Legal language

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Chapter I

LEGAL CONCEPTS

It is extremely important for a law student to have a basic knowledge of legal concepts. In this Chapter, some important concepts are explained briefly in simple language. Students who are eager to know more are encouraged to refer to a book on the appropriate subject for an in-depth discussion of such a concept. For instance, the concepts of Appeal, Reference, Review and Revision merit only a brief discussion in this Chapter, and the student may refer to the Civil Procedure Code (referred to here as "CPC') and the Criminal Procedure Code ("CrPC') for a detailed explanation and a plethora of case-law on these concepts. Likewise, a reference may also be made to standard dictionaries like Black's Law Dictionary, Oxford Dictionary of Law, Collin's Legal Dictionary, Osborn's Concise Law Dictionary and other law dictionaries and law lexicons.

The following concepts are discussed in this Chapter:

1 Law

2 International law

3 Justice

4 Rights

5 Remedy

6 Duty

7 Wrong: Civil wrong: Criminal wrong

8 Person

9 Legal heirs

10 Legal representatives

11 State

12 Custom

13 Power of Attorney

14 Fact

15 Arbitration

16 Pleadings

17 Plaint: Plaintiff: Defendant

18 Suit

19 Jurisdiction

20 Writs

21 Affidavit

22 Stay of suits: Stay Order

23 Injunction

24 Adjournment

25 Cause of action

26 Issues

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29 Decree

30 Judgment

31 Appeal

32 Reference

33 Review

34 Revision

35 Offence

36 Complaint

37 Charge

38 Bail

39 Conviction: Acquittal: Discharge

Each of the above concepts is discussed below in necessary details.

I. LAW

It is not easy to give a precise and concise definition of the term "law". Several authors have attempted to define this term - only to be faced by criticism from other authors. Defining this term assumes greater difficulties because everything depends on the perspective from which one looks at "law". Nevertheless, it is the basic concept in jurisprudence, and it is interesting to see how eminent jurists have attempted to define this term.

According to Blackstone, "Law, in its general and comprehensive sense, signifies a rule of action, and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational.

" Salmond gives a simpler definition of law: "The law consists of the rules recognized and acted upon in the courts of justice.

" Austin's definition is even simpler: "Law is the command of the sovereign."

In a broad sense, however, the term "law" would include any rule of action, as when one speaks of the law of gravity and other scientific "laws".

'The law' and 'a law'

The term law is used in two senses : abstract and concrete. When used in the abstract sense, it means a system of law, as when one speaks of the law of India, the law of defamation, and so on. Used in its concrete sense, if means a particular statute or enactment, as for instance, the Indian Contract Act, the Indian Penal Code, and so on.

Kinds of laws

There are many kinds of laws, as for instance, natural or moral law, physical or scientific law, imperative law, conventional law, commercial law, constitutional law, administrative law, common law, civil law, criminal law, prize law, procedural law, international law, and so on.

Again, in the law of crimes, the Indian Penal Code is the substantive law, whereas the Criminal Procedure Code is the procedural law.

Sources of law

The two main sources of law are : formal sources and material sources. Material sources can further be divided into legal sources and historical sources. This can be summarised as under:

Sources of law

1. Formal

2. Material

a. Legal

i.e.

- Legislation
- Precedent
- Custom
- Professional opinion

b. Historical

II. INTERNATIONAL LAW

There are two branches of law which use the terminology, International Law : Public International Law (or the Law of Nations) and Private International Law (also known as Conflict of Laws).

Public International Law

Public international law consists of rules acknowledged by the general body of civilized independent States, to be binding upon them in their mutual relations. (Birkenhead)

According to Salmond, public international law is essentially a species of conventional law and has its source in international agreements. It consists of those rules which sovereign states have agreed to observe in their dealings with one another.

Thus, public international law is that body of rules which regulates the relations between different states, as also between individuals and states. Rules of international law have developed as a result of international conferences, multilateral treaties, opinions and writing of jurists, etc.

According to Dr. Sethna, international law is "all that body of customs, usages, conventions, and principles of international propriety and natural justice, as have been accepted or recognized by the nations of the world".

There is an interesting controversy on whether public international law can really be called "law". Austin and his followers do not consider it as law proper, because, in their opinion, there is no sanction behind such law. Perhaps the only sanction is international opinion, and according to the Austinians, this is not sufficient for the purpose of enforcement of law. Modern jurists are, however, of the opinion that law need not have sanction or force for is enforcement. They feel that restraint is not necessarily an important element of any law, though it is a powerful characteristic of law. They argue that, today, international censure is a more powerful weapon than the sanction which underlies civil law.

Private International Law

Private International Law, also referred to as Conflict of Laws, is a totally different subject.

It deals mainly with cases of private individuals, where a foreign element is involved. Thus, a dealer from India sells his goods to a dealer in France, the delivery to be effected in Germany, and the money to be paid in Italy. In case of a breach of contract, a question may arise as to whether a suit may be filed in India or in France or in Germany or in Italy. After that question is answered, the next question would be : Which of the four legal systems would apply ? Additionally, if the same two traders have already litigated earlier, a further question would arise as regards the recognition and enforcement of the earlier judgment.

Thus, the three primary questions before the court in a case involving Private International Law are :

(a) choice of jurisdiction, i. e., which court would have the right to try the case;

(b) choice of law, i. e., which law would the court apply; and

(c) recognition and enforcement of foreign judgments.

111. JUSTICE

The Dictionary meaning of the term justice is "moral or legal fairness". Thus, justice is of two types : natural or moral justice, and positive or legal justice. The first is meted out by Nature, by God, whilst the latter is administered by man. Natural justice is also sometimes referred to as Divine Law or Moral Law. It is said that natural justice, though often not administered or administered in an invisible form, is perfect; legal justice is necessarily imperfect.

Natural justice is the ideal and the truth, of which legal justice is the more or less imperfect realisation and expression. Natural justice and legal justice represent two intersecting circles, as shown in the figure below. Justice may be legal but not natural or moral. On the other hand, it may be moral but not legal. At times, it may be both legal and moral, as in the following diagram :

A = Natural Justice

B = Legal Justice

AB = Natural & Legal Justice

The two concepts can be illustrated with an example. X, a notorious cheat, takes a loan from a poor widow against a promissory note, on which he affixes a postage stamp, instead of a revenue stamp. Such a promissory note would not be admissible in evidence, and when sued by the poor widow, X is likely to succeed on a point of law. Legal justice may be done in this case, but moral justice is not. If, however, after winning the suit, when coming out of the court, Xis hit by a passing car, and is disabled for life, one may say that, now, natural justice is done in the matter, as God has punished him for cheating the poor widow.

IV. RIGHTS

The concept of a right is of fundamental significance in modern legal theory, because we cannot live without rights which are recognised and enforced by law. In all civilized societies, law consists of those principles in accordance with which justice is administered by the State, for the purpose of enforcing the rights of its citizens and for punishing the wrong-doers.

Learned authors of Jurisprudence have looked upon rights from various angles, and hence, have defined this term in different ways. Salmond defines a right as "an interest which is recognized and protected by a rule of law." According to Austin, a party has a right when others are bound or obliged by law to do, or forbear, something towards, or in regard to, him. Holland defines a right as the ability possessed by a person to control others' actions and self-protection with the help and assistance of the State. According to Dr. Sethna, a right is any interest, vested or created under a law or a contract.

Objects of rights

The following are six kinds of rights, with reference to their objects:

1. Rights over material things, as for instance, one's rights over one's house, furniture, car, books, etc.

2. Rights over immaterial or intangible property, as for instance, copyrights, patents, trade-marks, goodwill, etc.

3. Rights in respect of one's own person, as for instance, the right not to be assaulted or falsely imprisoned.

4. Rights in respect of one's reputation, as for instance, the right not to be defamed.

5. Rights in respect of domestic relations, which includes marital rights (i.e., rights between a husband and wife), parental rights (i.e., rights of a parent over his child) and a master's rights over his servant.

6. Rights in respect of other rights, as for instance, when a right has another right as its subject-matter. Thus, under a contract of sale, the buyer acquires a right over the right of ownership of what is sold to him.

Q. State four different Kinds of rights B u Nov 2005.

kinds of rights.

Rights can be divided into the following eleven categories :

1. Legal and moral rights

The right of a wife to be loved by her husband (— who may actually be fond of his neighbour's wife —) is a moral right, but the right of A to recover money from B on a promissory note is a legal right.

2. Perfect and imperfect rights

The right of A to recover money on a pro-note is a perfect right. But, if he does not file a suit within the period of limitation, his right becomes an imperfect right, i.e., a right which cannot be enforced in a court of law. All cases of imperfect rights are exceptions to the maxim, Ubi jus ibi remedium (discussed in Chapter II of this book).

3. Proprietary and personal rights

Proprietary rights are rights in respect of property, as for instance, a man's rights over his house, furniture, car, etc., whereas personal rights are rights with regard to a man's status or person, as for instance, his right of freedom of speech and expression or his free choice of a profession.

