

CRIME & PUNISHMENT

House trespass

Trespass is an area of tort law. Today we will discuss laws relating to house trespass.

Under section 442 of the Penal Code a person commits 'house trespass' if he

- (1) commits criminal trespass,
- (2) by entering into, or remaining in
- (a) any building, tent, or vessel used as a human dwelling, or
- (b) any building used (i) as a place for worship, or (ii) as a place for the custody of the property.

Explanation:- The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house trespass.

Punishment.-Imprisonment of either description for one year, or with fine which may extend to one thousand taka or with both.(section 448)

No offence under the section when there was no one in the house. In a charge under section 448, or house trespass with intent to cause wrongful loss and to intimidate the inmates, there should be a finding by the court below that the entrance was effected with the intention of causing any wrongful loss. (Madhushudan Shaha v.Jatindra Mohan 2 DLR 17)

Aggravated forms of house trespass.- The following are the aggravated forms of house trespass: (1) House trespass in order to the commission of an offence punishable with death Punishment: Imprisonment for life or with rigorous imprisonment for a term not exceeding ten years and fine. (S. 449)

(2) House trespass in order to the commission of an offence punishable with imprisonment for life.

Punishment- Imprisonment of either description for 10 years and fine.(S.450)

(3) House trespass in order to the commission of an offence punishable for imprisonment.



Punishment. - If the offence intended to be committed be theft- imprisonment of either description for 7 years and fine. Otherwise Imprisonment of either description for 2 years and fine.(S 451)

(4) House trespass after preparation made for causing hurt, assault, or wrongful restraint to any person, or for putting any person in fear of hurt, assault, or wrongful restraint.Punishment-Imprisonment of either description for 7 years and fine.(S.452).

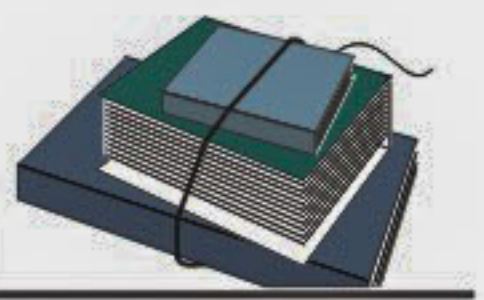
Lurking house trespass: Lurking house trespass is a trespass after taking precautions to conceal such house trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass.(S.443)

Punishment. - Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. (S.453)

In the case of Illahi Baksh v.state (1959)n 11 DLR (wp) 131, it has been held that intention is the essence and gist of the offence of Lurking house trespass. Where intention is not proved, no offence of lurking house trespass or house trespass can be said to have been committed.

Source: Penal Code by L.Kabir.

LAW LEXICON



Notary Public - A public officer whose function it is to administer oaths, to attest and certify documents, and to take acknowledgments. ***

Notice - Formal notification to the party that has been sued in a civil case of the fact that the lawsuit has been filed. Also, any form of notification of a legal proceeding. ***

Notice to creditors - A notice given by the bankrupt court to all creditors of a meeting of creditors. ***

Nuncupative will - An oral (unwritten) will. ***

Oath - A solemn pledge made under a sense of responsibility in attestation of the truth of a statement or in verification of a statement made. ***

Objection - The process by which one party takes exception to some statement or procedure. An objection is either sustained (allowed) or overruled by the judge. ***

Occupational Safety and Health Act (OSHA) - A federal law designed to develop and promote occupational safety and health standards. ***

Occupational Safety and Health Review Commission - The agency established by OSHA to adjudicate enforcement actions under the Act. ***

Of counsel - A phrase commonly applied to counsel employed to assist in the preparation or management of the case, or its presentation on appeal, but who is not the principal attorney for the party. ***

Official reports - The publication of cumulated court decisions of state or federal courts in advance sheets and bound volumes as provided by statutory authority. ***

Source: Jurist International.

