



LAW amusements



YOUR Advocate

LAW week



Unusual laws around the world

Nigeria: I wouldn't be cheating
There is another very real and terrifying perspective on adultery (called "zina" in Islam Law), pointedly set out in this extract of the Penal Code of the northern Nigerian state of Zamfara, Ch. 8, s. 126 (at zamfaraonline.com/sharia/chapter08.html):

"Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of zina (and) shall be punished with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for a term of one year, or if married, with stoning to death."

I wouldn't be taking that chocolate bar if I was you
And another gem from the Nigerian state of Zamfara, Ch. 8, s. 126 (at zamfaraonline.com):

"Whoever commits the offence of theft ... shall be punished with amputation of the right hand from the joint of the wrist; and where the offender is convicted for the second theft shall be punished with the amputation of the left foot; and where the offender is convicted for the third theft shall be punished with the amputation of the left hand from the joint of the wrist, and where the offender is convicted for the fourth theft shall be punished with the amputation of the right foot; and where the offender is convicted for the fifth or subsequent thefts, he shall be imprisoned for a term not exceeding one year."

Me wanna dlink! Wah! Wah!
There is no legal drinking age in these countries; you can enjoy your first drink while you're having your diaper changed: China, Nigeria, Poland, Portugal, Thailand and Vietnam. It's "16" in most European countries.

Source: Potsdam University site "Alcohol Problems and Solutions at potsdam.edu/hansondj/LegalDrinkingAge.html

Don't be selling your gymnasts
Georgia's Code (2007, Title 39, Chapter 2, section 17) at lexis-nexis.com/hottopics/gacode:

"Any person who shall sell, apprentice, give away, let out, or otherwise dispose of any minor under 12 years of age to any person for the vocation, occupation, or service of rope or wire walking, begging, or as a gymnast, contortionist, circus rider, acrobat, or clown, or for any indecent, obscene, or immoral exhibition, practice, or purpose shall be guilty of a misdemeanor."

"Hello? It's just the paperboy! Anybody ho..." bang!



Revised Statutes of Colorado, Title 18, Article 1-704.5 (also known as the "Make My Day" law, accessible through loc.gov/law/guide/us-co.html):

"... (A)ny occupant of a dwelling is justified in using any degree of physical force, including deadly physical force, against another person when that other person has made an unlawful entry into the dwelling, and when the occupant has a reasonable belief that such other person has committed a crime in the dwelling in addition to the uninvited entry, or is committing or intends to commit a crime against a person or property in addition to the uninvited entry, and when the occupant reasonably believes that such other person might use any physical force, no matter how slight, against any occupant."

"... Any occupant of a dwelling using physical force, including deadly physical force ... shall be immune from criminal prosecution (or) civil liability for injuries or death resulting from the use of such force."

Uh, listen alien, you can't land there!
In October of 1954, the little French town of Châteauneuf-du-Pape passed the following by-law (in-house, but extremely reliable translation):

"The fly-over or landing or takeoff, on public property, of a flying saucer, of whatever nationality, is prohibited."

Source: www.duhaime.org

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 am Hindu and my wife is Muslim. We got married under the Special Marriage Act and we practice our own religion at home. What I would like to know is whether I will get my inheritance once my parents pass and also whether my wife can claim my inheritance if I die? I will be looking forward to your response.

A.K.M Lalmatia

Response

I would like to thank you very much for asking me to provide legal opinion regarding matters relating to inheritance of property and marriage under the Special Marriage Act.

Upon receipt of your query, we have understood that you are a Hindu whereas your wife is a Muslim. You got married under the Special Marriage Act 1872 and now practice your respective religions at home.

In the light of the aforesaid facts and circumstances, I would like to elaborate the following legal provisions for your understanding. Though I recognise that you have no query so far as the marriage is concerned, it is expedient to clarify your concept with regard to the same so that you are not in the dark. It is particularly important when the number of cross religious marriage is increasing in recent days.

