

CRIME & PUNISHMENT

Criminal misappropriation of property

UNDER section 403 of the Penal Code, A person commits "criminal misappropriation" if he (i) dishonestly misappropriates or converts to his own use (ii) any movable property.

Punishment: Imprisonment of either description for two years or fine or both.

Illustrations:
A, being on friendly terms with Z, goes into Z's library in Z's absence and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft, he is guilty of an offence under this section.

Explanation 1 to section 403 provides that a dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Explanation 2 to this section provides that a person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take, or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of an offence defined above, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property for a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person



is the owner of it, it is sufficient if, at the time of appropriating it he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

It would thus appear that the two main ingredients of the offence of criminal misappropriation are:

- Dishonest misappropriation or conversion of property person's own use and
- Such property must be movable.

In the case of *Bhagiram Dome v. Abar Dome*, (1888) 1.K.R.15 Cal.388, 400 It has been observed that Criminal Misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent.

The offence consists in the dishonest misappropriation or conversion, either permanently or for a time, of property which is already without wrong in the possession of the offender.

Source: Penal Code by L. Kabir.

LAW LEXICON

Probate estate - Estate property that may be disposed of by a will.

Probation - An alternative to imprisonment allowing a person found guilty of an offence to stay in the community, usually under conditions and under the supervision of a probation officer. A violation of probation can lead to its revocation and to imprisonment.

Product liability - Legal responsibility of manufacturers and sellers to buyers, users, and bystanders for damages or injuries suffered because of defects in goods.

Promisee - An individual to whom a promise is made.

Promisor - An individual who makes a promise.

Promissory estoppel - A promise which estops the promisee from asserting or taking certain action.

Property tax - A tax levied on land and buildings (real estate) and on personal property.

Proprietor - Owner; person who has legal right or title to anything.

Prosecutor - A trial lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of deciding who and when to prosecute.

Proximate cause - The last negligent act which contributes to an injury. A person generally is liable only if an injury was proximately caused by his or her action or by his or her failure to act when he or she had a duty to act.

Source: Jurist International.

LAW EVENT

Urge to focus socio-economic issues in legal research



MD. GOLAM SARWAR

LEGAL research is not mere description of facts, but a purposive investigation to explain a legal phenomenon. It is an important element of legal education, which performs several related functions: attaining theoretical knowledge, practical training and a general education contributing to proper legal reasoning, effective communication and ethical responsibility.

It is an overwhelming fact that laws in our country are embedded with colonial mindset. Even with changing needs of society, we are quite incapable to address our own socio economic structure in terms of making our law. A law which does not address the needs of society cannot ensure justice within that particular society. In accordance with, if law does not correspond with justice it would itself create injustice instead of delivering justice. Law itself would hamper the interest of the society though it is supposed to protect the interest of the society. Most of the laws in our country are outdated, which are unable to address the changing needs, here lies the importance of legal research. Legal research can give a description over the effect and impact of existing laws and how people are benefited from the existing law or where the loopholes lie?

Through analysing existing social economic and political context legal research can suggest to make necessary amendment which would serve the needs of the changing society.

Besides legal education, legal research is important for judges and lawyers who are involved with the everyday fact file. In the words of Dr. Faruque (a Professor of Law at Chittagong University), "Legal research is critically important for initiating legal reform and change in a society. Law must keep pace with social change. Law has to either respond to social change or initiate social change. In view of changing social, moral, political context, many laws may lose their relevance or simply may seem to be inadequate to meet the needs of society". Legal research can help find out the laws which are old and need reforms. Legal research can initiate a new theory of law or challenge old one or help in clarifying existing theory. The findings of legal research may be helpful

to bring about desired changes in existing laws and legal institutions.

In respect of our legal education it is very much regretful to say that legal curricula of our law schools have failed to emphasise on effective legal research methodology which is integral to attain the modern system of legal education.

To understand law along with practicality, legal research is highly essential for every law students which would also create pedagogic legal minds. Through analysis and interpretation a law student can interpret the law going beyond the text of the law which would serve the very purpose of the enactment without legal research it would be difficult to interpret a pro-rich law for the benefit of the common people.

Considering the importance of legal research, the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) organised a two-day long training course on Legal Research and Writing in Dhaka on 9 and 10 March 2012. To create and facilitate a platform for potential researchers and to orient participants on the context, purpose and techniques of legal search, SAILS has taken this initiative. Since its journey SAILS is working for promoting quality legal and human rights education in Bangladesh and in the South Asian region. Among others Dr. Abdullah Al Faruque, Professor, Department of Law, University of Chittagong, Dr. Ridwanul Hoque, Associate Professor, Department of Law, University of Dhaka, Dr. Naim Ahmed, Advocate, Supreme Court of Bangladesh, Mr. Al Asad Md. Mahmudul Islam, Senior Judicial Magistrate, Rangpur took different sessions on research methodology, research on human rights issues giving particular focus on socio-economic issues.

Professor Dr. Mizanur Rahman, Chairman NHRC recommended for immediate reform in the legal education in Bangladesh and urged to make it people-friendly. Socio-economic theme of legal research should be focused which would address the grievances of millions of marginalised people. "We believe in action research than academic research that would be instrumental to change the reality", he said while concluding the course.

The Writer works with Law Desk, The Daily Star.



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

On an evening while I was crossing road, I found a mobile which is very costly. After that I didn't communicate to anybody or didn't take any attempt to make the fact known to others because I thought that it would be meaningless to find anybody while the mobile is found in road. Then I have sold it. Is there any legal liability against me in this incident?

Mohsin Uddin
Zigatala, Dhanmondi, Dhaka.

Response

I would like to thank you very much for your queries. From the given fact, it appears that your query is related to a property, which is apparently abandoned. The mobile phone that has been found by you was likely to be an abandoned one as from the fact it does not appear that it had any owner at the moment you found it. Therefore, you are unlikely to incur any liability for the mobile phone as well as for the selling price thereof provided that the owner could not

actually be ascertained (e.g. no SIM inside and no contact details etc. in the cell).

However, had there been an owner of the mobile phone, the situation would have been entirely different. As far as Criminal misappropriation of property is concerned, you would not be liable if

less to look for any owner is a reasonable step, is a question of fact. Besides, you would have still been liable even after selling the phone i.e. for converting the property into your own use.

Even if, the mobile phone had any owner, any claim for such a lost property was unlikely to be

made and where such claim was made it would have been very difficult for the law enforcers to track you as the phone has already been sold and it is likely that the ownership of the phone has changed for several times since then. From a moral point of view, I would advise you not to consume proceed of the sale for personal purpose but to donate it somewhere else for any social cause. Besides, we should not take such

abandoned property, but hand them over to the nearby Police Station as soon as possible in order to avoid any likely legal consequence and also as part of our moral obligation.

For detailed query contact:
omar@legalcounselbd.com.

LAW WEEK

HC clears way for trial of stockbroker

The High Court yesterday cleared the way for a lower court to continue trial in a case filed over the 1996 stockmarket scam, more than 13 years after the proceedings were stayed. The accused are all officials of Premium Securities Limited (PSL), a brokerage house -- Managing Director Mashiur Rahman, Chairman Abdur Rouf Choudhury, and directors Sayeed Hossain Chowdhury and Anu Jaigirdar. Delivering a verdict on four separate petitions, the HC asked the District and Sessions Judge's co court, Dhaka, to complete the trial as early as possible after receiving copy of this judgement. The HC also vacated its earlier order that stayed the case proceedings against the four accused on August 24, 1998. - *The Daily Star March 15 2012.*

HC asks govt to provide information

The High Court on March 12 asked the government to provide information about health, education and nutrition facilities which are given to the children staying with their mothers in jails across the country. In response to a writ petition, the court ordered the officials concerned to inform it in three weeks about the facilities for the children in jails. The HC bench of Justice Farid Ahmed and Justice Sheikh Hassan Arif also issued a rule upon the officials to explain in three weeks why the alleged violation of fundamental rights of those children should not be declared illegal. Secretaries of home, social welfare and women and children affairs ministries and inspector general of prisons have been made respondents to the order and the rule. - *The Daily Star March 13 2012.*

Contempt rule against

Prof Ershadul Bari

The High Court on March 12 issued a contempt of court rule against Prof Ershadul Bari, former vice chancellor of Bangladesh Open University (BOU), for not appearing before it as per its earlier summons order. In the rule, the court asked Prof Bari to explain why he should not be punished for committing contempt of court. Earlier on March 5, the HC summoned the former BOU VC to appear before it on March 12 (yesterday) in connection with a charge of distorting the history of the War of Liberation in two textbooks he had written for the BOU students in 2000. During the hearing of a writ petition, it ordered the Inspector General of Police and Dhaka Metropolitan Police commissioner to ensure appearance of Prof Bari before it on April 10 in connection with the rule. - *The Daily Star March 13 2012.*

2 judges differ on mass arrests

Two judges of the High Court on March 11 passed dissenting orders on a writ petition that challenged the reported mass arrests in the capital by law enforcers ahead of BNP's Dhaka rally on March 12. Senior judge of an HC bench Justice Mirza Hussain Haider asked the government to explain in six weeks as to why it should not be directed to ensure free movement of people, their right to hold assembly and other fundamental rights enshrined in the constitution. Junior judge of the bench Justice M Khurshid Alam Sarkar, however, rejected the petition, saying that he would not accept a petition relating to a political programme. The HC bench will now send the petition to Chief Justice Md Muzammel Hossain who will then form another bench of the HC to dispose of the matter. Ruhul Kuddus Kajol, a Supreme Court lawyer, filed the petition as public interest litigation, seeking HC directives upon the government to ensure that people can move freely in the capital. - *The Daily Star March 12 2012.*

HC to stop extra-judicial punishment

The High Court on March 11 directed the inspector general of police (IGP) to issue a notification to all police stations for taking action against extra-judicial punishments taking place in the name of arbitration. During the hearing of a rule, the court asked the IGP to mention in the notification that the police would have to record cases without any written allegation of such punishments. It ordered the LGRD secretary to issue another notification to inform all local government bodies, including union parishads and municipalities, that their representatives cannot punish anybody in arbitration which is a punishable offence. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim also directed the information secretary to broadcast the directives through media. - *The Daily Star March 12 2012.*

HC passes dissenting orders on

'mass arrests'

Two High Court judges passed dissenting orders Sunday on a writ petition challenging reported mass arrests ahead of BNP's Monday rally in capital. The presiding judge of a division bench issued a rule upon the government to explain in six weeks why it should not be directed to ensure free movement of people. Justice Mirza Hussain Haider also asked for explanation as to the people's right to hold assembly and other fundamental rights guaranteed by the constitution should not be ensured. On the other hand, Justice M Khurshid Alam Sarkar, the other judge of the bench, summarily rejected the petition, saying he would not accept the petition that was related to a political programme staged for Monday. - *The Daily Star March 11 2012.*

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: