

 **YOUR ADVOCATE**

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Query
With my friend Mamun, I have made a deed of agreement. Under this agreement, Mamun has agreed to pay my money (Tk 2 Lac) which is due to him within August 30 but he did not pay it yet. The deed has signed by us and two witnesses but there was no authentication from legal practitioner. Now what would be the legal value of this deed of agreement and if I want to file a suit to recover my money what procedure have to follow?

Roni
Satmasjid Road, Dhaka

Response
Thank you very much for your query to the Daily Star's Your Advocate column. From your query it appears that you and your friend have entered into an agreement whereby your friend has agreed to pay you Tk. 2,00,000.00 within August 2011. But, he did not pay the due amount within the stipulated time. The agreement was duly signed by the parties and witnessed by independent witnesses. Now you are desirous to know whether the agreement is enforceable under the laws of land.

Generally as per the Stamp Act a contract has to be executed in Tk. 150.00 non-judicial stamp paper. However, it is not apparent from your query whether this requirement has been met. On the other hand, the agreement was properly signed and witnessed. Therefore, the agreement may be treated as valid agreement even if it is not executed in



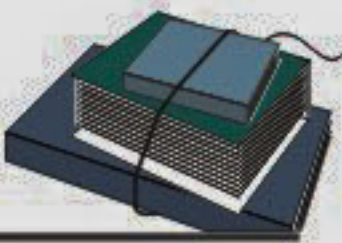
non judicial stamp paper. Non compliance with the requirement of stamp duty does not automatically make the agreement invalid. The only difficulty is, in case the matter has to resort to the court, the court may refuse to admit the agreement as evidence for want to

compliance to the Stamp Act. The court may however, admit it by imposing a fine. Secondly, from the given facts it is not clear why does your friend owe you the amount. If you have given a loan to your friend and have claimed interest on that, the agreement may be considered void for illegality. None other than the Banks or the financial institutions is entitled to give loan against charging interest. If, on the other hand, no interest has been claimed on the loan amount or the money s payable for some other lawful reason there would be no such problem. The agreement can be treated as valid unless it was made for any illegal purpose. Considering this agreement as valid it can be said that the agreement is enforceable. After analyzing all the aspects including the amount of loan it is suggested to pursue him both verbally and in writing. After assessing his reply, you can serve a Legal Notice for repaying the amount. If he did not take any initiative to repay the loan after receiving the Legal Notice then you can file a money suit before the court. Assuming that the contract was made in Dhaka you should file the money suit before the District Court in Dhaka. As the amount in issue is not very significant, I would suggest you to go to the court only as the last resort.

Hope this answer will help you to take the next course of actions.

For detailed query contact: omar@legalcounselbd.com.

LAW LEXICON



Next friend - One acting without formal appointment as guardian for the benefit of an infant, a person of unsound mind not judicially declared incompetent, or other person under some disability.

No Bill - This phrase, endorsed by a grand jury on the written indictment submitted to it for its approval, means that the evidence was found insufficient to indict.

No-contest Clause - Language in a will that provides that a person who makes a legal challenge to the will's validity will be disinherited.

No-fault Proceedings - A civil case in which parties may resolve their dispute without a formal finding of error or fault.

Nolo contendere - A Latin phrase meaning "I will not contest it." A plea in a criminal case which does not require the defendant to admit guilt, but the defendant does not contest the facts on which the charge is based. Some judges refuse to accept such pleas in criminal cases.

Non compos mentis - Not of sound mind; insane.

Nonfeasance - Nonperformance of an act which should be performed; omission to perform a required duty or total neglect of duty.

Nonjury trial - Trial before the court but without a jury.

Not guilty plea - Complete denial of guilt. In criminal cases, a necessary stage of the proceedings required to preserve all legal issues.

Not guilty by reason of insanity - The jury or the judge must determine that the defendant, because of mental disease or defect, could not form the intent required to commit the offense.

Source: Jurist International.

LEGAL MAXIM



Magister rerum usus; magistra rerum experientia - Use is the master of things; experience is the mistress of things.

Major continet in se minus - The greater contains the less.

Majus est delictum se ipsum occidere quam alium - It is a greater crime to kill one self than another.

Mala fide - In bad faith.

Mala grammatica non vitiat chartam - Bad grammar does not vitiate a deed.

Mala in se - Bad in themselves.

Mala prohibita - Crimes prohibited.

Malitia supplet aesatem - Malice supplies age.

Malo animo - With evil intent.

Mandamus - We command.

Maximus magister erroris populus est - The people are the greatest master of error.

Source: Inrebus.com.

RIGHTS INVESTIGATION



Libyan NTC pledges to investigate rights violations

LIBYA'S National Transitional Council has pledged to investigate human rights abuses committed by its own supporters, in response to a newly released report by Amnesty International.

In a statement on 13 September, the NTC condemned all abuses committed during the war, and said it "will move quickly to act on Amnesty's findings to make sure similar abuses are avoided in areas of continued conflict such as Bani Walid and Sirte."

In its statement, the NTC also said it would now be "putting its efforts to bring any armed groups under official authorities and will fully investigate any incidents brought to its attention."

"We welcome the NTC's commitment to investigate abuses such as those we have documented and to ensure that they are not repeated", said Claudio Cordone, Amnesty International's Senior Director.

"We look forward to concrete action to ensure as a matter of

urgency that detainees are not ill-treated, and that particularly vulnerable groups such as Libyans from Tawargha - most of whom have fled their town - and sub-Saharan Africans, are protected from reprisals."

Amnesty International's report



released on 13 September, The Battle for Libya: Killings, Disappearances and Torture revealed that while al-Gaddafi forces committed war crimes and

possibly crimes against humanity, forces opposed to Colonel al-Gaddafi also committed human rights abuses including war crimes.

One of Amnesty International's key recommendations is for the NTC to bring detention centres under control of the Minister of Justice and Human Rights in order to prevent ongoing abuses of captured fighters and civilians.

The organisation has also called for a strong public message that torture and other abuses will not be tolerated, and that those responsible will be held to account.

Amnesty International has asked for the NTC to take specific action, including through public appeals, to ensure that armed groups do not abuse those who are particularly vulnerable to reprisals, such as sub-Saharan Africans and Libyans from Tawargha who are generally assumed to have been sided with Colonel al-Gaddafi.

The NTC has postponed by two days its planned attack on Bani Walid, asking for civilians to leave the town after negotiations for the surrender of the al-Gaddafi forces failed.

Source: Amnesty International.

 **GOOD NEWS**

Darfur: UN-AU envoy says enduring peace is a realistic objective

A permanent ceasefire and lasting peace in Darfur is an achievable goal, the top United Nations-African Union official in the troubled Sudanese region stressed on 11 September, urging all sides to the conflict to build on a recent peace agreement between the Government and one of the rebel groups.

Ibrahim Gambari, the head of the joint UN-AU peacekeeping mission (UNAMID) and the Joint Chief Mediator ad interim for the region, told a meeting in Doha, Qatar, that the recent agreement "debunks the widely held view that the conflict in Darfur is intractable and defies solutions."

On 14 July the Sudanese Government - which has been fighting rebel groups in Darfur since 2003 - signed the Doha Document for Peace in Darfur (DDPD) with the Liberation and Justice Movement (LJM).

Mr. Gambari told the inaugural meeting of implementation follow-up committee of the DDPD that the

agreement must now be implemented quickly and faithfully.

"In doing so, it would serve as a litmus test for the viability of comprehensive and inclusive peace in Darfur," he said.

Mr. Gambari also said he hoped the deal would encourage other rebel groups and armed movements to join in the Darfur peace process.

"Timely and faithful implementation of the provisions of the DDPD would also open up the visa for several early recovery and development projects and reconciliation initiatives which would address the root causes of the conflict and ensure the attainment of lasting peace and stability in Darfur."

The implementation follow-up committee includes representatives of the UN, UNAMID, the AU, the Sudanese Government, armed movements, the Qatari Government mediators and about a dozen other organizations and governments.

Source: Hera.org.

 **LAW WEEK**

Hearing deferred again in August 21

cases
A Dhaka court on September 15 deferred until September 21 the hearing on charge framing against BNP Senior Vice Chairman Tarique Rahman and 29 others accused in the supplementary charge sheets of the August 21 grenade attack cases. Judge Shahed Nuruddin of the Speedy Trial Tribunal-1 passed the order after defence lawyers of ten accused submitted separate petitions seeking adjournment of the hearing. - *The Daily star online edition September 15 2011*

Charge framed against Sayedee

Charges have been framed against Jamaat-e-Islami leader Delwar Hossain Sayedee in a tax evasion case. Judge Mohammad Mozammel Hossain of the Special Judge's Court-3 of Dhaka framed the charges against Sayedee on September 15 after rejecting a petition submitted seeking discharge of the Jamaat leader from the case. Sayedee, who is also accused of murder during the 1971 Liberation War, was produced before the court during hearing. The Jamaat leader pleaded not guilty and demanded justice after the charges were read out to him. The court also fixed October 24 for the trial of the case. Masuma Khatun, deputy tax commissioner of the National Board of Revenue (NBR), filed the case on August 19 last year against Sayedee on charge of dodging income tax of Tk 56.45 lakh for the fiscal years from 2005-2006 to 2009-2010. - *The Daily star online edition September 15 2011.*

Further probe ordered in student

abuse case
A Dhaka court on September 14 ordered Detective Branch (DB) of police to conduct a further investigation into the case filed against a school teacher for violating a student of Viqarunnisa Noon School and College. The DB has to submit the probe report by October 16, said the court. Judge (in-charge) AKM Mostafa Dewan of the Fourth Special Tribunal for Prevention of Women and Children Repression also rejected a bail petition of Porimol Joydhar charged with violating a class-X female student of the school. On July 5, the victim's family filed the case accusing Porimol, a Bangla department teacher of the school's Bashundhara campus, of violating the girl at his coaching centre in the city's Badda twice, first on May 28 and then on June 17. - *The Daily star September 15 2011.*

SC judge feels embarrassed

A Supreme Court judge on September 13 felt embarrassed to hear a petition for staying a High Court verdict that declared the appointment of 807 National University staff illegal. Justice MA Wahhab Miah, the chamber judge of the Appellate Division, however, did not mention any reason for his embarrassment, Barrister Nasiruddin Ashim, a counsel for the petitioners, told reporters. The lawyer said the petition will now be sent to the chief justice for his decision. Additional Attorney General Murad Reza told The Daily Star that Justice Wahhab may have personal difficulties to hear the petition. Of 807 sacked NU officials and employees, 278 filed the petition with the apex court of the country on September 6 seeking stay on the HC verdict. The HC on August 23 ruled that appointment of the 807 staff recruited in between November 17, 2003 and August 31, 2004 in the university illegal. Earlier on September 10, the NU syndicate at an emergency meeting decided to sack 821 officials and employees who were recruited through a fake advertisement during the tenure of the BNP-led alliance government. - *The Daily star September 14 2011.*

Shipping minister sues Jugantor editor

A Dhaka court on September 13 summoned the editor, executive editor and a reporter of the Daily Jugantor asking them to appear before the court on October 18, hours after a defamation case was filed against them by the shipping minister. Shipping Minister Shahjahan Khan filed the defamation case against editor advocate Salma Islam, executive editor Saiful Alam and reporter Jashim Chowdhury Shabuj on charge of running two news items against him in the newspaper. After the hearing, Metropolitan Magistrate AGM Al Masud, recorded the statement of complainant taking into cognizance the defamation charge against them and asked them to appear before the court on the scheduled date. - *The Daily star September 14 2011.*

HC asks govt to explain

The High Court on September 12 asked the government to explain within four weeks why the torture of three children in the custody of Lalbagh Police Station should not be declared illegal. A Bangla daily on September 11 reported that Lalbagh police allegedly tortured three children -- Pakhi Aktar, 8, her brother Berek, 10, and her cousin Mirajul, 7, seriously by detaining them for six days. A vacation bench of HC issued a suo moto rule also asking the government to explain why punitive action should not be taken against the police personnel responsible for torturing the children. The bench of Justice Hasan Foez Siddique and Justice Md Anwarul Haque came up with the rule following the newspaper report headlined "Torture against 3 children by detaining them for six days in the Thana". - *The Daily star September*

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