Marriage is a social and legal union of a man and a woman in order to live together and often to have child. So far as marriage is concerned different laws are applicable for the followers of different religions in Bangladesh. The provisions of Muslim law regarding marriage are applied to the Muslims and the provisions of marriage under Hindu Law are applicable to the Hindus. The Special Marriage Act is enacted to legalize cross religion marriages. But the 1872 Act is applicable only for certain special types of marriages. It is clearly mentioned in section 2 of the said Act of 1872 that this Act will be applicable only in two circumstances: (1) where neither of the bride or the bridegroom belongs to the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion, OR (2) where each of the parties professes Hindu, Buddhist, Sikh or Jaina Religion. This is very important to note that under the first situation if none of the boy or girl belongs to any of the aforesaid religions, then they are practically becoming 'Nastik' / atheist. And under the second situation, both the boy and the girl must belong to any of the four stated religions, where Islam is not mentioned. Consequently, the Special Marriage Act does not at all permit marriages between Hindu and Muslim keeping their religion intact! So, the marriage cannot be treated as a legal one in its current form. Further, it is strictly and very clearly prohibited for a Muslim woman to marry a non-Muslim under the Muslim Law. Your wife is a Muslim and being a Muslim woman she cannot marry, unless she changes her religion to Hindu or become an atheist. In



Bangladesh, it is not possible to convert to Hinduism. So, the only way is to become atheist.

Now the obvious question is, if the Act does not permit such marriage how could you get married under the Act? At the time of marriage under the Special Marriage Act, 1872 both the parties have to sign two separate 'Declaration Forms'. In both the Forms it is mentioned that neither of the parties professes the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina Religion OR each of the parties professes Hindu, Buddhist, Sikh or Jaina religion. By signing the Declaration Form they are ratifying the points mentioned in the Form and also the fact that the mentioned information is true. So when you have signed the declaration, both of you have declared yourself as non-believer. I think you have not properly read or understood the declaration forms. Or you might have been misguided! Though you have said that both of you are performing your own religions even after getting married under the Special Marriage Act, as per record of your declaration none of you are the followers of any religion.

I understand that it is not a very pleasant matter for you to appreciate. But, it is sad to state that this is the real position. The Special Marriage Act was enacted in 1872 and is in real need of amendment to allow Hindu-Muslim marriages. For example, the Act has been amended in India and it is lawful in India to register a Hindu-Muslim marriage. The need for amendment is long overdue. By way of this writing, I also press for the amendment of the Act. But, however backdated the law is, this still represents the Bangladeshi legal position regarding Hindu-Muslim marriage and honestly speaking we cannot but accept it until and unless the law is amended accordingly.

Only for the sake of argument, if we assume that you are still a Hindu and your

wife is a Muslim then the inheritance matter will be as follows: It is clearly mentioned in section 23 of the Special Marriage Act, 1872 that a person professing Hindu religion shall have the same rights with regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 applies. The rule was different before the year of 1850. That time the persons were excluded from inheriting his parent's property because of conversion of religion and caste. But after 1850 when the Caste Disabilities Act was enacted, the provision of exclusion from inheriting property due to conversion of religion and caste was removed. Now, under Hindu Law no one is deprived from inheriting property due to conversion of religion and caste. So, being a Hindu male you are entitled to inherit your father's property after his death.

If your wife is still considered to be a Muslim, then her marriage will be termed as an 'irregular marriage' under the Muslim law. Irregular marriages can be regularized only if the irregularity is made good, i.e. if you convert to Islam. Then your wife will have inheritance right over your property under the Muslim Law. Otherwise, she will not be so entitled. If, on the other hand, we accept the real position that you have sacrificed your religions and both have become non-believer then both of you will have inheritance rights under the Succession Act.

I agree that I might have made you extremely dissatisfied and unhappy with my response, but alas this is the real legal picture. I urge all of the prospective bride and bridegroom who are professing Hindu and Muslim religion to be aware of the actual legal situation before they get married. I also further press for the need to amend the law without any delay to meet the demand of time and changing society.

For detailed query contact omar@legalcounselbd.com.

Coaching centres played dubious role

A few coaching centres that prepare candidates for recruitment tests had been involved in the leak of question papers for assistant teachers at public high schools. The candidates arrested along with some government employees at a guest-house in Gangachhara upazila in Rangpur on July 8 made the revelation to police. Several coaching centres in the capital and elsewhere have links with the syndicate, they told law enforcers. Police, however, did not mention names of any coaching centres for the sake of investigation. It was found that the question papers could be taken out of the Bangladesh Government (BG) Press due to negligence of police in frisking press employees entering and leaving the restricted zone at the press. -The Daily Star, July 15, 2010.

War crimes trial must not be motivated

The UK State Minister for International Development Alan Duncan said the trial of 1971 war criminals should be conducted fairly through proper judicial process. The government must ensure that the judgement is not politically motivated, said Duncan while addressing a press conference jointly organised by the British High Commission in Dhaka and UK Department for International Development (DFID) at the city's Lake Shore Hotel. He, however, appreciated the government's move for holding the trial even after 40 years of the country's independence. -The Daily Star, July 15, 2010.

Victims' families want quick trial

Family members and relatives of the army officers slain in last year's BDR mutiny demanded quick and fair trial of the killers. In their reaction to submission of the charge sheet of BDR killing case, some of them expressed their concern over the time needed for the trial terming it a bit lengthy. On February 25 and 26 last year, 57 army officers were killed during a 33-hour mayhem at the BDR headquarters in Pikhana, Dhaka. "All I want is to see the trial finish quickly," said Fatema Sultana, wife of slain Col Gulzar Uddin Ahmed, in a voice choked with emotion. -The Daily Star, July 14, 2010.

Arrests made ignoring court order

Jamaat-e-Islami protested the arrest of its two leaders Quader Mollah and Muhammad Kamaruzzaman and demanded unconditional release of all detained top brass. Acting Jamaat Ameer Maqbul Ahmed and Acting Secretary General ATM Azharul Islam jointly issued a statement on arrest of the Jamaat duo from the High Court premises. The statement said the ruling Awami League proved that it does not believe in the rule of law and freedom of speech. They also said police arrested both leaders ignoring a High Court order. -The Daily Star, July 14, 2010.

Procurement law passed dropping experience clause

The Jatiya Sangsad passed a bill dropping from the Public Procurement Act 2006 the provision of past experience as a condition for getting contracts for public work involving up to Tk 2 crore. It also passed another bill for setting up a tourism board for development of tourism industry. Planning Minister AK Khandker proposed passage of the bill for bringing a few amendments to the PPA which include dropping the provision of past experience. Earlier last year, the planning minister had placed a bill in parliament with the same purposes. But during scrutiny of the bill, the parliamentary standing committee on the planning ministry changed the proposal for dropping from the PPA the provision of past experience. -The Daily Star, July 13, 2010.

Cabinet okays Border Guard Bangladesh Act

The cabinet approved the draft of the Border Guard Bangladesh Act 2010 with a provision of capital punishment for mutiny offences. The approval came at a weekly meeting with Prime Minister Sheikh Hasina in the chair at the Cabinet Division of the secretariat. The draft includes a provision of death penalty as maximum punishment, which was seven years' imprisonment for mutiny offences under the existing BDR law, premier's Press Secretary Abul Kalam Azad told reporters after the meeting. He said a three-tier court system would replace the existing one-tier one. Of the three courts, the Special Border Guard Court could award capital punishment for mutiny, or instigating mutiny or similar offences. -The Daily Star, July 13, 2010.

No power for UGC to fix tuition fees

The parliament passed the Private University Bill, snubbing the cabinet's move to empower the University Grant Commission (UGC) to fix tuition fees of private universities. The cabinet's another proposal for empowering UGC to approve the salaries and service rules for teachers and other staff of private universities was also scrapped from the bill. Instead, the House passed the bill incorporating recommendations of the parliamentary standing committee on education ministry which stood against boosting the UGC's supervisory power over private universities. -The Daily Star, July 12, 2010.

Special court starts trying 735 accused

As a Bangladesh Rifles special court in its Pikhana headquarters started trying a record number of 735 accused in a single mutiny, the prosecutor narrated how brutally some of them killed commanding officers, and tortured some other officers and their family members. Lt Col Md Badrul Alam, prosecutor of the case, told the court that the mutineers killed the acting commanding officer of Sadar Rifle Battalion, tortured one officer tying him with a coconut tree, and tortured some other officers and their family members as well. -The Daily Star, July 12, 2010.

