Ref:BASL/ 01/11/2002

Writs of Cetiorari and Mandamus *- Principle of proportionality, examined – When need to give reasons on the findings of a Court of Inquiry, discussed – Importance of maintaining the principles of natural justice, stressed*

Wickramasignhe Vs. Chandrananda De Silva & 11 Others

CA Application No. 861/98

Decided by **U.DE Z.GUNAWARDANA, J.** on 06th April,.2001.

The Petitioner moved the Court of Appeal for an Order of Certiorari quashing his expulsion from the Sir John Kotalawela Defence Academy consequent upon a finding of guilt of ragging and repeatedly harassing two trainee cadets of the same Academy. The argument of Counsel for the Petitioner was two pronged, in that (a) the victims of the alleged ragging had not given evidence, let alone be cross-examined; and (b) the penalty meted out to the Petitioner was grossly excessive in relation to the alleged offence, thereby invoking the principle of proportionality which ordains that administrative measures, in particular, must not be more drastic than is necessary or justified by the attendant circumstances. In his exhaustive Judgement, citing several authorities, Justice Gunawardana has agreed with the many judgments where it has been held that although there was no statutory duty to give reasons, there was a common law requirement of natural justice to outline sufficient reasons to indicate whether the decision had been lawful. Strength was drawn from Lord Musthill's Judgement where he states: "I find in more recent cases on judicial review a perceptible trend towards an insistence on greater openness or if one prefers the contemporary jargon 'transparency' in making of administrative decisions". Lord Denning's view that "when a man's reputation or livelihood is at stake, he not only has the right to speak by his own mouth. He also has the right to speak by Counsel or Solicitor", was cited to stress the importance of respecting the principles of natural justice.

Ref:BASL/ 02/11/2002

Murder and Robbery *– Sections 296 and 383 of the Penal Code – Trial without a jury – Common murderous intention – Principle relating to participatory presence in arriving at the conclusion of guilt, discussed – Trial by Jury and Trial without a Jury, analysed.*

Somapala & Another Vs. The State

CA Application No. 7-8/99
H.C.Kurunegala case No. 57/90

Decided by **P.H.K.KULATILAKA, J. & RAJA FERNANDO, J.** on 23rd November, 2001.

After an abortive trial, the Accused were retried in the High Court of Kurunegala before the High Court Judge sitting without a jury on charges of murder of a Police Officer and the robbery of his service revolver. At the conclusion of the trial the first two Accused were sentenced to death on the charge of murder, and to a term of ten years rigorous imprisonment on the charge of robbery. In appeal, the learned Counsel for the Appellants urged that the learned Judge had not given his mind to the principles of common murderous intention and to participatory presence to arrive at the conclusion of guilt of the Accused to the crime. Their Lordships observed that in a jury trial where an accused is tried by his own peers, as the jurors are laymen, the statute provides that the trial Judge should, after the conclusion of the evidence, sum up the evidence laying down the law by which the jury is guided. In a trial by a Judge without a jury the Code of Criminal Procedure Act does not carry any provisions requiring the Judge to lay down in his judgment the law by which he is guided.

Ref:BASL/ 03/11/2002

Last Will *– Abolition of Fidei Commissa Act, No.20 of 1972 – Effect of fedeicommissum provided in a Will made prior to its abolition, discussed*

Jayasekera Vs. Lenora & Two Others

S.C.Appeal No. 56/2001. CA Application No. 605/90(F). D.C.Galle Case No. P/9362

Decided by **ISMAIL, J., EDUSSURIYA, J. & YAPA, J.** on 17th May, 2002

By a Last Will executed on 7th May, 1952 the Testator bequeathed his residential housed to be possessed by his children in common in equal shares, and the subject matter was to devolve in its entirety on the death of the last survivor of the children or their spouses on the incumbent of a church or the superintending Missionary of that Church. The effect of the "gift over" was examined in the light of Section 4 of the Fedei Commissa Act, by the Supreme Court, in setting aside the judgments of the District Court and the Court of Appeal.

Ref:BASL/ 04/11/2002

Civil Procedure Code *– Raising of issues – Manner in which issues to be dealt with or tried, discussed.*

Boyagane D.c.mills (Pvt) Ltd. Vs. Menikdiwela

CA Application No. 1221/2000
D.C.Kurunegala Case No. 5847/M

Decided by **UDALAGAMA, J. & NANAYAKKARA, J.** on 28th August, 2001.

The Petitioner moved the Court of Appeal to revise an Order of the District Court refusing to accept certain issues as preliminary issues. Having failed to file Application for Leave their Lordships did not accept illness without cogent evidence

of the party as exceptional circumstances to move in Revision, when an alternate remedy was available. In respect of raising of issues, their Lordships were guided by the observations of gunawardena, J. where he held that the question as to how or in what manner issues have to be dealt with or tried is primarily a matter best left to the discretion of the trial Judge, and an Appellate court would be slow to interfere with that discretion unless it is patent or obvious that the discretion had been exercised not according to reason but according to caprice.

Ref:BASL/ 05/11/2002

Interim Injunction *– Object of granting interim injunctions, discussed – Basis for exercising discretion for the granting of interim relief, examined - .*

Seylan Bank Ltd. Vs. Edirisinghe & Another

CA /LA Application No. 415/2000
D.C.Colombo case No. 5648/SPL

Decided by **UDALAGAMA, J. & NANAYAKKARA, J.** on 27th June, 2002

The Plaintiff challenged the right of the Defendant Bank to seize and auction the mortgaged property and obtained an interim injunction. Their Lordships observed that a District Judge cannot be faulted if he has exercised his discretion reasonably and fairly without causing prejudice or injustice to a party. The grant of interim relief is a remedy that is both temporary and discretionary. The object of an interim injunction is to protect the plaintiff against an injury which could result from a violation of his legal right by the Defendant for which he could not be adequately compensated if the disputed and contested facts are eventually resolved in his favour at the end of the trial.

Ref:BASL/ 06/11/2002

Intervention *– Section 18(2) of the Civil Procedure Code – Whether Court bound to give reasons for refusing application for amendment of pfleadings and intervention of parties, discussed.*

Rev. Saranankara Thero & Another Vs. Rev. Vijitna Thero, Et Al

CA /LA Application No. 183/2002
D.C.Colombo case No. 5187/SPL

Decided by **UDALAGAMA, J. & NANAYAKKARA, J.** on 09th May, 2002

The Plaintiffs-Respondents moved the District Court to be declared as the Viharadhipathis of a Temple. At the time of filing of the Plaint only one Defendant had been named. On the third date of trial, the Defendant being absent and his Registered Attorney stating that he had no instructions, the case was fixed for *ex parte* trial. Thereaffter the Petitioners' application to intervene was disallowed by the District Court. The Petitioners sought leave to appeal on the ground that no reasons had been given disallowing their said application for amendment and intervention. Their Lordships, in their interpretation of Section 18(2) of the CPC held that reasons are necessary only when amendment and intervention of parties are allowed.

Ref:BASL/ 07/11/2002

Arbitration *– Arbitration clause in agreement - Reference to repealed statute in agreement — Jurisdiction*

L.b.finance Ltd. Vs. Amarajeewa & Two Others

CA /LA Application No. 317/2000
D.C.Colombo case No. 25232/MR

Decided by **UDALAGAMA, J. & NANAYAKKARA, J.** on 28th May, 2002

The 1st Defendant-Petitioner moved for leave to appeal against an Order of the District Court rejecting its objection to jurisdiction.. The case had been initiated in the District Court by the Plaintiff-Respondent for wrongful possession of his vehicle. It was admitted that the said vehicle had been purchased on a lease agreement and the Plaintiff was in default.. The Plaintiff's position was that the seizure had been effected without notice of termination of the lease agreement.. The said agreement relied on the arbitration clause to settle disputes, which made reference to the repealed Arbitration Ordinace (Chap.98). The question that arose for determination was whether the District Court had jurisdiction to hear and determine the matter.

Ref:BASL/ 08/11/2002

Res Judicata *– Section 406 of the Civil Procedure Code – Whether filing of a fresh action on the withdrawal of the earlier action on the same cause of action attracts the defence of res judicata, discussed.*

Kalani Gunasekera Vs. Chandra Gunasekera And Another

CA /LA Application No. 312/2001
D.C.Gampaha Case No. 43752/L

Decided by **UDALAGAMA, J. & NANAYAKKARA, J.** on 13th May, 2002

A leave to appeal application was filed by the 2nd Defendant-Petitioner against the Order of the District Court rejecting an issue on the question of *res judicata*. The matter pertained to the invalidation of a Deed which derived title to a piece of land from a Deed that was found to be a forgery in the Magistrate's Court. The learned District Judge had directed that the Plaint be amended with the addition of the necessary parties. Both parties relied on the ration in the case of Jayawardena v. Arnolishamy, 69 NLR 497, their Lordships held that when the subject matter and parties in both actions are different, withdrawal of an earlier action could not preclude the institution of a later action by reason of Section 406(2).