



LAW amusements



Outrageous Lawsuits

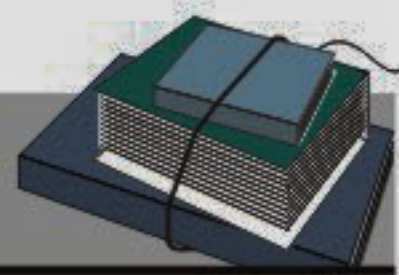
Oh Canada!
Mr. Waddah Mustapha, a hairstylist from Windsor, native of Lebanon but residing in Ontario at the time of the alleged tort, claimed significant psychological damages after seeing a dead fly floating in his unopened water bottle.
At no time in the litigation was the assault upon the poor little fly's person acknowledged. Indeed, it seems that he drowned anonymously. The SPCA did not intervene. For the purposes of this article, we will refer to the dead fly as "David".

As for Mustapha
"In the course of replacing an empty bottle of drinking water with a full one, Mr. Mustapha saw a dead fly (David) and part of another dead fly in the unopened replacement bottle. He became obsessed with the event and its 'revolting implications' for the health of his family, which had been consuming water supplied by Culligan for the previous 15 years. The plaintiff developed a major depressive disorder with associated phobia and anxiety. He sued Culligan for damages."

On this basis, the perfect storm of an outrageous lawsuit began. First, the claim tied up the Court of Justice Brockschire who awarded Mustapha over \$300K in damages, clearly breaking open Canada's reputation as a safe haven for these types of claims. The decision was appealed where, in a presumably hermetically-sealed Courtroom, the Ontario Court of Appeal dismissed the claim. Mustapha then took his case to Ottawa where a full bench of nine judges heard about David. On May 22, 2008, after well over \$1-million in lawyer and expert fees, Court time and judge's salary spent, the ruling came down: "the loss suffered by the plaintiff, Mr. Mustapha, was too remote to be reasonably foreseen and that consequently, he cannot recover damages from the defendant" and the pesky ghost of David, then resting on the back of Canadian justice, was finally brushed off.

Source: www.duhaime.org

LAW lexicon



- Burglary** - The act of illegal entry with the intent to steal.
- Business bankruptcy** - A proceeding under the Bankruptcy Code filed by a business entity.
- Bylaws** - Rules or laws adopted by an association or corporation to govern its actions.
- Capital crime** - A crime punishable by death.
- Calendar** - A list of cases scheduled for hearing in court.
- Calling the docket** - The public calling of the docket or list of causes at commencement of term of court, for setting a time for trial or entering orders.
- Canons of ethics** - Standards of ethical conduct for attorneys.
- Capacity** - Having legal authority or mental ability. Being of sound mind.
- Caption** - Heading or introductory party of a pleading.
- Case law** - Law established by previous decisions of appellate courts, particularly the United States Supreme Court.
- Cases** - General term for an action, cause, suit, or controversy, at law or in equity; questions contested before a court of justice.
- Cause** - A lawsuit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice.
- Cause of action** - The fact or facts which give a person a right to relief in court.

Source: Jurist International

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
I would like to know the difference between annulment and divorce. Is it possible to annul a marriage in Bangladesh? In what circumstances may one claim to annul a marriage? Looking forward to your response.
Tisha,
Panthapath

Response
Thanks for your query. I have understood that you are desirous to know about annulment of marriage and divorce. It is notable that in Bangladesh, family law is mostly personal; i.e. depends on the religion of the person concerned. Accordingly, the marriage and divorce of Muslims are governed by the Muhammadan law.

Divorce is the mechanism to bring an end to a valid marriage. Under the Muslim law, the husband has the automatic right to divorce. But the same can be delegated by the husband to the wife or any other person. In recent times, it is a common phenomenon that husband delegates the right to divorce to the wife. You may find the delegation of such right to you at clause 18 of your *Kabinnama* / *Nikahnama*. Exercising the said right, a wife can unilaterally divorce.

It is notable that divorce is not legally termed as 'annulment of marriage' in Bangladesh. In fact, the term 'annulment of marriage' is not widely recognized in our country. A valid marriage can be dissolved by way of divorce. However, sometimes a marriage may be termed as 'illegal'. Such marriage is deemed to be illegal from the very beginning as if the marriage has never been taken place. So, if the marriage itself is not recognized, there is no scope for any divorce. Such marriages are automatically terminated immediately at the time of intended execution of the purported marriage.

