 2. A court official.

Admiralty law - Also, maritime law. That body of law relating to ships, shipping, marine commerce and navigation, transportation of persons or property by sea, etc.

Admissible evidence - Evidence that can be legally and properly introduced in a civil or criminal trial.

Source: Jurist International.

LAW news



Binding treaty for climate summit

A legally binding agreement on cutting greenhouse gas emissions is no longer a realistic goal for next month's Copenhagen summit, the UN Secretary-General says.

According to Ban Ki Moon such an agreement will not be signed next month and the most likely outcome is voluntary targets, which countries could announce but then ignore.

He said that several key countries were not ready to sign up to binding targets and that the best the world could hope for from the summit would be "political commitments". Mr Ban said he hoped that they would be legally binding within a year but would be dependent on each country.

His comments, made in London, marked a significant retreat from the UN's previous plan for a new treaty to be signed at Copenhagen to replace the Kyoto Protocol, which expires in 2012. Mr Ban said: "It may be realistic if we think Copenhagen will not be the final word on all these matters. But if we agree on a strong politically binding commitment that will be, I think, a reasonable success. Then the post-Copenhagen negotiations will continue so that we have a legally binding agreement as soon as possible."

"Each and every country has their own domestic constraints when they go back - no country will be totally free, that is the difficulty. It is a very complex process including verification systems, targets and money. It is not an easy task. That is why I am saying Copenhagen is not the final word."

Mr Ban also said that developed nations would have to increase the amount that they paid to poorer countries to help them to adapt to climate change. Asked whether he believed that



the European Union's proposal of a fund of up to \$50 billion of public money a year would be sufficient, he said: "As we go into the future, I think that should be scaled up."

He said that generous funding needed to be agreed to build trust among developing countries, which have accused richer nations of creating climate change but leaving them to face the consequences. "We should admit that there are some suspicions and distrust, particularly on the part of developing countries."

He also suggested that the global target for limiting the temperature increase to 2C above pre-industrial levels might have to be adjusted because it could still result in sea-level rises inundating many small islands. "These small-island developing countries say that it should be a maximum of 1.5C. For them it's a matter of life and death."

Source: UN Wire.

YOUR Advocate

This week your advocate is Barrister Omar Khan Joy of the Supreme Court of Bangladesh and Head of The Legal Counsel. His professional interests include 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

My wife has a daughter from her previous marriage. She'll be turning 3 in a couple of weeks. Lately my wife has been urging me to legally adopt her. My wife's previous husband is sort of a trouble maker and I really don't want him anywhere near my family. I would like to know about the advantages and disadvantages of a legal adoption with regards to my situation. We are planning on having our own children and I would like to avoid problems with regards to property distribution in future. Also, if I legally do adopt my daughter is there any possible way that he can claim her or her property?

Response

Thank you for asking us to provide you with our opinion in the given issue. I understand that your wife is insisting you to adopt her child from her previous marriage. In the given situation, you are desirous to know firstly, whether and how you can adopt the child; and secondly, the possible impacts of adopting the child on the future distribution of your properties to your legal successors.

As far as the first issue is concerned, please note that the Mohammedan law does not recognize the concept of adoption. Accordingly, even if you are desirous to adopt the child in issue, there will be no lawful method of doing the same. I hope you will be able to make your wife understand the legal position in Bangladesh



with regard to the adoption of a child.

However, I must make it clear that though adoption is not possible, obtaining custody of the child may be possible. Naturally, the mother would remain the lawful custodian of the daughter until it attains the puberty. However, such right of your wife might have been extinguished with her re-marriage. At this moment, if she is desirous to take the custody of the child, she should first request the father of the child regarding the same. If no consensus can be reached, she can file a suit before the appropriate court seeking the custody of the child.

Secondly, as I have already stated that

adoption is not allowed under the Mohammedan law, there is no possibility that the child would become the legal heir of your property. Even in case where your wife got the custody of the child this will have no impact on your property as the child being a step-child will never be able to be your legal heir.

I hope that the aforesaid brief discussion on the laws will help you to assess your legal position. I strongly believe that you will be able to take the right decision in consultation with your wife to the best interests of the child as well as your family.

For detailed query contact omar@legalcounselbd.com

FOR YOUR information



A story of modern slavery

In our Penal Code, slaves and slavery related provisions are described but no specific definition of slavery exists in our legal system.

Buying or disposing of any person as a slave - Section 370

Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave - Section 371

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with [imprisonment] for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Unlawful compulsory labour- section-374

Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

(2) Whoever compels a prisoner of war or a protected person to serve in the armed forces of Bangladesh shall be punished with imprisonment of either description for a term which may extend to one year.

THE Special Rapporteur on contemporary forms of slavery, its causes and consequences, Gulnara Shahinian, in her latest report to the Human Rights Council, has called for comprehensive global action to eliminate the practice of bonded labour which she describes as a form of slavery. Quoting data from the International Labour Organisation, the Special Rapporteur says at a minimum, more than 12 million people are living as forced labourers. The causes are many - poverty, demand for cheap labour, unemployment, national or global crises.

"Time and realities may have changed," Shahinian says, "but the core essence of slavery persists in modern economies. In its modern forms, we find forced labour in agriculture, domestic servitude, the garment industry, the construction industry and prostitution and in the supply chains of mainstream companies."

Bonded labour occurs when a person offers their services in exchange for the repayment of a debt and, as part of the arrangement, loses control over work conditions and the length of the agreement. Usually there are no safeguards attached to the agreement that would normally be found with a regular loan - such as reasonable conditions of repayment or agreed interest rates. Often the employer uses the debt to force individuals to work in exploitative conditions: bonded labourers commonly work very long hours, for very low wages and with no days off.

Technically, bonded labourers can end their state of servitude once the debt is repaid but as the report points out, this seldom happens. Debtors are often illiterate, lack basic maths skills and are easy prey for moneylenders.

In building a profile of this form of forced labour the Special Rapporteur has found poverty first and foremost plays a crucial role: the vast majority of bonded labourers are chronically poor. Consequently, they often have little or no education, they are mostly from socially



excluded groups, including indigenous people, minorities and migrants and they are more vulnerable because in many cases they have limited access to land where they might otherwise earn a living.

The Special Rapporteur is concerned that in the eyes of many, human trafficking and bonded labour are one and the same. Shahinian says seeing forced labour only through the prism of trafficking means that the magnitude of the problem is seriously underestimated. "Forced labour which may occur in the informal sector, in supply chains and export processing zones, within indigenous or minority populations and in rural areas - the overwhelming majority - is not addressed," she says.

International efforts to sign, ratify, enforce and monitor the slavery conventions "pale in comparison" to those for trafficking, she says. Given the gravity of

the human rights violations associated with bonded labour and the millions of people affected by such practices in every part of the world, it is important, the Special Rapporteur says that slavery be given its due prominence and attention.

Shahinian acknowledges that many countries have ratified the slavery conventions and the relevant conventions of the International Labour Organization. However, where laws on forced labour exist, their enforcement is limited and Shahinian says there are very few policies and programmes specifically directed at bonded labour. "Comprehensive action to eliminate this phenomenon," she says, "requires strong political will and the coordinated actions of many Governments to enforce international law and protect the rights of all."

Source: Office of the High Commissioner for Human Rights.

LAW week



Babar was in thick of things

Lutfozzaman Babar, in collusion with former deputy minister Abdus Salam Pintu and his brother Moulana Tajuddin, used banned Harkatul Jihad al Islami (Huji) to execute the August 21 grenade attack, said Criminal Investigation Department (CID) sources. Former BNP state minister for home Babar, who was taken on a fresh remand for four days, disclosed it during the five-day interrogation by the CID investigators. - *The Daily Star, Nov 5, 2009.*

PM pledges retrial

Prime Minister Sheikh Hasina said her government would seek retrial of the case filed for assassinating four national leaders. Hasina accused former president Ziaur Rahman and her wife Khaleda Zia of rewarding the killers of the four leaders while addressing a discussion at Bangabandhu International Convention Centre in the capital marking the Jail Killing Day. - *The Daily Star, Nov 4, 2009.*

IGP gets 48hrs to save Turag

The High Court directed the inspector general of police to stop within 48 hours earth filling and encroachment on the Turag river. The HC also directed the authorities concerned to take effective steps to protect the Buriganga, Turag, Balu and Shitalakhya from grabbers until the ongoing cadastral survey of the rivers is completed as per its previous orders. Some video footage on illegal earth filling, encroachments and extraction of sand by dredging at several points of the rivers was submitted to the HC recently. - *The Daily Star, Nov 4, 2009.*

Huji founder Salam held

The Criminal Investigation Department arrested Moulana Sheikh Abdus Salam, founder of banned Islamist group Harkatul Jihad al Islami (Huji), for suspected links with the August 21 grenade blasts. A Dhaka court placed the arrestee on a six-day remand. The detention comes a week after former BNP state minister for home Lutfozzaman Babar was shown arrested in the case filed for the blasts. Queried, CID officials did not give the exact time and place of Salam's arrest. They only said they picked him up from the city. - *The Daily Star, Nov 3, 2009.*

Vested property to be returned

The cabinet gave final nod to the Vested Property Return (Amendment) Bill, 2009 paving the way to turn the seized property over to the real owners from the Hindus. The approval came at a regular meeting at the Cabinet Division at the Secretariat with Prime Minister Sheikh Hasina in the chair. Hasina at the meeting also directed the home ministry to arrest the culprits responsible for the bomb attack on AL lawmaker Fazle Noor Taposh and unrest in the RMG sector. - *The Daily Star, Nov 3, 2009.*

HC rightly upheld death penalties

Chief counsel for the state in Bangabandhu Sheikh Mujibur Rahman murder case, Advocate Anisul Huq, told the Appellate Division of Supreme Court that the third judge of the High Court had lawfully and rightly upheld the lower court's convictions and death sentences of 12 convicts in the case. The nation wants to find a closure of a dark episode through the trial's conclusion. The bloody events of August 15, 1975 not only changed the lives of the bereaved family members, but altered the nation's course of history, he said. - *The Daily Star, Nov 3, 2009.*

Bill seeks to drop experience clause

A bill was placed in parliament seeking amendment to the Public Procurement Act to drop the provision of past experience as a condition for getting public work contracts worth up to Tk 2 crore. Planning Minister Air Vice Marshall (ret'd) AK Khandker placed the bill with a proposal for a few amendments to the act terming it essential for smooth enforcement of the law. The bill was sent to the parliamentary standing committee on planning ministry for scrutiny and placing report in parliament in two days. - *The Daily Star, Nov 2, 2009.*

West backs trial, int'l norms

Western diplomats remain concerned that unless the government further amends the International Crimes (Tribunals) Act 1973, the trials of war criminals may not meet the minimum international standards of due process and fairness. The concern was expressed to The Daily Star by diplomats supportive of the Bangladesh government's decision to hold trials of people alleged to have committed war crimes during the 1971 War of Independence. These views appear to contradict Law Minister Shafique Ahmed's repeated statements that the current law is sufficient to meet international expectations. - *The Daily Star, Nov 2, 2009.*

Bill placed in JS to curb TU rights

The government placed a bill in parliament seeking to amend the Bangladesh Labour Act 2006 to limit the number of trade unions at the Chittagong and Mongla ports for ensuring better management. Labour and Employment Minister Eng Khandaker Mosharraf Hossain placed the bill, which was sent to the parliamentary standing committee on the ministry concerned for scrutiny and placing report in parliament. Once the proposed law is enforced, employees of the ports will be allowed to collectively form only one trade body at their work places. - *The Daily Star, Nov 2, 2009.*

Govt to probe all extra-judicial killings: Minister

The government will investigate all cases of extra-judicial killings and try them, Law Minister Shafique Ahmed said. The present government is against any kind of extra-judicial killing and committed to protect the fundamental human rights of people, he said, adding that the government in its nine months in power has taken many steps to implement these commitments. Addressing as chief guest at the inauguration of a pilot scheme titled "Human Rights Training for Law Officers and Legal Practitioners" at Hotel Sonargaon, he said the government would hold trials for crimes against humanity that took place since 1971 to 1975 in the country. - *The Daily Star, Nov 1, 2009.*

Cabinet decides on future BDR trial

A draft of the gazette notification, which states any future mutiny and other offences in Bangladesh Rifles (BDR) will be tried under the Army Act, will be placed in the cabinet for approval. "We have decided to put forward the matter to the next cabinet for approval considering its importance," Shafique Ahmed, minister for Law, Justice and Parliamentary Affairs, told The Daily Star after a meeting at his Indira Road residence. He said the BDR mutiny trial will begin next week with the formation of six separate courts across the country by the border force authorities. "The BDR director general will be the head of the courts," he said, adding everything for the trial has been finalised. - *The Daily Star, Oct 31, 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