LAW EVENT



NUB becomes champion of 7th Henry Dunant Moot

THE Moot Court is a simulation of a real court room, where Law students can practice the art of Mooting by arguing legal problems in the form of imaginary cases. It makes a tremendous platform for law students to learn the way of putting a case precisely and intelligibly. Considering this, the Faculty of Law, Dhaka University organised the Seventh Henry Dunant National Memorial Moot Court Competition 2011 in collaboration with the International Committee of the Red Cross (ICRC). ICRC initiated the Henry Dunant Memorial Moot Court Competition, with the aim of promoting better awareness of International Humanitarian Law among law students at different universities from national and regional area. Henry Dunant Moot is contributing significantly in creating a mooting culture amongst the novice legal learners of the region including Bangladesh. This year's National competition [Bangladesh Round] was held on 29 Sept. to 1 Oct. 2011 at Dhaka University with 10 public and private universities attending it. Judges of the Supreme Court of Bangladesh and eminent lawyers adjudged the competition. The final session was held on October 1 presided over by Justice M. A. Wahhab Mia who was also the chief guest at the prize distribution ceremony.

Northern University and BRAC University made their way to the final round and Northern University bagged the Championship Trophy. The members of



the champion team were Alida Binta Saqi, Tamanna Mannan Mou and Jubayer Ahmed. Tamanna Mannan Mou from Northern University was adjudicated as the best mooter. The best memorial and best researcher award were received by Eastern University and Chittagong University respectively.

The Champion Team Northern University Bangladesh will represent Bangladesh and participate in Regional Henry Dunant Moot Court Competition 2011 at Katmandu, Nepal in 20 to 22 October 2011.

- From Law Desk.



HUMAN RIGHTS WATCH

Humanitarian cause first

ALL parties to Libya's armed conflict must act to spare civilians and ensure that urgently needed supplies can be delivered safely to Sirte, Amnesty International said on October 3 amid reports that the humanitarian situation in the coastal city is rapidly worsening.

The International Committee of the Red Cross (ICRC) was able to visit Sirte on October 1, where they described severe shortages of medical and other supplies while indiscriminate fire continues to put residents at risk. The ICRC team brought the first humanitarian aid since the city came under siege in mid-September.

An ICRC team was unable to carry out a visit on October 3 due to the security situation. "Forces on both sides must take necessary precautions to spare civilians and must immediately set up humanitarian corridors to ensure that urgently needed supplies can be delivered safely to Sirte residents," said Hassiba Hadj Sahraoui, Middle East and North Africa Programme

Deputy Director at Amnesty International. All civilians who want to leave Sirte should be allowed to do so immediately in dignity and safety.

Establishing humanitarian corridors would include setting up neutral zones and negotiated routes that are clearly defined to give humanitarian workers safe access to the sick and injured. Media reports have described how civilians trapped in Sirte have been endangered by ongoing fighting and surviving on dwindling medical supplies, food, fuel and water.

Sirte's main hospital, Ibn Sina, reportedly came under fire over the weekend. "All those involved in the fighting have legal obligations to spare civilians by ending immediately the use of indiscriminate weapons like GRAD rockets, and not firing artillery and mortars into residential areas," said Hassiba Hadj Sahraoui.

International humanitarian law prohibits the use of weapons that are inherently indiscriminate or which cannot be targeted at military

objectives. Amnesty International has collected evidence that Colonel Mu'ammar al-Gaddafi's forces committed war crimes throughout the conflict, including by carrying out attacks targeting civilians and indiscriminate attacks. They launched artillery, mortar and rocket attacks against residential areas, and used inherently indiscriminate weapons such as anti-personnel mines and cluster bombs. They also concealed tanks and heavy military equipment in residential buildings. The North Atlantic Treaty Organization (NATO) has accused pro-Gaddafi forces of using civilians as shields in Sirte.

Anti-Gaddafi forces have been found to use GRAD rockets, which pose a lethal danger to populated areas because they are unguided. "The NTC, which has publicly committed to respect international human rights and humanitarian law, must ensure that anti-Gaddafi forces respect these norms and to also avoid revenge attacks and other reprisals," said Hassiba Hadj Sahraoui.

Source: Amnesty International.



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
I have a daughter and husband. I want to know if I die, who will succeed to my property and in what proportion? Again, if my husband dies, how much I and my daughter will get from my husband's property? It may be pointed that we have only child- a daughter.

Momotaj Begum Manikganj

Response
You have not indicated about your religious orientation. Assuming that you are Muslim, upon the death of your

husband, you will be entitled to one eighth of his property. Since you have only one daughter, she will be entitled to one third of the properties of your husband. The remaining properties of your husband will vest in favour of his siblings and parents.

As far as your properties are concerned, upon your death, your husband will be entitled to one fourth of your properties and your daughter will be entitled to one third. The remaining properties of your will vest in favour of your siblings and parents.

For detailed query contact: info@tanjibalam.com



LAW WEEK

2 killed in 'shootouts' with cops-Rab

A regional leader of banned outfit Biplobi Communist Party and another alleged criminal were killed in separate incidents of 'shootout' in Jhenidah and Natore on October 05. Mukul Hossain, 30, son of Farid Chand Mondol of Chuadanga, was killed in a 'shootout' with Rapid Action Battalion (Rab) and police in Harinakunda upazila of Jhenidah while Jahangir Alam, 45, of Daulatpur upazila in Kushtia was killed in a 'shoot-out' with police in Lalpur upazila of Natore. -The Daily Star online edition October 05 2011.

HC gets 6 additional judges

The government has appointed six additional judges to the High Court, raising the number of HC judges to 94. The newly appointed judges are Supreme Court lawyers SH Nurul Huda Jaigirdar, KM Kamrul Qader (Ripon) and Muhammad Khurshid Alam Sarker and former deputy attorney generals Mojibur Rahman Mia, Mostofa Jaman Islam and Mohammad Ullah. "The additional High Court judges have been appointed for two years. Their appointments will take effect from the day of their taking oath," said a press release issued by the ministry of law, justice and parliamentary affairs on October 04. The president has made the appointment as per article 98 of the constitution. The ministry also issued a gazette notification in this regard. - The Daily Star October 05 2011.

ICT asked to frame charge against SQ Chy

International Crimes Tribunal on October 4 asked prosecution to file formal charges against BNP leader Salauddin Quader Chowdhury's war crimes committed in 1971 Liberation War to the tribunal on November 14. The tribunal passed the order after the prosecution told the court that it received the final probe report on Salauddin's crimes against humanity from the investigating agency. Nearly 8,000 pages of statements of witnesses, victims and their families and documents have been attached to the 119 page probe report, it said. Salauddin had been directly or indirectly involved in almost all crimes under section three of the International Crimes (Tribunals) Act, the agency said. The three-member panel led by its Chairman Justice Nizamul Haque also adjourned the trial proceedings till November 14. -The Daily Star October 05 2011.

Sayedee indicted

The International Crimes Tribunal on October 03 framed 20 specific charges against Jamaat-e-Islami leader Delawar Hossain Sayedee for committing genocide and crimes against humanity during the Liberation War of 1971. The charges include murdering civilians; collaborating with the Pakistani occupation army to kill and torture unarmed people, loot valuables and torch houses and other properties; persecuting people on religious and political grounds; and committing atrocities on the Hindu community. The court has set October 30 as the date for opening statement of prosecution and examination of prosecution witnesses. "The proceedings shall take place every workday until further order," it said. Sayedee's counsel Tajul Islam sought three months' time for preparations to defend his client. The court, however, did not respond to his prayer. -The Daily Star October 04 2011.

10-Truck Arms Case, Charge-framing hearing Oct 25

A Chittagong court on October 03 fixed October 25 for hearing on charge framing against all the accused in two cases relating to 10-truck arms haul in the port city in 2004. The accused include Jamaat-e-Islami chief Motiur Rahman Nizami, who was the then industries minister, and former state minister for home Lutfozzaman Babar. On April 2, 2004, police seized 10 trucks of weapons and ammunition from the Chittagong Urea Fertiliser Ltd (CUFL) jetty in Chittagong in the biggest ever arms haul of the country. Judge SM Mujibur Rahman also directed the jail authorities to decide as per jail code on a petition by Babar's lawyers to allow them to visit the former state minister in jail. Public Prosecutor Kamal Uddin told The Daily Star that as the advertisements were duly published, the case is now ready for trial and the court fixed date for hearing on charge framing. - The Daily Star October 04 2011.

Rights chief threatens to go to HC

National Human Rights Commission (NHRC) Chairman on October 01 said if the government took no action against Inspector General of Police (Prisons) who barred him from entering Sylhet jail on September 29 he will move to the High Court. Human rights officials are eligible to visit places like prisons, hospitals or other government institutions without any prior approval according to section 12 (Ga) of the NHRC Act, 2009, said NHRC Chairman Prof Mizanur Rahman. The NHRC staff went to visit Sylhet Central Jail, after receiving allegations of corruption and human rights violation against the jail authorities, he added. Mizanur Rahman alleged that IG Prisons Brig Gen (ret'd) Ashraf Islam Khan violated the law by preventing him from visiting the prison, adding that, the NHRC will move to HC if government does not take any action. - The Daily

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: