Stare decisis

EVIDENCE

Ref:BASL/ 01/09/2003 ***Rs. 28.00***

Evidence- *Failure to produce vital documents – Relying on other factors to prove contents of vital documents – Permissibility, examined.*

PEOPLE'S BANK Vs WIJESURIYA, et al

C. A. L. A. 671/93(F)
D. C. Kegalle 1975/M

Decided by **N.E.DISSANAYAKE, J. &** **A.M.SOMAWANSA**, J. on 07th June, 2002

The Plaintiff-Appellant Bank instituted action against the Defendants on the basis of a Letter of Guarantee issued by it for the purpose of retreading tyres by the 1st Defendant-Respondent from Richard Peiris & Co., Ltd. Prior to the issue of the Letter of Guarantee the 1st Defendant-Respondent as Principal Debtor and the other two Defendants-Respondents as Sureties, entered into a Guarantee Bond which was annexed to the Plaintiff-Appellant's Plaint. The 1st Defendant-Respondent issued four cheques within the guaranteed value in favour of the said Company, which eventually bounced. On the request of the said Company the Plaintiff-Appellant paid on the guarantee and sued the Defendants-Respondents. At the trial the Plaintiff-Appellant failed to produce the originals of the vital documents such as the cheques and the Letter of Guarantee on which it relied on for its cause of action. Its attempt to prove the existence/contents of such documents referred to in other marked documents was frowned upon by the learned Judges.

Appeal dismissed.

REVISION

Ref:BASL/ 02/09/2003 ***Rs. 24.00***

Revision- *Permissibility of addition of parties in an application for revision, examined – Validity of affidavit containing statements anterior to that of the petition, probed.*

GALADARI HOTELS (LANKA) LTD Vs. JAYAWARDENA & HNB

C. A. 660/2001 (R)
D. C. Colombo 16317/MR
Decided by **UDALAGAMA, J, & NANAYAKKARA, J** on 13th December, 2001

The Plaintiff- Respondent filed action against the Defendant-Petitioner Hotel seeking damages in a sum of Rs.500,000/- and other consequential reliefs. On the Defendant-Petitioner Hotel failing to respond to the summons, *ex-parte* judgment was delivered in favour of the Plaintiff-Respondent. On the Defendant-Petitioner Hotel's application to vacate the *ex-parte* judgment being refused, writ of execution of decree was taken out by the Plaintiff-Respondent. The Fiscal having failed in his attempts to execute the Writ had instructed the 2nd Respondent Bank not to permit the Defendant-Petitioner Hotel to operate the Bank Accounts. Thereafter, the Defendant-Petitioner Hotel moved in Revision where it made the 2nd Respondent Bank also a party to the Revision Application when it was not a party to the original action in the District Court. The Plaintiff-Respondent's two preliminary objections pertaining to the addition of the Bank at the Revision stage, and filing an affidavit containing statements anterior to the petition were overruled.

Preliminary objections rejected.

LANDLORD & TENANT

Ref:BASL/ 03/09/2003 ***Rs. 40.00***

Landlord & Tenant *– Section 22(1) of the Rent Act, No.7 of 1972 – Ejectment of ex employee from premises provided during course of employment – Grounds for ejectment, discussed.*

ARULRAJASINGHAM Vs. THAVAYOGARAJAH

C. A. No. 1201/99(F)
D. C. Mt.Lavinia 431 / 98 RE

Decided by **N.E.DISSANAYAKE, J. &** **A.M.SOMAWANSA**, J. on 30th April, 2002

The Plaintiff-Respondent instituted action against the Defendant-Appellant to eject him from premises owned by him on the basis that the said premises was let to him for his residence by reason of his being in service and employment of the Plaintiff-Respondent, and that the Defendant-Appellant had ceased to be an employee. The Defendant-Appellant contended that he was foremost a tenant, and the fact that he performed services to the Plaintiff-Respondent was incidental, and that tenancy was not conditional upon the performance of service to the Plaintiff-Respondent. He based this defence on a Judgement based on the repealed Rent Restriction Act. Their Lordships rejected the argument and held that if an action is filed for the ejectment of the tenant who is an ex-employee, all that the Landlord has to prove is that the premises were let to the tenant for the use as a residence by reason of his being in his service or employment.

Appeal dismissed with costs

AGRARIAN SERVICES

Ref:BASL/ 04/09/2003 ***Rs. 32.00***

Agrarian Services Act – Unlawful eviction of tenant cultivator – Mode of calculation of damages pertaining to period and quantum, examined.

RATNASIRI Vs SUDU BANDA

Stare decisis

C. A. (PHC) 64 / 96F
P.H.C. Badulla 38 / 94
M.C.Bandarawela No. 65520

Decided by **GAMINI AMARATUNGA, J** on 15th January, 2002

The Respondent-Appellant appealed against an Order made by the learned Judge of the High Court dismissing an appeal preferred to the High Court against an Order made by the Magistrate directing the Appellant, in terms of Section 5(8) of the Agrarian Services Act, No. 58 of 1979 as amended, to pay damages to the Respondent for his failure to vacate a paddy land upon an Order made by the Commissioner of Agrarian Services under Section 5(7)(b)(ii) of the Agrarian Services Act. The question before Court was the quantum and the mode of calculation of damages. Prior to the amendment of the principal Act, the calculation of damages was from the date specified in the Order of the Commissioner to the actual date of delivery of possession. The amending Act repealed this provision and specified that damages are to be calculated as regulated from the date of eviction upto the date of restoration of possession.

Appeal allowed.

POISONS, OPIUM & DANGEROUS DRUGS

Ref:BASL/ 05/09/2003 ***Rs. 16.00***

Poisons, Opium & Dangerous Drugs Ordinance – Possession of heroin – Sealing of productions – Evidence of tampering – Necessity of cross examining on vital matters, discussed.

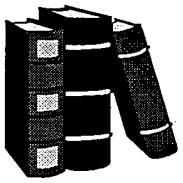
WIJESEKERA Vs. THE ATTORNEY-GENERAL

C. A. No. 89 / 99
H.C. Balapitiya No. B / 196

Decided by **P.H.K.KULATHILAKA, J. & RAJA FERNANDO, J.** on 04th January, 2002

The Appeal was against the conviction and setntence of life imprisonment on the Accused-Appellant for the possession of 2.3 grams of heroin, an offence punishable under Section 54 of the Poisons, Opium & Dangerous Drugs Ordinance. The case depended on the evidence of two Police Officers. One of the Police Officers had gone with the complainant to investigate a complaint of robbery, and upon the complainant pointing out two persons near a boutique as the suspects, the Police Officer had searched their person and discovered a kris knife and some heroin on one of them. Since the Police Officer was only investigating a complaint of robbery he had not brought any scales with him to weigh the heroin. He had locked the heroin in the cubby hole of his vehicle. After reaching the Police Station he followed procedure in sealing the exhibit and sending it to the Government Analyst for the required examination. On the Accused being indicted in the High Court all the relevant parties adduced evidence at the trial. During the trial it was discovered that there was a three-inch tear in the envelope containing the heroin. Though in appeal learned Counsel for the Accused-appellant attempted to contend that excess heroin was introduced into the said envelope thorugh the tear in it, it was found that there was no cross-examination on this point at the trial. Furthermore, their Lordships surmised that there was no reason to introduce excess heroin after the Analyst had filed his Report, as the tear in the said envelope was discovered only at the trial in the High Court. Their Lordships held that the excess quantity of heroin necessitated in imposing the mandatory sentence of life imprisonment.

Appeal dismissed. Conviction and sentence affirmed.



BOOK LAUNCH

"The Concept of Misconduct in the Termination of Employment"

By Dr. Irwin Jayasuriya, Attorney-at-Law



"The Concept of Misconduct in the Termination of Employment" is the expanded version of his doctoral thesis and is expected to be launched on November 27, 2003, at 2.30 p.m. at the Berjaya Mount Royal Beach Hotel, 36, College Avenue, Mount Lavinia.

This book discuses the concept of misconduct which is almost always the reason for termination of employment which has may facets that need clarification and understanding in practice. The author has brought into the text the various views and concepts expressed by eminent judges as well as jurists and has analysed and discussed these views and has attempted to relate them to the reasons accepted by Courts and Tribunals for the termination of employment. The author has accessed on a selective basis the various judicial decisions of India and the UK and compared them to the decisions taken by our own Tribunals and Courts in relation to the principle of misconduct. The reader will be able to see the different approaches taken by the Judges of these three countries and thereby have a better understanding of this important branch of industrial law. Dr. Jayasuriya, in compiling this work has included the Industrial Disputes Act together with all amendments and the Industrial Disputes Regulations governing the Act.