Under the Muslim family law, the reasons of a marriage to become 'illegal' are as follows:

If a Muslim married woman gets married to another person during the continuance of her first marriage, then the second marriage will become illegal.

On the other hand, a Muslim man is prohibited from marrying (1) his mother or his grand mother how high so ever; (2) his daughter or grand-daughter how low so ever; (3) his sister whether full, consanguine or uterine; (4) his niece or great-niece how low so ever; and (5) his aunt or great aunt how high so ever, whether paternal or maternal. A Muslim man is also prohibited from marrying (1) his wife's mother or grand mother how high so ever; (2) his wife's daughter or grand daughter how low so ever; (3) the wife of his father or paternal grand father how high so ever; and (4) the wife of his son or daughter's son how low so ever.



Furthermore, any Muslim Man is prohibited by consanguinity or affinity is prohibited by reason of fosterage except certain foster relations, such as sister's foster mother, or foster-sister's mother, or foster-son's mother, or foster brother's sister, with any of whom a valid marriage may be contracted.

In the aforesaid scenarios, the law will not recognize that the marriage has ever taken place and shall be deemed as 'illegal' from the very beginning. But, for record purpose a declaratory suit may be filed whereby the family court shall declare the marriage as illegal. This is needed only for record purposes.

On the other hand, a valid marriage can be terminated by divorce by either of the parties. Independent of the right to divorce to the wife conferred in the *Kabinnama*, the wife can also divorce the husband under the provisions contained in the Dissolution of Muslim Marriage Act 1939:

A woman married under the Muslim law is entitled to obtain decree for the dissolution of a marriage on any one or more of the following grounds, namely:

1. The whereabouts of the husband has not been known for a period of four years;
2. The husband has neglected or has failed to provide for her maintenance for period of two years;
3. The husband has taken an additional wife in contravention of the provisions of the Muslim Family Law Ordinance- 1961;
4. The husband has been sentenced to imprisonment for a period of seven years or upwards;
5. The husband has failed to perform, without reasonable cause, his marital

obligations for a period of three years; 6. The husband was impotent at the time of the marriage and continues to be an impotent;

7. The husband has been insane for a period of two years or is suffering from leprosy for a virulent venereal disease;

8. The wife, having been given in marriage by her father or other guardian before she attained the age of 18 years, repudiated the marriage before attaining the age of 19 years, provided that the marriage has not been consummated;

9. The husband treats the wife with cruelty that is to say for example habitual assault; living a notorious life by the husband; forces the wife to do immoral acts; disposes of wife's property; restraining her from religious practices; etc.

I hope that the above shall clarify your query. In case of a mutual divorce, you may simply consult with a *Kazi*. In case where the divorce is one-sided and the husband is not willing to co-operate, you should consult with a lawyer in addition to the *Kazi*. Any divorce has to be registered under the Muslim Marriages and Divorces (Registration) Act 1974. To show respect to family life and for the best interest of the child, if any, I always advise the couples to think twice with a positive mindset to resolve the matrimonial problems amicably so that the need for divorce can wither away. However, even after giving proper thoughts and reasonable efforts, the things do not change or the causes for divorce remain, you should go for the dissolution without wasting very long time. We all look forward to have happy and prosperous family lives!

For detailed query contact omar@legalcounselbd.com

LAW week



Withdrawal of 2,903 cases recommended

The home ministry has recommended withdrawal of 2,903 cases including two filed against BNP leaders Moudud Ahmed and Tarique Rahman, Law Minister Shafique Ahmed told the House. "Most of the cases recommended withdrawal were filed against supporters and leaders of Awami League," he said in a scripted answer to a query of BNP lawmaker Lutfar Rahman. He said of the 2,903 cases the central committee formed at the home ministry recommended for complete withdrawal of 2,353 cases and partial withdrawal of 550 cases. - *The Daily Star*, March 11, 2010.

Govt tightens control on cellphone crimes

The government introduced some fresh measures tightening the registration process of SIM (subscriber identity module) and RUMIM (removable user identity module) cards, following a rise in cellphone use for criminal activities. Persons under the age of 18 will no more be able to buy SIM or RUMIM cards, and persons 18 years of age and above must put their national identity numbers on registration forms to become subscribers. Before the new measures were put in place, any ID card would suffice for getting a registered SIM or RUMIM card. Subscribers from now on also must provide a name of an introducer along with the introducer's address, and a contact number on the registration forms. - *The Daily Star*, March 11, 2010.

Contempt rule on Prothom Alo for report on HC bail

The High Court issued a contempt rule on the Prothom Alo Editor and Publisher Matiur Rahman and reporter Mizanur Rahman Khan for publishing a report on granting wholesale anticipatory bail and bail for convicts. The rule asked them to explain within four weeks why contempt proceedings should not be drawn against them. A division bench of the HC comprised of Justice Nazmun Ara Sultana and Justice Md Rais Uddin issued the rule following a petition filed by Muhammad Fakhruddin, a Supreme Court lawyer. - *The Daily Star*, March 10 2010.

HC quashes proceedings against Hasina

The High Court quashed all proceedings in the MiG-29 warplane purchase corruption case against Sheikh Hasina filed during the BNP-Jamaat alliance rule. It also declared illegal the process of case filing by now-defunct Bureau of Anti-Corruption (Bac), and its proceedings against Prime Minister Hasina. The HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Borhan Uddin delivered the verdict after Hasina filed a petition challenging the case. - *The Daily Star*, March 10, 2010.

Gender unfair laws to go

Prime Minister Sheikh Hasina said her government would repeal the laws discriminatory to women and soon make the National Women Development Policy effective. Addressing a programme marking the 100th International Women's Day at Bangabandhu International Conference Centre in the city, the premier said the BNP-Jamaat government silently brought changes in the women development policy. The policy was formulated during the last Awami League rule between 1996 and 2001. "We will undo the changes and make the policy more up-to-date," she said, adding that Awami League in its election manifesto promised to ensure women rights in every sphere of life and it would do so. - *The Daily Star*, March 9, 2010.

HC asks for details on 172 scrap ships

The High Court directed the government to submit by March 18 all documents on 172 ships imported for scrapping since its verdict delivered on March 17 last year in this regard. It expressed concern over deaths of workers at ship-breaking yards. The HC directive came after Bangladesh Environmental Lawyers' Association (Bela) filed an application in January for court directives, saying the government has been arbitrarily authorising import of ships with hazardous substances. - *The Daily Star*, March 9, 2010.

Miles to go before just rights

Eminent women rights leaders observe that women are playing significant role in every sector of the country by leaving behind the notion that they are 'half-human beings.' However, the leaders said that the women have miles to go as they are still marginalised in society and deprived of equal rights. Women are going through both encouraging advancement and a static state of deprivation and repression, said Khushi Kabir, a human rights activist, and also the coordinator of Nijera Kori, an NGO. Policies and laws for ensuring women's rights, programmes for women development, increasing number of women in employment and female literacy rate indicate the advancement of women's rights. - *The Daily Star*, March 8, 2010.

HC told of ship-breaking monitoring committee

A high-powered committee has been formed to monitor ship-breaking activities in the country, a deputy attorney general told the High Court. The committee, headed by the forest and environment secretary, will take necessary steps regarding ship-breaking. Deputy Attorney General Nazrul Islam Talukder told the HC during hearing of a petition filed by Bangladesh Environmental Lawyers Association (Bela) for stopping dismantling of toxic ships. He also said the government is sincere to follow its directives for framing rules on ship-breaking. - *The Daily Star*, March 8, 2010.

Law ministry against EC plan to empower executive magistrates

The law ministry has opposed the Election Commission's move to empower executive magistrates to hold trial of some electoral offences in mobile courts in city corporation polls saying it contradicts the Code of Criminal Procedure, said EC officials. "In the draft rules for conducting city corporation polls, the commission gave executive magistrates the authority to hold trial of some electoral offences. But the Code of Criminal Procedure doesn't approve of such delegation," a senior EC official told *The Daily Star* last week referring to the law ministry's opinion. Executive magistrates presiding over mobile courts cannot sentence anyone more than two years' imprisonment. But the EC draft rules allowed them to hold trial of those electoral offences for which an individual could face up to seven years' imprisonment. - *The Daily Star*, March 7, 2010.

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

LAW campaign

Empowering women through skills development

THE Government of Bangladesh ratified the Convention on the Elimination of All Forms of Discriminations against Women and adopted the Beijing Platform for action at the United Nations Fourth World Conference on Women in 1995. The Government gives high priority to poverty reduction and has undertaken major efforts to improve social protection for the vulnerable groups.

Despite the equality of rights provided under the Constitution, a patriarchal social system dominates women's lives in Bangladesh. This system upholds a rigid division of labour that controls women's mobility, roles and responsibilities and sexuality. Thus, Bangladeshi women face a host of inequities, including: (a) low economic and political participation, (b) low literacy, (c) poor health and nutrition, (d) social discrimination, (e) unequal legal provisions, and (f) gender-based violence and trafficking.

Legislation that defines the rights of women exists. In recent years, new laws have been enacted, for example, dowry prevention, prevention of women and child oppression, and prevention of acid throwing. However, for a large number of poor and illiterate women access to the judicial system is an insurmountable hurdle. Although the Government has established support centres for counselling and legal assistance, these efforts remain insufficient. People are not aware of the existing legislation and its enforcement is not prevalent.

Poverty is pervasive in Bangladesh with a per capita income of US\$370 a year. While 40% of the population lives below the poverty line, landless female headed households face the worst conditions, with 95% of them living below the poverty line. With poverty very much a rural phenomenon, investment in skills training is crucial to facilitate economic growth and reduce poverty in Bangladesh. Increased participation in non-farm sectors is critical in reducing poverty among women as they have little access to cultivable lands. The Asian Development Bank provided

financial assistance together with the Swiss Agency for Development and Cooperation to the Directorate of Technical Education to develop employable skills among unemployed youths, women and the poor. The Skills Development Project aims to reduce poverty by providing market responsive skills training to these vulnerable groups so that graduates can be employed in domestic or overseas labour markets. This project is being managed by Mr. Babar Ali (Project Director) and is advised by consultants hired by Swisscontact, GTZ-IS, and Maxwell Stamp Ltd.

The economically active population in Bangladesh is about 49.5 million where women occupy only 13 percent. Majority of the economically active women are unpaid family workers. While underemployment rate of men is 10.9 percent, which of female is 68.3 percent according to the recent labour force survey data. The Project aims to empower women through skills training, among others. It will provide employable skills training so that graduates can be employed in domestic and overseas job markets. Those who want to start their own businesses, it will provide entrepreneurship training and arrange credit for operation. It will also upgrade skills of underemployed as well as employed so that they can receive more salaries as a result of the increased labour productivity. The Project provides managerial training to women workers for their promotion in industries.

Under the Project men are targeted for continuous sensitisation on gender quality, Ms. Selina Choudhury (Gender and Social Development Specialist of the Project) said. At the institutional level, the project offers regular training sessions and workshops for male executives of companies on meeting the gender awareness requirements in their job descriptions and, more broadly, on gender-sensitive labour practices such as the recruitment of female labourers and provision of equal wages for equal work. At the project level, the Project trains principals and school administrator (who are mostly men) to provide equal opportunities in skills training and



employment services. Community-based motivational campaigns are planned to encourage women to break out of their traditional roles.

Women's growing participation in markets both as buyers and sellers has been a significant indicator of increased empowerment at the household level. Based on his 10 year experience on the Katalyst project in Bangladesh, Mr. Manish Pandey, Regional Director of Swisscontact said enhancing rural women's mobility and access to markets in all seasons in cost-effective ways for selling their products at fair prices will lead to higher incomes and upgrading their standards of living. At the same time, they can get access to better health services, educational opportunities and financial services. He will work closely with the consultants and other stakeholders of

the Skills Development Project to empower women economically in Bangladesh.

Increasing awareness of government officials and communities on the importance of pro-active interventions and resource allocation to encourage women's participation in skills development is critical for the success of the Project. Prof. Dr. Nital Chandra Sutradhar, Director General of the Directorate of Technical Education said. Building partnerships with local government institutions to strengthen support for gender inclusive skill development is being made. As a result of this project, many women will be given opportunities for job training, gainful employment, promotion to higher managerial posts, and more importantly economic empowerment.

Source: News release of Swisscontact South Asia Regional Office.