Another dies in custody

A man died in police custody in Nabinagar Police Station of Brahmanbaria, six days after the High Court asked the government to form a committee to investigate custodial deaths. The dead was identified as Mohammad Nurul Haque, 35, a rickshaw-puller, of Bidyakut village in Nabinagar upazila. Officer in-Charge of the police station Rupok Saha said Nabinagar police arrested fugitive Nurul Saturday night around 3:30am. He was admitted to Nabinagar Health Complex immediately after his arrest as he complained of chest pain. The police shifted him to Brahmanbaria Sadar Hospital the next morning around 6:00am since his condition deteriorated and he died at around 6:30am, the OC added. -The Daily Star, July 12, 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 news

French ban on Islamic veils easily passes vote

FRANCE'S lower house of parliament overwhelmingly approved a ban on wearing burqa-style veils Tuesday, July 13, 2010 part of a concerted effort to define and protect French values that has disconcerted many in the country's large Muslim community.

Proponents of the law say face-covering veils don't square with the French ideal of women's equality or its secular tradition. The bill is controversial abroad but popular in France, where its relatively few outspoken critics say conservative President Nicolas Sarkozy has resorted to xenophobia to attract far-right voters.

The ban on burqas and niqabs will go in September to the Senate, where it also is likely to pass. Its biggest hurdle will likely come after that, when France's constitutional watchdog scrutinizes it. Some legal scholars say there is a chance it could be deemed unconstitutional.

Spain and Belgium have similar bans in the works. In France, which has Europe's largest Muslim population, about 5 million of the country's 64 million people are believed to be Muslim. While ordinary headscarves are common in France, only about 1,900 women are believed to wear face-covering veils.

The main body representing French Muslims says such garb is not suitable in France, but it worries that the ban will stigmatise all Muslims.

In Tuesday's vote at the National Assembly, there were 335 votes for the bill and just one against it. Most members of the main opposition group, the



Socialist Party, walked out and refused to vote, though they in fact support a ban. They simply have differences over where it should be enforced, underscoring the lack of controversy among French politicians on the issue. The bill passed Tuesday bans face-

covering veils everywhere that can be considered public space, even in the street, but the Socialists want it only in certain places, such as government buildings, hospitals and public transport.

France's government has sought to insist that assimilation is the only path

for immigrants and minorities, and last year it launched a grand nationwide debate on what it means to be French. The country has had difficulty integrating generations of immigrants and their children, as witnessed by weeks of rioting by youths, many of them minorities, in troubled neighbourhoods in 2005.

At the National Assembly, few dissenters spoke out about civil liberties or fears of fanning anti-Islam sentiment. Before the vote, Greens lawmaker François de Rugy said the conservatives "are throwing oil on the fire you are reviving tensions just to win votes."

Legislator Bérengère Poletti, of Sarkozy's party, said face-covering veils "are a prison for women, they are the sign of their submission to their husbands, brothers or fathers."

The niqab and burqa are also seen here as a gateway to extremism and an attack on secularism, a central value of France for more than a century.

Discussions in France have dragged on for more than a year, since Sarkozy declared in June 2009 that the burqa is "not welcome" in France.

There has been some concern the bill could prod terror groups to eye France or its citizens as potential targets. Following Sarkozy's comments, Al Qaeda in the Islamic Maghreb issued a statement on websites vowing to "seek vengeance against France."

The legislation would forbid face-covering Muslim veils in all public places in France and calls for \$196 (Cdn.) fines or citizenship classes, or both.

The bill also is aimed at husbands and fathers. Anyone convicted of forcing someone else to wear the garb risks a year of prison and a \$39,000 fine, with both penalties doubled if the victim is a minor.

Officials have taken pains to craft language that does not single out Muslims. While the proposed legislation is colloquially referred to as the "anti-burqa law," it is officially called "the bill to forbid concealing one's face in public."

It refers neither to Islam nor to veils. Officials insist the law against face-covering is not discriminatory because it would apply to everyone, not just Muslims. Yet they cite a host of exceptions, including motorcycle helmets, or masks for health reasons, fencing, skiing or carnivals.

In March, France's highest administrative body, the Council of State, warned that the law could be found unconstitutional. It said that neither French secularism nor concerns about women's equality, human dignity or public security could be legal justifications.

Anticipating a ban on the veils, an entrepreneur who tried to run for president in 2007, Rachid Nekkaz, is creating a fund to pay the fines of anyone caught wearing a niqab or burqa.

While he says he opposes the full veils, he says a ban would be anti-democratic, and he is creating the fund "so that my country is not the disgrace of the whole world."

Source: UNWire.