



LAW LEXICON

Joint and several liability - A legal doctrine that makes each of the parties who are responsible for an injury, liable for all the damages awarded in a lawsuit if the other parties responsible cannot pay.

Joint tenancy - A form of legal co-ownership of property (also known as survivorship). At the death of one co-owner, the surviving co-owner becomes sole owner of the property. Tenancy by the entirety is a special form of joint tenancy between a husband and wife.

Judge - A presiding officer of the court.

Judgment - The official and authentic decision of a court of justice upon the rights and claims of parties to an action or suit submitted to the court for determination.

Judgment debtor - One who owes money as a result of a judgment in favor of a creditor.

Judicial review - The authority of a court to review the official actions of other branches of government. Also, the authority to declare unconstitutional the actions of other branches.

Source: Jurist International.



LEGAL MAXIM

In extenso - At full length.

In fictione legis aequitas existit - A legal fiction is consistent with equity.

In foro conscientiae - In the forum of conscience.

In futuro - In the future.

In jure non remota causa sed proxima spectatur - In law not the remote but the proximate cause is looked at.

In limine - At the outset, on the threshold.

In loco parentis - In place of the parent.

In mortua manu - In a dead hand.

In novo casu novum remedium apponendum est - In a new case a new remedy is to be applied.

In omni re nascitur res quae ipsam rem exterminat - In everything is born that which destroys the thing itself.

In omnibus - In every respect.

In pari delicto potior est conditio possidentis - When the parties are equally in the wrong the condition of the possessor is better.

In personam - Against the person.

In pleno - In full.

Source: inrebus.com



YOUR ADVOCATE

This week Your Advocate is Barrister Tanjib-ul Alam Advocate, Supreme Court of Bangladesh. He is the head of the chamber of a renowned law firm, namely, 'Tanjib-ul Alam and Associates', which has expertise mainly in commercial law, corporate law, admiralty, employment and labor law, land law, banking law, constitutional law, telecom law, energy law, Alternative Dispute Resolution, Intellectual Property Rights and in conducting litigations before courts of different hierarchies.



Query

Dear sir, on behalf of Mr.X(averse to disclose his name) I am sending you this problem which raised in a specified company. Mr. X is one of the directors of Y Company, entered into a contract for the supply of goods and materials with the company which requires the sanction of the Board of Directors according to its Articles. In the Meeting of the Board of Directors, with other resolutions company gave the validity of the contract of Mr. X. Among the 7 directors of the company, 3 directors challenge the validity of the meeting before a competent court on the ground of non-service of notice of the meeting on them. In this circumstance, is there any legal consequence of resolutions taken by the Board of Directors in that meeting? And is there any necessity to call a fresh meeting now?

Motijheel,Dhaka

Response

Thank you for your query. The above situation gives rise to two issues, (a) validity of the meeting of the Board of Directors and (b) the process of entering into a contract by the company with one of its Directors.

With regard to the first issue, as a matter of general principle, a meeting held without the requisite notice to the Directors is a nullity in the eye of law as such void. However, section 89 of the Companies Act, 1994 provides that any Minutes of a Meeting of a Company duly signed by the Chairman of the Meeting shall be

treated as prima facie evidence of the transaction that took place including the holding the meeting itself. Therefore, unless there is contrary finding from the Court the Meeting will be deemed to have been held in compliance with law. As such the Company can continue to act in accordance with the Agreement with the Director until the Court declares that the meeting was illegal and without any legal effect.

With regard to the issue of executing contracts with the Directors, it is known as "related party transaction". A Director is under an obligation to disclose his interest in the transaction and he is not allowed to participate in the decision making process concerning his interest and his presence will not be counted for the calculation of quorum. From your query, it is not clear if the interested Directors casted his vote.

Given the fact that three of the Directors objected to the holding of the meeting and the interested Director is not allowed to participate in the decision making process, in the absence of any other mitigating factor, it appears that the votes are equally divided. In such a case, the decision cannot be proceeded upon. If the Chairman has a casting vote and he is not the interested person, then the Chairman's casting vote will become deciding factor.

As far as the need for holding fresh meeting is concerned, the Company is always free to hold a fresh meeting with notice to all the Directors in compliance with section 95 of the Companies Act, 1994. This would probably help the company to avoid litigation amongst the Directors.

For detailed query contact:
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World press freedom day

3 May 2011 -- In 1993, the United Nations General Assembly established the Day "to celebrate the fundamental principles of press freedom, to evaluate press freedom around the world, to defend the media from attacks on their independence and to pay tribute to journalists who have lost their lives in the exercise of their profession".

Press freedom is considered to be a cornerstone of human rights and a guarantee of other freedoms. Freedom of expression is essential to enable public participation in decision-making. Citizens cannot effectively exercise their right to vote or take part in public debate if they do not have free access to information and ideas and are not able to freely express their views.

On the occasion of the World Press Freedom Day, 3 May, the Director-General of

UNESCO, Irina Bokova, appealed to all governments to uphold their commitments in protecting and promoting freedom of expression and freedom of the press, which are the foundations of all democratic societies. Particular responsibility remains with the governments of the countries in the Middle East and North Africa to meet the aspirations of their people, notably for freedom of expression, a basic human right already largely reclaimed by the citizens of Egypt and Tunisia. The Director-General also expressed deep concern over reoccurring attacks on journalists reporting on conflicts and social movements in the Middle East and Northern Africa.

Source: Hrea.org

Devavish said.

The study states that "gross human rights violations" continue, including "arbitrary arrests, torture, extra-judicial killings, harassment of rights activists and sexual harassment".

It recommends that the government formally endorse the UN Declaration on the Rights of Indigenous Peoples and that the Human Rights Commission of Bangladesh investigate alleged human rights violations.

Displaced : During the insurgency, about 70,000 indigenous people fled Bangladesh and more than 100,000 were internally displaced. The study found that most international refugees had been repatriated and rehabilitated; however, "no practical steps have been taken to rehabilitate the internally displaced persons".

But State Minister Jatindra Lal Tripura MP, chairman of the Taskforce for Repatriation of Tribal Refugees and the Rehabilitation of Internally Displaced People, insisted: "The current situation is better than the past. At present, there is harmony and peace [in CHT]."

De-militarization : According to the report, a third of Bangladesh's army is deployed in the CHT, an area that comprises just a tenth of the country's territory.

"This is an excessive amount, by any standards, especially in a country not participating in a war," the study says.

The report cites the military presence as the main reason for human rights violations against the local population and says the withdrawal of temporary military camps is "crucial for re-establishing normalcy".

But how the military factor into establishing and maintaining peace in CHT remains unclear, Baer said. "The government has been open, but a big problem

has been gathering relevant information about... the military presence in CHT. The 'black hole', so to speak, in my work, is the role of the military establishment in the CHT peace process," Baer said.

Land rights : According to the study, disputed land rights remain the most important issue, with forced evictions and expropriation of ancestral lands continuing at an "alarming rate".

The Bangladesh government has long seen the CHT as empty land on to which it can move poor Bengali settlers, with scant regard for the area's Jumma inhabitants, activists insist.

"The government set up the land commission [to settle land disputes] without due consideration of the opinions of the indigenous community. Therefore, indigenous people feel an unwillingness to cooperate with it," said National Human Rights Commission chairperson Mizanur Rahman.

The study recommends that the government create a timeline for implementing all remaining provisions of the accord, warning that failure to do so could lead to "renewed political instability and ethnic conflict in the region".

On 21 April, Survival International - an organization working for the rights of tribal people worldwide - reported that six indigenous Jumma villages were razed to the ground and many Jumma were attacked by Bengali settlers in the CHT.

Violence erupted when Jumma land owners discovered settlers clearing their land and building shelters. A fight ensued that resulted in the death of three settlers. Following this incident, settlers, with the support of the army, burned down more than 90 Jumma houses and at least 20 Jummas were injured, the UK-based group reported.

Source: IRIN Humanitarian news and analysis.



LAW WEEK

Limon gets bail

The High Court (HC) on May 05 granted bail for six months to Limon Hossain, who was shot into disability by Rapid Action Battalion, in an arms case filed against him by the elite force with Rajapur Police Station in Jhalakathi. The court also directed the government to arrange his treatment at one of the country's best hospitals as per his choice. It also asked the government to bear cost of the treatment. Responding to a bail petition filed as public interest litigation, the HC also issued a rule upon the government to explain within two weeks why it should not be directed to form an inquiry commission to find out the fact behind the torture on Limon. The HC bench of Justice Nozrul Islam Chowdhury and Justice Anwarul Haque in the rule asked the government to explain why Limon should not be granted regular bail in this case. The bench came up with the rule and order following a bail petition filed by Ain O Salish Kendra, a human rights organisation. - *The Daily star online edition May 05 2011*.

SC dismisses Yunus petition

The Supreme Court on May 05 dismissed two petitions filed challenging the Bangladesh Bank order that removed Dr Muhammad Yunus as managing director of Grameen Bank. The seven-member bench of the Appellate Division headed by Chief Justice ABM Khairul Haque passed the order. The apex court passed the order following conclusion of hearing on the two petitions -- one filed by Yunus and another by nine directors of Grameen Bank on May 03. Yunus sought withdrawal of the SC order on April 5 that dismissed his leave-to-appeal petition against the High Court verdict upholding the Bangladesh Bank order removing him from the post. The other petition was filed on April 3 by nine Grameen Bank directors challenging the HC verdict. - *The Daily star online edition May 05 2011*.

Prime accused in cops murder case killed in Pabna

The prime accused in a case filed for killing three cops was shot dead in Bera upazila of Pabna on May 03. The deceased, Rafique alias Chalak Rafique, 32, was the main accused in the case filed for killing three policemen last year, said Mohammad Zahir, sub-inspector of Bera Police Station. On information, police recovered the bullet-hit body of Rafique from Shyampur char in the upazila. Earlier, three cops -- Sub-inspector Md Kafil Uddin, Nayek Abdul Wahed and constable Shafique of Dhalarchar police camp -- were killed as gunmen fired on them at Daspara in Bera upazila on July 20, 2010. - *The Daily star online edition May 03 2011*.

3 factories fined for pollution

An enforcement team of Department of Environment (DoE) in separate drives in the port city on May 02 fined three factories Tk 13 lakh and seized two trucks on charges of polluting environment and cutting hill illegally. The DoE team, led by its Director (enforcement) Munir Chowdhury, conducted a drive in Lake View area under Khulshi Police Station. DoE officials noticed levelling of hills at Paharika Residential Area in South Khulshi. Impulse Properties Ltd, a real estate company, was found involved in the illegal act. The team conducted another drive in Nasirabad industrial area under Bayezid Police Station and found two factories polluting the environment by emitting harmful gas, according to the release. - *The Daily star May 03 2011*.

Ctg Arms Haul, Babar involved, testify cops

Two police sergeants in separate statements in connection with the 10-truck arms haul case told a court on May 02 that they had arrested five people from the spot but the arrestees were released as per the direction of Lutfozaman Babar, then state minister for home. The witnesses are Sergeant Md Alauddin, then officer-in-charge (OC) of Bandar Police Outpost, and Sergeant Helal Uddin Bhuiyan, then OC of Koilar Depot Police Outpost. Metropolitan Magistrate Mohammad Mahabubur Rahman recorded Sgt Alauddin's 12-page and Sgt Helal's 8-page statements. - *The Daily star May 03 2011*.

Charge framed against ex-DU treasurer, 7 others

A Dhaka court on April 28 framed charges against former treasurer of Dhaka University (DU) and seven others in a case filed against them for appointing 765 employees to different posts through a forged tender in 2004. The accused are ex-DU treasurer Prof Syed Abul Kalam Azad, ex-acting registrar of National University (NU) Shamsher-uz-Zaman, deputy registrar (Parishad) Mohammad Shahidur Rahman, deputy registrar Mohammad Nurul Haque, ex-contractual dean Sher Mohammad, ex-examination controller and college inspector Mohammad Abdul Hamid, ex-director (finance and accounts) Mohammad Shahabuddin and ex-syndicate member Prof Feroza Begum. Rejecting the discharge petitions submitted on behalf of the accused, Third Additional Chief Metropolitan Magistrate AHM Habibur Rahman Bhuiyan framed charges and fixed July 5 for trial of

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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.

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The Daily Star 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel:



RIGHTS CORNER



THE Chittagong Hill Tracts Peace Accord has yet to be fully implemented, with human rights violations continuing more than a decade after it was signed in December 1997 says the UN.

The accord ended a 25-year low-intensity guerrilla war between 11 indigenous groups (Jumma) and the government and was intended to establish self-governance in this southeastern part of Bangladesh, home to half a million people.

However, a recent study by UN Rapporteur Lars-Anders Baer found an extensive military presence and ongoing land disputes in the Chittagong Hill Tracts (CHT) in 2010.

"When the idea of the study was presented to the UN's Economic and Social Council, the Bangladesh delegation... argued that there were no 'indigenous' people in Bangladesh. This was a surprise," he told IRIN.

Raja Devavish Roy, king of the Chakma Circle, the largest ethnic group in the Jumma, who was also appointed to the UN Permanent Forum on Indigenous Issues, says a widespread lack of knowledge about the area's long history of autonomy has resulted in discrimination against its inhabitants. "In the Chittagong Hill Tracts, all Millennium Development Goals... are well below the national average,"