# JUDGEMENTS

**Ref:BASL/ 01/05/2009** **Rs: 350/=**

*Fundamental Rights – Article 12(1) of the Constitution – Acquisition of land for public purpose – Land knowingly, deliberately and manipulatively sold to private entrepreneur to serve as an exclusive and private golf resort – process adopted for acquisition was conniving and contrary to the equal protection of the law guaranteed by Art. 12(1) which assures to the people the Rule of Law, discussed – persons who initiated, facilitated and/or conspired to achieve outcome being from the highest echelons of the executive which included a former President of the Republic, bemoaned.*

**MENDIS, et al vs. CHANDRIKA KUMARANATUNGA, et al**
**SC (FR) No. 352/2007**

Decided by : S.N.SILVA, CJ., SHIRANEE TILAKAWARDANE, J. & RATNAYAKE, J. on 08th October, 2008

The Petitioners invoked the fundamental rights jurisdiction of the Supreme Court on the basis that their rights had been infringed pertaining to the acquisition of land on the premise that such land would be utilised to serve a public purpose whereas, by this impugned executive or administrative action the land was knowingly, deliberately and manipulatively sold to a private entrepreneur to serve as an exclusive and private golf resort. The Court acknowledged that it was the last bastion of hope to the people in whom sovereignty is reposed, and it was essential to protect them from the patent abuse of executive or administrative power, which in the instant case involved a former President of the Republic, many senior government officials and statutory bodies. Despite the scale and magnitude of the case a detailed study of the facts was done by the esteemed Judges. On the conclusion of the matter a 61 page landmark Judgement was delivered in which fines were ordered against those guilty which included the former President, and the transfer of land was declared null and void. This Judgement is popularly known as the "Water's Edge" case.

**Ref:BASL/ 02/05/2009** **Rs: 70/=**

*Customs Ordinace- Duty on vehicles – Smuggling- When forfeiture can be allowed, examined.*

**TOYOTA LANKA (PVT) LTD vs. JAYATHILAKA, et al**

SC Appeal No. 49/2008 – CA No. 2118/2005
Decided by : S.N.SILVA, CJ., GAMINI AMARATUNGA, J. & SRIPAVAN, J. on 23rd March, 2009

This was an appeal from the Court of Appeal refusing a Writ of Certiorari sought by Toyota Lanka (Pvt) Limited to quash an order made by a Customs officer, seizing nine Toyota Land Cruiser Prado motor vehicles under Sec. 125 of the Customs Ordinance read with the Exchange Control Act. The question that was considered was whether it is competent for an officer of Customs to have recourse to Section 125 of the Customs Ordinance and effect seizure of goods in respect of which a Bill of Entry (CUSDEC) had been submitted, as provided in Section 47, and the goods released consequent to a physical examination and payment of duties that were levied. Whether, in such a situation instead of seizure the lawful course of action is for the Customs is to seek a recovery of the additional dues that may be claimed, by recourse to provisions of Sections 18 or 18A of the Customs Ordinance. The procedure of seizure and the rewards scheme enjoyed by Customs officers was scrutinized by their Lordships. In examining the amending Act No.2 of 2003, their Lordships noted that the "audit or examination " ..... terms of Section 128A(l) relates to the records an importer is required to maintain for a period of 3 years from the date of importation in terms of Section 51B. There is no provision for the examination of -goods at that stage and any such examination is *ipso facto* ultra vires. Further, provisions of Section 128A read with Section 51A (2) show that the audit is carried out to determine the value of the goods. This could lead to an amendment of the value and an importer who is dissatisfied with any decision to amend the value has a right of appeal to the Director General in terms of Section 5 I A(6). There is no provision for a forfeiture of goods by operation of law in the event of an alleged undervaluation. Indeed such a provision would render importation of goods well impossible except by the grace of an officer of the Customs. Hence the purported seizure at the 'post audit stage, is in any event ultra vires and of no force or effect in law. The Judgment of the Court of Appeal was set aside and a Writ of Certiorari was issued against the Customs Department quashing the seizure of the motor vehicles imported by the Company.

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# JUDGEMENTS

**Ref:BASL/ 03/05/2009** **Rs: 50/=**

*Kidnap & Rape – Reference by the High Court in terms of Article 125(1) of the Constitution – mandatory sentence imposed by statute- whether Judge inhibited from imposing sentence deemed appropriate in the exercise of judicial discretion notwithstanding provisions in statute, analysed.*

## THE STATE vs. SUNANDA KUMARA & ANOTHER

SC Reference No. 03/2008 – HC Anuradhapura No. 333/2004
Decided by : S.N.SILVA, CJ., GAMINI AMARATUNGA, J. & P.A.RATNAYAKE, J. on 15th October, 2008

The two accused were charged with the offence of kidnapping under Sec. 354 of the Penal Code and the rape of a minor child – an offence punishable under Sec. 364(2)(e) of the Penal Code, as amended by the Penal Code (amendment) Act, No. 22 of 1995. Even though the 1st Accused was prepared to plead guilty to the charges, the prosecution objected to any reduction in sentence as there was a madatory sentence imposed by law. It had transpired that the 1st Accused had eloped with the prosecutrix when she was between the age of 15 and 16 years and had had sexual relations. It was on the complaint of the girl's mother that the accused had been indicted. However, by the time of the trial, the 1st accused had married the prosecutrix who had reached the age of majority. The medical report revealed that there was no use of force, and sexual intercourse was consensual. The learned High Court Judge finding that it would be against her conscience to impose the mandatory sentence and disrupt a family life, referred the matter to their Lordships in the Supreme Court for a determination of the interpretation of the law.

Their Lordships considered several precedents pertaining to this complex question, particularly to *Sirisena Cooray v Tissa Dias* which illustrated the approach that should be adopted in cases where there is a conflict between an ordinary law and a Constitutional provision. Finally their Lordships in the Supreme Court held that the minimum mandatory sentence imposed by Statute is in conflict with the provisions of the Constitution and that the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence.

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Further details – U. R. de Silva 0777-764521

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***- Martin Luther King Jr.***