4. Inheritable and uninheritable rights

A right is inheritable if it survives its owner; it is uninheritable if it dies with its owner. Generally speaking, proprietary rights are inheritable, whereas personal rights are not inheritable and die with the owner.

5. Primary and sanctioning rights

If A enters into a contract with B, to supply him with 100 bales of cotton, B's right to receive the cotton is a primary right. But, if there is a breach of contract by A, B's right to receive damages for nonperformance is a sanctioning right.

6. Principal and accessory rights

The right of a man to a tree which belongs to him is a principal right, but the right to enjoy the fruits of that tree is an accessory right.

7. Positive and negative rights

If A has bought goods from B, the latter has a positive right to claim the purchase price from A. But, if A is taken as an apprentice by B in his business, and A agrees not to serve a rival business for two years, B has a negative right to ensure that, for two years, A forbears from serving anyone else in a competing business.

8. Legal and equitable rights

Legal rights were those which were recognised by the Courts of Common Law. Equitable rights, also called equities, are those which were recognised solely by the Courts of Chancery.

9. Real and personal rights

A real right corresponds to a duty imposed upon persons in general; a personal right corresponds to a duty imposed upon determinate individuals. A real right is available against the world at large; a personal right is available only against particular persons. Thus, X's right not to be defamed is available against the whole world, but his right to file a suit in a court of law against a person who defames him is personal, being against a particular person only, or sometimes, only against a specific group of persons.

10. Rights in rem and rights in personam

A right in rem is one which is available against the whole world. A right in personam is one which is available against a particular person (or persons) only. Thus, the rights of a person not to be defamed or assaulted, are examples of rights available against the whole world. Such rights are rights in rem, and their number is countless. But, if X agrees to sell his house to Y, the mutual rights of X and Y are created by agreement. These rights are personal to both, and if there is a breach of

contract, X can sue Y, or Y can sue X (as the case may be), but third parties can neither sue nor be sued.

11. Rights in re propria and rights in re aliena

If A is the owner of a house, he has a right in propria over that house. Later, he mortgages this house to B, and gives him possession thereof. B becomes the temporary occupier of the house, but A is still the owner of the house and has the right to redeem the mortgage. This right, which is for the time being, detached from as complete ownership of the house, is a right in re aliena.

12. Servient and dominant rights

A, as the owner of a house, has a right of way over the land of his neighbour, B. A's house is the dominant heritage, and A is the dominant owner. B's land is the servient heritage, and B is the servient owner.

V. REMEDY

(Kindly refer to the maxim, Ubi jus ibi remedium, in Chapter II of this book, where the concept of "remedy"is discussed at length.)

VI. DUTY

According to Salmond, a duty is an obligatory act; it is an act, the opposite of which would be a wrong. Duties and wrongs are correlative. The commission of a wrong is the breach of a duty, and the performance of a duty is the avoidance of a wrong.

A highly debatable question is whether rights and duties are necessarily correlative. There are two views in the matter. According to one view, every right has a corresponding duty, and therefore, there can be no duty, unless there is some other person to whom it is due. Proponents of this view argue that there can be no right without a corresponding duty, or a duty without a corresponding right, — just as there cannot be a husband without a wife, or a father without a child.

According to this view, every duty is a duty towards some person or persons, in whom the corresponding right is vested. Likewise, every right is against some person or persons, upon whom a correlative duty is imposed. Every right or duty thus involves a vinculum legis or a bond of legal obligation, binding two persons together. According to this school of thought, there is no duty unless there is someone to whom it is due. Likewise, there can be no right, unless there is someone from whom it is claimed.

The other school of thought does not accept the above, and distinguishes between absolute duties and relative duties. Relative duties are those which have corresponding rights, whereas absolute duties have no such rights. This school believes that the essence of a right is that it should be vested in some determinate person, and should be enforceable by some legal process by such a person. But, a duty to refrain from committing a public nuisance has no correlative rights.

According to Austin, every right implies a corresponding duty, but every duty does not necessarily imply a corresponding right. Thus, if A has a right to receive a debt due to him from B, B also has a duty to pay that amount to A. But take a case like this : It is the duty of a Magistrate to punish an offender, if his guilt is proved. In such a case, can it be said that the offender has a corresponding right to be punished?

One may conclude that duties in the strict sense of the term do have corresponding rights, but duties in the wider sense do not.

VII. WRONG : CIVIL WRONG : CRIMINAL WRONG

A wrong is an act contrary to the rules of right and justice. It may be of two kinds:

(a) moral or natural wrong, i.e. an act which is morally or naturally wrong, being contrary to the rules of natural justice; and

(b) legal wrong, i.e. an act which is contrary to the rules of legal justice and is a violation of the law.

The former falls within the ambit of ethics or morals, whereas the law student is concerned mainly with the latter, i.e., legal wrongs.

A legal wrong is an act which is authoritatively determined to be wrong by a rule of law, and is therefore treated as a wrong for the purposes of the administration of justice. The essence of a legal wrong consists in its recognition as a wrong by the law. It is synonymous with injuria, i.e. a violation of a legal right. A mere loss (damnum) without the violation of a legal right (injuria) does not give rise to a cause of action.

In the eyes of law, wrongs are of two types:

Civil wrongs and

Criminal wrongs.

The former are referred to as torts, whereas the latter are called offences or crimes. (The concept of an offence is discussed later in this Chapter.)

When a civil wrong is committed, a suit is filed in a civil court, and the Judge may award compensation if the plaintiff proves the civil wrong, e.g. a tort or a breach of contract. On the other hand, when a criminal wrong, i.e. an offence, is committed, a complaint is filed in a criminal court, and the Magistrate may sentence the accused to simple or rigorous imprisonment if the complainant proves the offence, e.g. murder, rape, kidnapping, etc.

Every wrong inflicts damage, which, in common language means the physical effect of another person's act. However, legal damage, or damage that constitutes liability in the eyes of law, is neither identical with actual damage, nor does it necessarily mean any pecuniary loss. Every invasion of a person's legal right or unauthorised interference with his property imports legal damage. Thus, although the injured person may not suffer any pecuniary loss by the wrongful act of the other

person, yet, if it is shown that there was a violation of some legal right, the law will presume damage. This is what is called legal damage.

The principle underlying the maxim, Ubi jus ibi remeaium, is that "if a man has a right, he must have a means to vindicate and maintain it, and a remedy if he -is injured in the exercise and enjoyment of it, and indeed, it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal". (Holt C. J. in Ashby v. White, 2 Raym Ld, 938)

In Ashby v. White (above), it was held that if a man has a right to vote, and the Returning Officer maliciously refuses to allow him to vote, he can maintain an action against him. in such a case, it is no defense to argue that the candidate in whose favour he wanted to vote was anyway elected, and that his single vote would not have made any difference. The plaintiff had a right to vote and this legal right was violated. He would, therefore, have a remedy at law.

In The Gloucester Grammar School case (1410, 11 Han IV, 47), the defendant, a school-master set up a rival school next door to the plaintiff's school, with the result that the boys from the plaintiff's school flocked to the defendant's. When the plaintiff sued the defendant for this pecuniary loss, it was held that no suit would lie, as bona fide competition is no ground for action, whatever damage it may cause. Fair and free competition may cause damage, but there is no legal damage in such cases.

VIII. PERSON

The classic definition of the term "person' is given by Salmond in the following words :

"So far as legal theory is concerned, a person is any being' whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes."

Under the Indian Penal Code, the word "person" includes any company or association, or body of persons, whether incorporated or not.

In common parlance, one tends to personify groups which are not "persons" in the eyes of law. Thus, one speaks of a firm as a collection of partners; yet, the law does not look upon a partnership firm as a separate or distinct person. Likewise, sometimes, a group of persons is personified, as when Judges are referred to as "the Court", or jurors are referred to as the "jury". One often speaks of "the estate of the deceased", as if it were a person, although the law does not recognise it as such.

A "legal person", i.e., a person in the eyes of law, as for instance, a company, is a separate, juristic entity. It has a distinct personality (often referred to as its corporate personality), it can own property and assets, it can sue and be sued, and it is, in law, separate and distinct from its shareholders and its directors.

Kinds of persons

Persons are of two types, —

Natural and

Legal.

The term natural persons refer to human beings, i.e., persons in fact as well as in law. A legal person, on the other hand, is any being to whom the law attributes personality by way of a legal fiction. These are persons in law, but not in fact, as for instance, corporations, registered societies, etc. Sometimes, they are described as juristic, artificial or fictitious persons.

There are three types of legal persons :

(a) Corporations : Thus, a company is regarded as a separate juristic entity, distinct and separate from the members who constitute it. Corporations are of two types : corporation aggregate (e.g. a private or public company) and corporation sole (e.g. the Attorney-General, the Advocate-General, the Postmaster-General, and so on).

(b) Institution — as for instance, a church or a university.

(c) Fund or estate — as for instance, a charitable fund or a trust.

IX. LEGAL HEIRS

When a person has made a valid will in his lifetime, his estate goes to the legatees mentioned in the will. However, if he dies intestate, i.e., without having made a will which is capable of taking effect, his property devolves upon his legal heirs. An heir is thus a person who is entitled to inherit the property of a person who has died intestate.

Kinds of legal heirs

1. An heir apparent is an heir (e. g., a son), who will inherit the property — unless he himself dies before the father or is excluded by a valid will.

2. An heir presumptive is an heir (e. ga daughter) whose right to inherit may be lost by the birth of an heir with a higher priority (e. g., a son).

3. An after born heir is one who is born after the death of an intestate from whom he inherits.

4. A collateral heir is one who is not a direct descendant, but whose kinship is through a collateral line, such as a brother, sister, uncle, aunt, etc.

5. A forced heir is a person whom the deceased could not have excluded because of a law which reserves a part of the estate for such an heir.

Provisions governing Hindus

As far as Hindus are concerned, the Hindu Succession Act, 1956, defines an heir as any person who is entitled to succeed to the property of a Hindu dying intestate. The said Act lays down detailed lists of heirs, separately for Hindu males and Hindu females.

Under the Hindu Succession Act, if two persons die simultaneously, in circumstances which make it uncertain as to who died first (e.g. in a plane crash or a shipwreck), then, for the purpose of

determining the legal heirs, it is to be presumed, until the contrary is proved, that the younger survived the older.

Provisions governing Muslims

The Muslim law of inheritance is not codified by statute, but can be traced to the customs of ancient Arabia and the rules laid down by the Koran.

The three principal classes of heirs under the Hanafi (Sunni) law are the Koranic heirs, the Agnatic heirs, and the Uterine heirs.

The Shia law, however, does not accept the above classification of legal heirs. The three classes of legal heirs under the Shiite (Shia) law are : (a) Class I heirs, e. g., parents and children; (b) Class II heirs, e. g., grandparents, brothers and sisters; and (c) Class III heirs, e. g., paternal and maternal uncles and aunts.

Provisions governing Parsis

The Indian Succession Act, 1925, provides for the classes of legal heirs, when a Parsi dies intestate. Prior to its amendment in 1991, separate rules were laid down for Parsi males and Parsi females. However, after the 1991 Amendment, Sections 51 to 56 of this Act lay down rules which are common to male and female Parsis.

Provisions governing other communities

Sections 31 to 49 of the Indian Succession Act lay down a list of legal heirs in the case of intestates other than Hindus, Mohammedans, Buddhists, Sikhs, Jains and Parsis. Thus, these provisions would apply mainly to Indian Christians, Europeans and Jews.

X. LEGAL REPRESENTATIVES

In Black's Law Dictionary, a representative is defined as one who stands for, or acts on behalf of, another. A legal or personal representative is defined in the said Dictionary as a person who manages the legal affairs of another because of incapacity or death, as for instance, an executor or administrator.

Under S. 211 of the Indian Succession Act, the executor or administrator of a deceased person is his legal representative, and all the property of a deceased person vests in such a legal representative. However, a person who comes forward to provide funeral expenses of the deceased does not, for that reason only, become his legal representative.

Under (i) the Patents Act, (ii) the Designs Act, and (iii) the Arbitration and Conciliation Act, a legal representative is defined as a person who in law represents the estate of a deceased.

Under the income-tax Act, if income is received by a person in whose hands it is taxable, a notice can be served on him. If, however, he dies before this can be done, a notice can be served on the executor, administrator or legal representative of the deceased, who is bound to comply with the same, and the income of the deceased in his hands is liable to be assessed. The legal representative

is, in such cases, obviously not personally liable, and tax is to be paid only out of the estate of the deceased.

The maxim, Actio personalis moritur cum persona, means that a personal right of action dies with a person, meaning thereby that his legal representatives are not liable after his death. However, recent legislation in India and England has virtually abolished this doctrine. Shortly stated, today, if the deceased has committed a tort which involves a wrongful appropriation of the plaintiff's property and has added it, or its proceeds, to his own property, the plaintiff can sue the legal representative of the deceased. Likewise, the Workmen's Compensation Act gives a right to the legal representatives of a workman to sue the employer. Under the law of torts, if the cause of action is personal in nature, e.g. defamation, adultery or seduction, the same does not survive against the legal representative of the person who committed such a tort.

The CPC defines a legal representative as a person who, in law, represents the estate of a deceased person. The term also includes any person who intermeddles with the estate of the deceased. Where a party sues, or is sued, in a representative character, the term aiso covers the person on whom the estate devolves on the death of the party so suing or sued.

Thus, the term legal representative denotes "the classes of persons />n whom the status of a representative is fastened, by reason of the death of a person whose estate they are held to represent". (Bisheshar Dayal v. B. B. Singh, 1929 Oudh 353)

However, a mere trespasser is not a legal representative, as he does not intermeddle with the estate of the deceased with the intention of representing it. (Nagendra v. Haran, 1933 37 CWN 758)

It is also not necessary that the legal representative should be a person who is in possession of the property of the deceased. All that is necessary is that he should be a person on whom the estate devolves.

If a suit is filed by two plaintiffs and one of them dies, in cases where the right to sue does not survive to the remaining plaintiff alone, an application for substitution of the legal representative of the deceased plaintiff becomes necessary. If no such application is made, the suit will abate (i.e. it will not be allowed to continue).

If there is a dispute as to who is the legal representative of the deceased plaintiff or defendant, the court may hold an inquiry into the matter and determine the question.

XI STATE

A state may be defined as a society of men established for the maintenance of peace and justice within a determined territory. According to Salmond, a state is "an association of human beings established for the attainment of certain ends by certain means". According to the U. S. Supreme Court, a state is "a body of free persons, united for the common benefit, to enjoy peaceably what is their own and to do justice to others".

The end of every organized political association is to provide defence against external enemies and to maintain peaceful and orderly relations within the association itself. As Hobbes said, the Sovereign carries two swords : the sword of war and that of justice. The essential functions of a State

are thus war and administration of justice. However, a modern State goes much beyond this. Today, the State engages in all kinds of social activities, by looking after the welfare of its citizens and promoting their well-being, by procuring employment, social security and freedom from want. In modern times, in the strength and welfare of citizens lies the strength and welfare of the State.

Secondary functions of a State

Apart from the two primary functions of a State, viz., war and administration of justice, the modern State has several secondary functions, which may be grouped under the following three heads:

(a) Legislation, i.e., the making of laws.

(b) Taxation, which is the instrument by which the State obtains the revenue which it requires for all its activities, and which assumes two forms: direct taxation and indirect taxation.

(c) Other activities, like post office, railways, education, government schools and hospitals, maintenance of welfare activities, etc.

Types of States

States can be broadly divided as under:

I. Unitary or composite

States

1. Unitary (or simple)

2. Composite

a. Imperial

b. Federal

A unitary (or simple) State (e.g. England) is one which is not made up of territorial divisions, which are themselves States. A composite State is one which is itself an aggregate or group of constituent States, e.g., India, which consists of the State of Maharashtra, the State of Gujarat, and so on. In an imperial State, the Government of one of the parts is the common government of all, whereas in a federal State, (like India), the common government is not one of its parts, but a central government in which all the constituent States participate.

II Dependent and independent

States

1. Independent

a. Fully sovereign

b. Semi-sovereign

2. Dependent

An independent State is one which possesses a separate existence, being complete in itself. It is fully sovereign if its sovereignty is, in no way, derogated from, by any control exercised over it by another State. It is semi-sovereign if it is subordinate to some other State. A dependant (or non-sovereign) State is one which is merely a constituent portion of a greater State, which includes other States also, and to whose government it is subject.

Q. Explain : Custom. B.U.May 2001 Nov. 2001 May 2002 Dec. 2002 Apr. 2003 Apr. 2005 Apr. 2006

XII. CUSTOM

Custom is one of the most fruitful sources of law. In fact, it is rightly said that custom is to society what law is to the State. It is the expression and realisation of the principles of right and justice.

According to Paton, custom is useful to the law-maker in two ways. Firstly, it provides the material out of which the law can be fashioned, because it usually takes a great deal of intellectual effort to create new law. Secondly, human psychology being what it is, it is easier to secure reverence and obedience for a law which is based on a custom which has been observed from times immemorial. There is always a tendency to feel that what has been followed in the past, would be a safe guide for the future.

Customs are of two types: legal and conventional. Legal customs, in turn, may be general or local.

A legal custom is one which has the force of law, irrespective of any agreement between the parties who are bound by it. It can be general or local. If it is observed by all the members of a society, it is called a general custom. But, where a custom is observed only by residents of a particular locality, it is called a local custom. Thus, a local custom prevails in some defined locality and constitutes a source of law for that place only. General custom, on the other hand, is that which prevails throughout the country, and constitutes one of the important sources of the law of the land.

Q. Give four essentials of a valid custom. B.U. Nov. 2005

The following are the six requirements of a local custom :

(i) Firstly, it must be reasonable. No court would enforce or accept an unreasonable custom. Thus, in India, a custom allowing sale of a religious office has been held to be unreasonable.

(ii) Secondly, it should be immemorial antiquity. It must be a custom which has stood the test of time.

(iii) Thirdly, there should be an ethical conviction on the part of those who follow the custom that it is obligatory, and not merely optional. Thus, when it was shown that sending a cheque by post was optional in a particular trading community, i. e., it was followed by some traders and not by others, it could not be said to have become a custom.

(iv) Fourthly, a custom must not be contrary to an Act of the Parliament.

(v) Fifthly, a local custom must also possess the attribute of continuity, i. e., it must have been recognised by the community without any break or interruption.

(vi) Lastly, a local custom must be capable of peaceable enjoyment, i. e., enjoyment without any disturbance or contest.

Recently, custom has lost much of its efficacy as a source of law, owing to the growth of legislation and precedents. However, the role of custom in India is far more significant than in England or USA. For instance, a large portion of Hindu Law and Mohammedan Law is uncodified and is based on custom.

XIII. POWER OF ATTORNEY

Before the Powers of Attorney Act, 1882, was passed, there was no codified law relating to powers of attorney. This Act was hence passed to amend the law relating to powers of attorney.

The Act defines a power of attorney as including any instrument empowering a specified person to act for and in the name of the person executing it. In simple words, a power of attorney is a document by which one person authorises another to act and do something on behalf of the person authorising. The person who executes the power of attorney is called the donor and the person in whose favour it is executed is called the donee.

A document executed by the donee in the name of the donor, by virtue of his power of attorney, is as effective as if the document is executed by the donor himself. A power of attorney is valid only in the lifetime of the donor and it automatically ceases to operate on the death of the donor.

In a way, a power of attorney is an example of an agency. The holder of the power of attorney acts as an agent of the donor of the power (- the principal -), and whatever he does on behalf of the principal is binding on the principal and also on third parties.

Kinds of powers of attorney

Powers of attorney can be general and special. A general power of attorney is one that authorises the donee to do anything on behalf of the donor. Thus, if A is going abroad for a year, he may authorise anybody, say, his father, sister, friend, etc., to do anything and everything which A himself could do. On the other hand, a special power of attorney is one which authorises the donee to do any act in respect of a particular transaction only. Thus, A can execute a power of attorney in the name of B in connection with the sale of his property only. This would include negotiating the sale of the property, receiving the purchase amount, giving a receipt to the purchaser, etc.

A power of attorney can be restricted for a particular period, and such a power would be ineffective on the expiry of that period. If no such period is specified, it will be effective until it is revoked by the donor.

XIV. FACT

The term "fact' has a technical meaning in law. The Indian Evidence Act defines it as —

(a) any thing, state of things or relation of things, capable of being perceived by the senses; or

(b) any mental condition of which any person is conscious.

Thus, that a man saw something or that he heard something is a fact. That a man holds a certain opinion or has a certain intention is also a fact.

From the above, it follows that a misrepresentation as to the intention of a person would be a misrepresentation of fact. In the famous words of Lord Bowen, "the state of a man's mind is as much a fact as the state of his digestion".

Principal and evidentiary facts

The fact which is sought to be proved in a court of law is called the principal fact (factum probandum), whereas the facts which lead to establish it are called evidentiary facts (factum probans).

Of which facts evidence can be given

Under the Indian Evidence Act, evidence can be given of the existence or non-existence of facts in issue and relevant facts, — and of no others. Thus, evidence of all other facts (— collateral facts —) is excluded.

Relevant facts

One fact is said to be relevant to another, when it is connected to the other in any of the ways specified in the Indian Evidence Act.

Facts in issue

A fact in issue means —

(a) any fact from which (either by itself or in connection with other facts), the existence, non-existence, nature or extent of any right, liability or disability, asserted in any suit or proceedings, necessarily follows; or

(b) any fact asserted or denied in answer to an issue of fact recorded under the CPC.

Mistake of fact : Effect on contracts

If both parties to an agreement are under a mistake of fact essential to such agreement, the agreement is void. This rule applies only when the mistake of fact is a mutual, and not a unilateral mistake. However, a mistake of law, mutual or unilateral, does not affect the validity of a contract unless it is a mistake of foreign law.

Mistake of fact : Effect under criminal law

Mistake of fact is sometimes a good defence in criminal law. If a person, owing to a mistake of fact, in good faith, believes himself either bound or justified by law to do that act, he does not commit an offence under the Indian Penal Code. Thus, in one case, a Police Officer, after making reasonable inquiries, and on well-founded suspicion, arrested a person under a warrant. In fact, he had arrested

the wrong person. In the circumstances, it was held that he could not be prosecuted for wrongful confinement. (Emp. v. Gopalia, 1924 26 B. L. R. 138)

Mistake of fact : Effect under the law of torts

Under the law of torts, a mistake of fact is no excuse, except where motive is an essential ingredient constituting the wrong. Thus, for instance, a mistake of fact is no defence in an action for trespass. If A trespasses on B's land, he cannot argue that he made a mistake, and thought that the land was his, and not B's.

Note : A reference may be made to the maxims, Ignorantia facti excusat and Ignorantia juris non excusat, discussed in the next Chapter.

XV. ARBITRATION

Arbitration is a process by which parties to a dispute get the dispute settled through the intervention of a third person called the arbitrator. According to Mozely and Whitely, arbitration takes place when two or more parties submit all matters in dispute to the judgment of arbitrators who are to decide the controversy. Halsbury describes it as a reference of a dispute between two or more parties, for determination, after hearing all the parties, by a person or persons other than a court of competent jurisdiction.

Arbitration is thus a means of settlement of disputes by the decision, not of the regular courts of law, but of a person or persons appointed by the parties themselves. It is thus a form of Alternate Dispute Resolution (ADR). It is in vogue today, both at the national as well as international levels, as it is a much faster mode of resolving legal disputes. Whereas court cases can drag on indefinitely, arbitration is much quicker. The principal aim of arbitration is to have a dispute settled without wasting time and money in a regular suit. Legal technicalities do not attach to arbitration proceedings and the provisions of the Indian Evidence Act do not apply. The arbitrator or arbitrators hear the parties, and give their decision (called the Award), which is binding on the parties.

A dispute may be referred to a sole Arbitrator, i.e. an Arbitrator chosen with the consent of all the parties. The other alternative is to have an odd number of Arbitrators, the most common being three. One Arbitrator is appointed by each of the parties, and then, these two Arbitrators appoint the third Arbitrator (sometimes referred to as the Referee or Umpire).

An arbitration agreement may take the shape of a separate agreement between the parties, or may be in the form of an arbitration clause in a commercial agreement. In India, an arbitration agreement must be in writing, which includes not only a signed document, but also an exchange of letters, telegrams, telex, fax, etc.

Under S. 28 of the Indian Contract Act, an agreement to oust the jurisdiction of a court is void. However, an agreement to refer past or present disputes to arbitration does not contravene this provision.

In India, provisions governing arbitration are to be found in the Arbitration and Conciliation Act, 1996, which is enacted on the lines of the Model Law and Rules of UNCITRAL (United Nations Commission on International Trade Law), and designed for universal application. It covers both domestic and international arbitration, and makes special provisions for enforcement of foreign Awards.

Matters which cannot be referred to arbitration

The following matters lie within the ambit of law courts only, and therefore, cannot be referred to arbitration:

(a) Criminal proceedings.— An arbitrator cannot arrogate to himself the powers of a Magistrate, and decide whether or not a person has committed an offence.

(b) Matrimonial matters. — It is the exclusive privilege of law courts (e.g. family courts) to decide on matters of divorce, alimony, custody of children, and so on. These matters cannot be settled by an arbitrator.

(c) Insolvency proceedings. — The question of insolvency is decided by civil courts, and not by arbitrators. However, disputes between an insolvent and his creditors can be referred to arbitration.

(d) Lunacy proceedings. — An arbitrator has no power to declare a person to be a lunatic. This is the sole privilege of law courts and other authorities appointed by statute.

XVI. PLEADINGS

The CPC defines a pleading as meaning a plaint or a written statement. Mogha's Law of Pleadings defines pleading as "statements in writing, drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer".

Every pleading must contain only a statement, in a concise form, of material facts on which the party relies for his claim or defence, as the case may be. Pleadings should not contain the evidence by which facts are to be proved.

Every pleading must also be signed by the party and his pleader, if any, and must also be divided into paragraphs which are consecutively numbered. As far as possible, each allegation must be contained in a separate paragraph.

Classification of pleadings

According to Mogha, pleadings can be broadly classified under the following four heads:

(i) Pleadings in a suit;

(ii) Pleadings in other civil proceedings before a court or tribunal;

(iii) Pleadings in writ proceedings; and

(iv) Pleadings in an election petition. Object of Pleadings

The object of pleading is to give a fair notice to each party of what the opponent's case is, and to ascertain, with precision, the points on which the parties agree and on which they differ. This helps the court in framing the issues before the trial begins.

The reason for including all the necessary particulars is to prevent surprise at the stage of trial, and informing the opposite party as to what case he has to meet.

Amendment of Pleadings

The court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments may be made as may be necessary for the purposes of determination of the real questions in controversy between the parties. However, no application for amendment can be allowed after the trial has commenced, if the court is of the view that the party could have raised the matter before the commencement of the trial, if it had exercised due diligence.

Q. Explain : Defendant. B.U Apr. 2000 Dec. 2002 Apr. 2004

Q. Explain: Plaintiff. May 2002

Q. Explain : Plaint. B.U. Nov. 2000 Nov. 2001 Apr. 2006

Q. Explain : Plaintiff & Defendant. B.U. Nov. 2003

XVII. PLAINT : PLAINTIFF : DEFENDANT

A plaint is a statement of claim. It is by presenting this document that a suit is instituted and commenced. The plaintiff is the person who institutes the plaint, and the person against whom the plaint is filed is called the defendant. Thus, the plaintiff seeks relief against the defendant from the court, on the basis of the cause of action stated by him in the plaint.

When there are two or more plaintiffs in the same suit, they are referred to as co-plaintiffs. Likewise, two or more defendants are referred to as co-defendants. At times, the plaintiff may not be seeking any relief against a person, and yet, he is a necessary and proper party to the suit. In such cases, he may be added as a defendant, but no relief may be claimed against him in the suit. Such a person is sometimes referred to as a proforma defendant.

The structure of a plaint can be broadly divided into three parts :

I. The heading and the title.

II. The body of the plaint

III. The relief claimed.

Part I - The heading and the title

Every plaint begins with the name of the court in which the suit is instituted, e.g. 'In the High Court of Judicature at Bombay'. Next to the heading is the title, indicating —

(a) the name, description and place of residence of each plaintiff; and

(b) the name, description and place of residence of each defendant.

Part II- The body of the Plaint

The body of the plaint contains the Plaintiff's statement of his claim and of other, matters which he is required to state. This would include the following particulars:

(a) A statement of facts constituting the cause of action, and as to when the cause of action arose.

(b) Facts showing that the court has jurisdiction.

(c) Where a party is a minor or a person of unsound mind, a statement to that effect.

(d) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and court fees.

(e) A statement that since the cause of action has arisen on a particular date, the suit is not time-barred. If, however, the suit is prima facie time-barred, the plaint must state the ground on which the Plaintiff claims exemption from the law of limitation.

Part III - The relief claimed

The plaint must specifically state the relief claimed by the Plaintiff. If he is entitled to more than one relief in respect of the same cause of action, he can claim all or any of such reliefs. But, if he omits (without the leave of the Court) to sue for any particular relief, he cannot afterwards sue for the relief so omitted.

XVIII. SUIT

A suit is a legal proceeding between two or more parties in connection with a civil dispute. In the words of the Privy Council, "the word suit ordinarily means, and apart from some contexts must be taken to mean, a civil proceeding instituted by the presentation of a plaint." (Hansraj v. Dehradoon-Moussourie Electric Tramways Co. Ltd. (AIR 1933 P C. 63)

The cause of action, which is a set of circumstances giving rise to the suit, is an important ingredient of a suit. Where there is no cause of action, there cannot be a suit.

Although this term is not defined by the CPC, it is laid down (in S. 9 of the CPC) that civil courts in India are empowered to try all suits of a civil nature, excepting suits of which their cognizance is barred. It is clarified that a suit, in which the right to property is in dispute, is a suit of a civil nature — even if such a right may depend entirely on questions as to religious rites or ceremonies. However, suits for vindication of a mere dignity attached to an office are not suits of a civil nature. Thus, a claim by a swami that he is entitled to be carried on the road in a palanquin on ceremonial occasions is not a suit of a civil nature and will not be entertained by a civil court. (Sri Sunkar v. Sidha, 1843 3 MIA 198)

Certain types of suits are expressly barred by the CPC. Thus, the Code bars a fresh trial of matters which have already been adjudicated upon between the same parties by a competent court.

Likewise, suits for determination of all questions relating to execution, satisfaction and discharge of decrees and arising between parties or their representatives, are expressly barred.

There are also suits which are impliedly barred. Thus, a suit may be impliedly barred by a general principle of law, as for instance suits relating to acts of State. A civil court would, therefore, have no jurisdiction to try such suits. Likewise, no suit will lie to recover costs incurred in a criminal court.

The relevant provisions of the CPC also lay down as to who can be joined as plaintiffs in the same suit, and likewise, who may be joined as co-defendants. It also makes provisions for representative suits, i. e., suits where there are numerous persons having the same interests.

The CPC also contains detailed provisions which govern specific types of suits, viz., —

(i) Suits by or against Government or Public Officers

(ii) Suits by aliens

(iii) Suits by or against foreign states, foreign rulers, ambassadors and envoys

(iv) Suits by or against Rulers of former Indian States

(v) Suit by or against Military, Naval or Air personnel

(vi) Suits by or against corporations

(vii) Suits by or against partnership firms

(viii) Suits by or against trustees, executors and administrators

(ix) Suits by or against minors or persons of unsound mind

(x) Suits relating to family matters

(xi) Suits by indigent persons (sometimes also referred to as pauper suits)

(xii) Suits involving interpretation of the Constitution of India

(xiii) Suits relating to mortgages of immovable property

(xiv) Interpleader suits

(xv) Summary suits

(xvi) Suits relating to public nuisances

(xvii) Suits relating to public charities.

Q. Explain : Jurisdiction. B.U. Apr. 2000 Apr. 2003 Apr. 2004 Apr. 2005 Apr. 2006

XIX. JURISDICTION

Jurisdiction means the extent of the authority of a court to administer justice. Jurisdiction is of three kinds, namely, pecuniary jurisdiction, territorial jurisdiction and jurisdiction as regards the nature of the suit.

Pecuniary jurisdiction refers to a bar on a court from trying a case when the value of the suit exceeds a given monetary limit. Thus, when the Small Causes Court is conferred jurisdiction in all cases where the amount or value of the subject-matter of the suit does not exceed Rs. 10,000/-, this would be an instance of pecuniary jurisdiction.

The rule that a court cannot try a suit for immovable property situated beyond certain limits refers to the territorial jurisdiction of the court.

When certain types of suits, e.g. partnerships suits, are excluded from the cognition of the Small Causes Court, it can be said that the court has no jurisdiction in such matter on account of the nature of the suit.

The jurisdiction of the court may be original or appellate. In the exercise of its original jurisdiction, the court entertains a suit filed before it for the first time. When exercising its appellate jurisdiction, the court entertains appeals from decrees passed by subordinate courts. Thus, the High Court at Mumbai exercises both these types of jurisdiction. On the original side of the High Court, one finds suits filed in the High Court itself, i. e. not in appeal from a lower court. When exercising its appellate jurisdiction, the High Court disposes of appeals against decrees passed by subordinate courts.

It is to be noted that when a court has no jurisdiction in a particular case, the parties cannot, by mutual consent, confer such jurisdiction on the court. No amount of consent or waiver can create jurisdiction which a court does not possess.

If, in a particular case, two courts would have concurrent jurisdiction, it is open to the parties to agree that only one of them would decide disputes arising out of a contract entered into between them. In such a case, one would say that a particular contract is, for instance, "subject to Mumbai jurisdiction".

Q. Explain : Writs. B.U. May 2001 Nov. 2001 Nov. 2003

Q. State the different kinds of writs. B.U. Nov. 2005

XX. WRITS

One of the outstanding features of the Constitution of India is the declaration of Fundamental Rights, like the right to equality, right to freedom, cultural and educational rights, etc. Any person whose fundamental rights are violated can move the High Court (under Art. 226 of the Constitution) or the Supreme Court (under Art. 32), and the court can issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of such Fundamental Rights.

Writ of Habeas Corpus

Habeas Corpus is a Latin term which literally means, "Produce the body". This remedy is available in all cases of deprivation of personal liberty and wrongful detention. If the court is satisfied that such

detention is illegal, it orders the immediate release of the person who is detained. Normally, it is the arrested person who makes the application. However, even a relative or a friend can do so to obtain such release. In one case, even a telegram sent by a prisoner to the Judge was treated as a Habeas Corpus Petition. (Prem Shankar Shukla v. Delhi Administration, 1980 3 SCC 526)

Writ of Mandamus

The Writ of Mandamus (literally meaning "We command") is directed against any person, requiring him to do something stated therein, relating to his office, and which the court feels is in the interest of justice. Its object, thus, is to compel the performance of a public duty. A Writ of Mandamus lies, not only against executive authorities, but also against judicial and quasi-judicial authorities.

Writ of Prohibition

A Writ of Prohibition is issued by a superior court, directing an inferior court not to exercise jurisdiction which is not legally vested in it. In other words, .it compels a court to keep itself within the limits of its jurisdiction. It is issued against a Tribunal when such Tribunal —

(a) is acting without jurisdiction; or

(b) is acting beyond its jurisdiction; or

(c) is acting in the violation of the rules of natural justice; or

(d) is proceeding under a law which is unconstitutional or ultra vires; or

(e) is acting in contravention of a fundament?1 right. Writ of Certiorari

Certiorari means "to be more fully informed of". This is a Writ issued by a superior court directing an inferior court to transmit to the superior court, all the records of a pending matter, to be dealt with by the superior court, in order to ensure that speedy justice would be done in the matter. This Writ is so named, because in its original Latin form, it required that the King should "be certified" of the proceedings to be investigated. The object of this Writ is that a superior court may exercise its authority to ensure that a subordinate court is properly exercising its jurisdiction.

Writ of Quo Warranto

Quo Warranto literally means, "By what warrant" or "By what authority". This is a Writ issued by the court to a person when he acts in a capacity in which he is not entitled to act. If a person asserts his claim to a public office, and he is not legally qualified to hold such office, this Writ can be issued. Thus, a Writ of Quo Warranto can be prayed for against a Chief Minister, a Judge of a High Court, the Chairman of a Municipality or a member of the University Senate, as all these persons can be said to hold a public office.

XXI. AFFIDAVIT

An affidavit is a statement made by a person on oath. It is a written statement signed by a person and sworn or affirmed by him before a person who is authorised to administer an oath, as for instance, a Magistrate or a Notary Public.

All affidavits must strictly confirm to the provisions of Order 19 of CPC. As per this Order, an affidavit should be confined to such facts as the deponent is able of his own knowledge to prove — except in the case of interlocutory applications, when statements of his belief may be admitted, provided the grounds thereof are stated.

An affidavit which is not properly verified cannot be treated as evidence. However, it has been held by the Supreme Court, that where a writ petition is based on an affidavit which has not properly been verified, it is not necessary to dismiss the petition on this ground without first affording the party a chance to file a duly verified affidavit. (Dwarka Nath v. I.T.O., AIR 1966 SC 81)

In order to save the valuable time of the court, evidence of a witness may be allowed to be given on affidavit, but in such a case, if the opposite party wishes to cross-examine the witness, the court may order the attendance of the witness, i.e. the deponent, for such cross-examination.

Mogha, in his Law Of Pleadings, enumerates the important rules to be followed in drafting an affidavit. Some of them are as under :

(i) The name of .the court in which the affidavit is presented should appear at the top of the affidavit.

(ii) Then the full name of the person making the affidavit should be given.

(iii) Then comes the body of the affidavit.

(iv) An affidavit should be divided .into paragraphs, numbered consecutively, and as far as possible, each paragraph should be confined to a distinct fact.

(v) The words generally used by the declarant are, 'I solemnly affirm' or 'The deponent solemnly affirms and states as under.

(vi) If there are any alterations or interlineations in the affidavit, they must not only be initialed by the deponent, but should also be authenticated by the officer before whom it is sworn.

XXII. STAY OF SUITS: STAY ORDER

A stay refers to the postponement or halting of further proceedings in a given case pending before a court of law. A stay order is an order of the court to suspend all or part of a judicial proceeding.

There are several provisions in the CPC, which deal with stay of suits. The object underlying this provision is to prevent two courts of concurrent jurisdiction from simultaneously trying two parallel suit6 in respect of the same subject-matter and between the same parties. It is easy to see that, in the absence of such a provision, two courts could pass contradictory decrees in respect of the same subject matter litigated between the same parties.

Cases when the court can stay suits

I. The main provision relating to stay of suits is to be found in S. 10 of the CPC, which provides that no court can proceed with the trial of any suit if the subject-matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, and such previous suit is pending in the same or any other court in India. Thus, this rule will not cover any pending suit in a foreign court. For the purposes of S. 10, a suit also includes an appeal.

II. The second instance where a court would stay suits is to be found in Order 30 of the CPC. It is provided that if a suit is filed by a partnership firm in the name of the firm, the defendant may demand that the names of the partners and their residential addresses be disclosed to him. If the firm does not comply with such a demand, the defendant can call upon the court to stay all further proceedings in the matter.

III. Again, when a suit is filed by a minor, it must be filed in his name by another person (like his parent or guardian) who is called the next friend of the minor. Now, if the next friend retires or dies, or is removed by the court, the suit te to be stayed until another person is appointed as the next friend in his place.

IV. Every High Court also has the power to stay a suit pending in a subordinate court.

V. In the case of interpleader suits, if any of the defendants is actually suing the plaintiff in respect of the same subject-matter, the court in which the suit against the plaintiff is pending, must, on being informed by the court in which the interpleader suit has been filed, stay the proceedings against him. (Order 35 of the CPC)

VI. Lastly, a court has the inherent power to stay —

(i) a suit which is an abuse of its process;

(ii) cross-suits, on the ground of convenience; and

(iii) any suit — even if the case is not covered by S. 10 of the CPC (seen above).

Stay Order & Injunction Order

Laymen sometimes loosely use the term Injunction Order as synonymous with Stay Order. Thus, if a person obtains an interim injunction against the demolition of his shop, he may say that he has got a stay order against the threatened demolition. The correct terminology, however, would be to state that he has obtained an injunction against such demolition.

Q. Explain : Injunctions. B.U. Apr. 2000 Dec. 2002 Apr. 2003 Apr. 2006

XXIII. INJUNCTION

Injunction may be defined as the order of a competent court to —

i) forbid or restrain the commission of a threatened wrong, or

ii) forbid or restrain the continuation of a wrong already begun, or

iii) command the restoration of status quo.

Kinds of injunctions

Injunctions can broadly be classified into two kinds, temporary and permanent injunctions.

Temporary injunction

The equitable remedy of temporary injunction is also known as interim injunction. This injunction may be granted on an application made at any stage of a suit. It is called temporary because it is effective only until a particular date, or till the next date of hearing, or till the final disposal of the suit, or till further orders are passed by the court. The provisions regarding grant of temporary injunctions are to be found in the CPC, where the circumstances in which a temporary injunction may be granted by the court are laid down.

In Sitaram v. Banwarilai, (AIR Cal. 105), the court reiterated the three tests to be applied when issuing temporary injunctions, as under :

(i) whether the plaintiff has made out a prima facie case;

(ii) whether the balance of convenience is in favour of the plaintiff; and

(iii) whether the plaintiff would suffer any irreparable loss or injury if his application for injunction was disallowed.

In all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, the court directs notice of the application to be given to the opposite party. In cases where such notice is dispensed with, an ex parte injunction can be passed by the court.

Permanent injunction

A permanent injunction is contained in a decree passed by the court, after fully hearing the merits of the case. This injunction is the final outcome of the suit. It is also called a perpetual injunction since it prohibits the defendant from exercising a right or committing an act, indefinitely or perpetually, — as opposed to a temporary injunction that remains in force only for a certain period of time. The object of a perpetual injunction is to protect the rights of the plaintiff.

The Specific Relief Act, 1963, lays down certain conditions when a perpetual injunction may be granted (section 38) and when it may be refused (section 41). Section 39 of the said Act also provides for mandatory injunctions. Whereas preventive injunctions are issued to prevent breach of a right, a mandatory injunction is one that directs the performance of the requisite act. However, like all other reliefs under the Specific Relief Act, the court has ample discretion in the matter of granting injunctions1 and it may refuse to grant an injunction even if all the requirements of the Act are fulfilled.

Q. Explain : Adjournment. B.u. Apr. 2000

XXIV. ADJOURNMENT

The dictionary meaning of 'to adjourn' is 'to postpone' or 'to break off until later'. Although the court's power to grant an adjournment is completely discretionary, provisions have been made with regard to adjournments.

The general rule is that the court may, at any stage of the suit, grant time to any of the parties, and from time to time, adjourn the hearing of the suit, if sufficient cause is shown for so doing, and reasons for such adjournment are recorded in writing. In such a case, the court fixes a fresh date for the hearing of the suit, and it may pass such order as it thinks fit for the costs occasioned by such adjournment.

Order 17 of the CPC also lays down five subsidiary rules governing adjournment, as under :

(a) If the hearing of the suit has commenced, it must be continued from day to day, until all the witnesses have been examined, unless the court finds, for exceptional reasons (to be recorded in writing) that an adjournment of the hearing beyond the following day is necessary.

(b) No adjournment is to be granted at the request of a party, except where the circumstances are beyond the control of that party.

(c) The fact that the party's lawyer is engaged in another court is not a ground for obtaining an adjournment.

(d) If the illness of the party's lawyer or his inability to conduct the case for any reason (other than his being engaged in another court) is put forward as a ground for adjournment, — the Court must not grant the adjournment unless it is satisfied that the party applying for the adjournment could not have engaged another lawyer in time.

(e) If a witness is present in the court, but a party or his lawyer is not present, or though present, is not ready to examine or cross-examine the witness, the court may, if it thinks fit, record the statement of the witness, and pass such orders as it thinks fit, dispensing with the examination or cross-examination of the witness, as the case may be.

The CPC was amended in 1999 to provide that not more than three adjournments can be given to any party during the hearing of the suit. This is an obvious effort to deal with the tendency of the parties, particularly the defendant, to unnecessarily delay the progress of the case.

XXV. CAUSE OF ACTION

The term 'cause of action' is a basic concept of the law of civil procedure. The term is, however, not defined by the Civil Procedure Code. The Supreme Court has described it as a bundle of essential facts, which it is necessary for the plaintiff to prove. (Ganesh Trading Co. v. Moji Ram, 1978 2 SCC 91)

The cause of action is thus the entire set of facts that give rise to an enforceable claim. It gives occasion for, and forms, the foundation of the suit. The classic definition of the term is to be found in the judgment of Lord Brett in Cooke v. Gill (1873 8 C.P., 107), where he observed as follows :

" Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

A suit is always based on a cause of action. There can be no suit without a cause of action. A cause of action must include some act or omission on part of the defendant, as in the absence of such an act or omission, no cause of action can possibly accrue. However, it is important to note that it does not include the evidence necessary to prove such facts, but every fact which the plaintiff must prove to enable him to obtain a decree.

A cause of action may consist of a single fact or an assemblage of facts. It has however no relation to the defence which may be set up by the defendant; likewise, it also has no bearing on the nature of relief claimed by the plaintiff.

Thus, if A sues B in the High Court at Mumbai for non-repayment of a loan, A would aver that the agreement to give the loan to B was signed in Mumbai, the loan money was paid by A to B in Mumbai, and the repayment was also to be made in Mumbai. In the circumstances, A would plead that the entire cause of action has arisen in Mumbai.

As laid down in State of M. P. v. State of Maharashtra (AIR 1977 SC 1466), a cause of action "refers entirely to the grounds set forth in the plaint as the cause of action or the media upon which the plaintiff asks the court to arrive at a conclusion in his favour." Whether or not any particular facts constitute a cause of action has necessarily to be determined with reference to the facts of each case.

A cause of action must be antecedent to the institution of the suit. Accordingly, when a plaintiff filed a suit for ejection fifteen days before he was entitled to possession, he failed for want of cause of action. (Gulzar Singh v. Kalyan Chand (1893) 15 All 399)

It is not uncommon that two claims arise out of the same cause of action, and it is not always that two claims have to arise from different causes of action. For instance, due to a collision with the defendant's truck, the plaintiff's bicycle is damaged and he suffers injuries all over his body. Here, though the transaction [viz. the collision) is one, two causes of action have arisen viz.(i) damage to the bicycle, and (ii) injury to this body. Here, the plaintiff can bring two separate actions for damages — one for his own injuries and another for the damage caused to his bicycle. However, he cannot bring one suit for the injury to his hands and another for the injury to his legs, or one suit for damage to the handle of the bicycle and another for damage to its wheels.

XXVI. ISSUES

Under the CPC, an "issue" is said to arise when a material proposition of fact or law is affirmed by the one party and denied by the other. Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or which a defendant must contend in order to constitute his defence. Each material proposition which is affirmed by one party and denied by the other constitutes a distinct and separate issue.

Kinds of issues

Issues can be classified into :

(a) issues of facts,

(b) issues of law, and

(c) mixed issues of law and fact.

At the hearing of the suit, after reading the plaint and the written statement, after hearing the parties or their pleaders, and after examining the parties, if necessary, the court decides upon what material propositions of fact or law the parties are at variance. Then, the court proceeds to frame the issues on which the right decision of the case appears to depend. The main object behind this is to record precisely the points of disagreement between the parties.

The issues should not be inconsistent with the contentions of the parties made in the plaint or in the written statement. Hence, framing issues is a very important stage in any suit. Issues are also a notice to the parties, as to on whom the burden to prove a particular fact in issue lies. The parties accordingly have to produce evidence in support of their contentions pertaining to the issues.

In view of the above, a court would commit a grave irregularity if it took up the final hearing of a case without first framing the issues arising in that case.

Often, in the course of the judgement, the court reproduces the issues framed in the case and proceeds to lay down its findings on such issues.

Amendment of issues

The court also has the power to amend any issues or frame any new issues as it deems fit, at any time before passing a decree. The court can also, at its discretion, strike out any issue if it appears to be wrongly framed, at any time before passing a decree.

Further, an application for amendment of the issues can be moved by any of the parties, if the party finds that an issue which ought to have been framed has not been framed or that the burden to prove a particular issue is wrongly cast on that party.

While it is true that the parties should be vigilant in ensuring that proper issues are framed, at the same time, it is also the primary duty of the court to do so, and the court cannot be absolved from this responsibility merely because the parties have been negligent. (Alleemuddin v. Haji Bashir Ahmad, 1977 A. W. C. 683)

Framing of wrong issues

If the Court frames issues wrongly, the appellate court should frame the proper issues, «nd remand the case for a new trial. This is, however, not necessary, if in spite of framing the wrong issues, the judgment gives a finding on the correct issue.

XXVII. EX PARTE

An ex parte decree is a decree passed in the absence of the defendant. Thus, if in spite of serving the summons on the defendant, he does not appear, the court may pass an order that the suit shall proceed ex parte. If the plaintiff makes out a prima facie case, the court may pass a decree in favour of the plaintiff. However, the judge should take care to see that the plaintiff's case is prima facie proved. The mere absence of the defendant does not, of itself, justify the presumption that the plaintiff has a good case.

Setting aside an ex parte decree

In any case in which a decree is passed ex parte against a defendant, he can apply to that court for an order to set aside the decree. If the court is satisfied that the summons was not duly served, or that the defendant was prevented from a sufficient cause from appearing before the court on the date of hearing, the court may pass an order setting aside the decree on such terms as to costs it deems fit.

However, a court shall not set aside a decree merely on the basis of irregularity in the service of the summons, if it is satisfied that the defendant had notice of the date and sufficient time to appear. Likewise, no ex parte decree can be set aside, unless a notice thereof has been served on the opposite party.

Remedies available to the defendant

When an ex parte decree is passed against the defendant, he has five remedies open to him :

(a) He may apply to the court which passed the ex parte decree to set it aside, as stated above.

(b) If such application is rejected by the court, he can appeal against that order of dismissal.

(c) He may file an appeal against the ex parte decree.

(d) He may apply for a review of the judgment passed against him.

(e) When the ex parte decree is alleged to have been obtained by fraud, he can file a separate suit to set aside the decree on the ground of fraud. (Abdul v. Mahomed, 1894 21 Cal. 605)

Limitation period for setting aside ex parte decrees

The application to set aside an ex parte decree must be filed within thirty days from the date of passing such decree.

Q. Explain : Amicuscariae. B u Apr 2000

XXVIII. AMICUS CURIAE

The term amicus curiae, in Latin, means "a friend of the court". Such a person is not a party to the proceeding, but since he is a friend of court his sole function is to advice — or make suggestions — to the court. In State v. Finley, it was observed that "An amicuscuriae is one who gives information to the court on some matter of law in respect of which the court is doubtful." Thus, the function of such a person is only to make useful suggestions to the court.

The term amicus curiae is explained in Black's Law Dictionary as a person who is not a party to a suit, but who petitions the court, or is requested by the court, to file a brief in the suit, because that person has a strong interest in the subject-matter of the suit. In American jurisprudence, such a person is sometimes also referred to as a "bystander" or "stander-by", who informs, or makes suggestions to, the court.

In Village of North Atlanta v. Cook, it was observed as under:

"The literal meaning of amicus curiae is friend of the court, and the term includes persons, whether attorneys or laymen, who interpose in a judicial proceeding to assist the court by giving information or otherwise, or who conduct investigation or other proceeding on request or appointment thereof by the court." Thus, amicus curiae implies the friendly intervention of counsel to call the court's attention to a legal matter which has escaped, or might escape, the court's consideration; but, a right to be so heard is entirely within the discretion of the court.

According to the Oxford Dictionary of Law, the term implies a Counsel who assists the court, by putting arguments in support of an interest that might not be adequately represented by the parties to the proceedings (- such as a public interest litigation -), or by arguing on behalf of a party who is otherwise unrepresented. In the modern practice prevailing in England, when a court requires the assistance of an amicus curiae, it is customary to invite the Attorney-General to attend, either in person or by counsel instructed on his behalf, to represent public interest. Likewise, counsel have been permitted in England to act as amicus curiae on behalf of professional bodies like the Law Society.

In one case, it was observed that amicus curiae is not appointed as a private counsel of the parties in a suit to represent them in a partisan manner and for their personal use and benefit. His function is not, however, to take over the conduct of a case for the litigating parties. (City of Kansas v. Kindle)

In other words, the concept connotes the friendly intervention of a Counsel to "remind" the court of some matter of law which might have escaped its notice, and with regard to which there may be a danger of its giving a wrong finding. Such a person is not a party to the suit and has no control over such a suit.

In one case, a person who was neither an officer nor an attorney nor an agent of a railroad company, and who was not authorised to act for it, filed a notice of appeal from a judgment against the company as amicus curiae. The court held that he had no power to do so. (Southern Rly. Co. v. Locke)

To take just one example from the Indian context, in D. K. Basu v. State of West Bengal (discussed at length in a later Chapter), whilst hearing the Writ Petitions before it, the Supreme Court felt the necessity of getting some assistance from the Bar, and therefore, requested a Senior Advocate, Dr. A. M. Singhvi, to assist the Court as amicus curiae.

Q. Explain: Decree. B.U. Nov. 2000, May 2001, Apr. 2004

XXIX. DECREE

The term "decree" is defined in the CPC as the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.

The term includes (i) the rejection of a plaint, and (ii) the determination of any question under S. 144 of the CPC. However, it does not include —

(a) any adjudication from which an appeal lies as an appeal from any order; or

(b) any order for dismissal of a suit for default.

A decree holder means any person in whose favour a decree has been passed or an order capable of execution has been made.

Before an order of a court can be regarded as a "decree", it must satisfy the following five conditions:

(a) There must be an adjudication.

(b) Such an adjudication must be in a suit.

(c) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit.

(d) Such determination must be of a conclusive nature.

(e) There must be a formal expression of such adjudication.

Types of decrees

A decree can be preliminary or final. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when the adjudication completely disposes of the suit. A decree may also be partly preliminary and partly final.

Where an adjudication decides the rights of the parties with regard to all or any of the matters in controversy in a suit, but does not completely dispose of the suit, it is a preliminary decree. Preliminary decrees can be passed in suits for pre-emption, suits for dissolution of a partnership, suits for sale of mortgaged property, and other suits specified in Orders 20 and 34 of the CPC.

A final decree is one which completely disposes of the suit, and finally settles all the questions in controversy between the parties,— and nothing further remains to be decided by the court 'in the matter. Thus, when a suit is filed for recovery of money, and the court directs the defendant to pay the amount to the plaintiff in a specified manner, it would be a final decree.

A decree may also be partly preliminary and partly final. Thus, A sues B for possession of a piece of land and also for mesne (past) profits. After hearing the parties, the court decrees possession of the property, and directs an inquiry into the mesne profits. In this case, the former part of the decree is final, and the latter is only a preliminary decree. The decree is only one; it is partly preliminary and partly final.

Q. Explain: Judgment. B.u. May 2002

XXX. JUDGMENT

The CPC defines "judgment" as the statement given by the Judge on the grounds of a decree or order.

Under the CrPC, a judgment is to be given immediately after the termination of a trial or at any subsequent time, of which notice should be given to the parties or their pleaders. However, no judgment delivered by a criminal court is invalid only by reason of the absence of any party or his pleader on the day notified for the delivery of the judgment.

The CrPC also provides that every judgment must comply with the following eight requirements:

(1) It must be written in the language of the court.

(2) It must contain the points of determination, the decision on those points, and the reasons for the decision.

(3) It must specify the offence of which the accused is convicted (including the section of the Indian Penal Code, or any other law, as the case may be) and the punishment to which he is sentenced.

(4) If the accused is acquitted, it must state the offence of which the accused is acquitted and direct that he should be set at liberty.

(5) If the conviction is under the Indian Penal Code and it is doubtful under which of two sections the offence falls, the court must distinctly express the same and pass a judgment in the alternative.

(6) If the conviction is for an offence which is punishable with imprisonment or life-imprisonment or death sentence, the judgment must state the reason why that particular sentence was awarded. If a death sentence is awarded, the specific reasons for awarding the extreme penalty should be mentioned.

(7) If a conviction is for an offence which is punishable with imprisonment for one year or more, but the court imposes a sentence of imprisonment for three months or less, it must record its reasons for awarding such sentence, —

(a) unless the sentence is for imprisonment till the rising of the court, or

(b) unless the case was tried summarily under the provisions of the CrPC.

(8) If the accused is sentenced to death, it must be stated that he is to be hanged by the neck until he is dead.

Q. Write a short note on: Appeal. B.U. Apr.2006

XXXI. APPEAL

The term "appeal" is not defined by the CPC. In Black's law Dictionary, the term is defined to mean a complaint to a superior court of the injustice done or error committed by an inferior court, whose judgment or decision the court above is called upon to correct or reverse, it is thus the right of carrying a case to a superior court to ascertain whether the judgment of the lower court is sustainable.

The Supreme Court has defined the term appeal as "the judicial examination by a higher court of the decision of an inferior court". (Lakshmiratan Eng. Works v. Asst. Commissioner of Sales Tax, AIR 1969 S. C. 488)

It is to be remembered that a right of appeal is not a natural or inherent right. It is well-established that an appeal is a creature of the statute; there is no right of appeal unless it is expressly provided for by the terms of an Act.

An appeal filed against the decree passed by the court of the first instance is known as a first appeal. An appeal filed against the decree of the appellate court is called a second appeal. For instance, if a litigant files an appeal in the High Court against a decree of the City Civil Court, it would be the first appeal. When he does not succeed, and files a further appeal against the decree of the High Court in the Supreme Court, that would be a second appeal.

Appeals in civil matters

The CPC provides that every appeal should be in the form of a Memorandum, signed by the Applicant or his pleader, and must be accompanied by a copy of the judgment appealed against. The general rule is that any mistake committed by the lower court in weighing evidence, any mistake in the view of law entertained by the lower court, any misapplication of law to the facts of the case, any material irregularity committed in the trial of a case, or any substantial error or defect of procedure, is a good ground of attack in a Memorandum of Appeal.

However, no appeal lies against a Consent Decree,i. e., a decree passed by the court with the consent of all the parties.

The general rule is that only a party to a suit, who is adversely affected by the decree, or his representative, can file an appeal. However, even a third party can appeal, if he is aggrieved or prejudicially affected by the judgment. This can, however, be done only with the leave of the court.

Appeals in criminal matters

Provisions for appeals in criminal matters are to be found in the CrPC. Detailed provisions are made therein about appeals to the Sessions Court, appeals by the State Government, appeals from convictions, appeals against acquittals, appeals against convictions by the High Court, etc. The detailed procedure for hearing appeals in criminal matters, as well as the powers of the Appellate Court are also to be found in the CrPC. It is also to be noted that a sentence against an accused cannot be enhanced in appeal unless an opportunity is given to him to show cause against such enhancement.

Appeals under the Constitution of India

Under the Constitution of India, an appeal lies to the Supreme Court in the following four cases :

(a) Appeals from High Courts in civil matters;

(b) Appeals from High Court in criminal matters;

(c) Appeals from High Courts in constitutional matters; and

(d) Special leave appeals, where the Supreme Court, in its discretion, can grant special leave to appeal from any judgment, decree, sentence or order of a lower court. Such petitions are also known as Special Leave Petitions (SLPs).

XXXII. REFERENCE

Reference in civil matters

Under the CPC., a subordinate court may state a case and refer the same for the opinion of the High Court when it is of the view that some doubt exists about a question of law. The High Court then considers the matter, and makes such Order thereon as it deems fit.

The raison d'etre of this useful provision is to enable subordinate courts to obtain the opinion of the High Court on a question of law in non-appealable cases. A court may make a reference suo motu or on the application of any of the parties.

Before a reference can be made, the following three conditions must be satisfied :

(a) There must be a pending suit or appeal in which the decree is not subject to appeal.

(b) A question of law — or of a usage having the force of law — must have arisen in the course of such a proceeding.

(c) The court trying the suit or appeal must entertain a reasonable doubt on such a question.

In such cases, the court may draw up a statement of the facts and the law point on which the doubt arises, and after recording its opinion, make a reference to the High Court. Similarly, the party who makes a prayer to the court for reference must, in his Application, make a mention of the facts of the case and the doubtful point of law.

It follows from what is stated above, that no reference can be made on hypothetical questions of law.

Reference in criminal matters

Under the CrPC, if a criminal court is satisfied that a case pending before it involves a question as to the validity of an Act, Regulation or Ordinance, and that it is necessary to determine the same in order to dispose of the case, it must state a case, setting out its opinion, and refer the matter for the decision of the High Court. This provision applies when such Act, Regulation, etc. has not been declared to be invalid or inoperative by the Supreme Court or by the High Court to which such court is subordinate.

XXXIII. REVIEW

Review is an application for a reconsideration of the matter before the court by the same judge who had earlier decided it.

Under the CPC, any person considering himself aggrieved:

(a) by a decree or order from which an appeal is allowed by the CPC, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by the court; or

(c) by a decision on a reference from a Court of Small Causes, — may apply for a review of the judgment to the court which passed the decree or made the order.

Such an application for review can be filed on any of the following three grounds, namely, —

(i) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the knowledge of the appellant or could not be produced by him at the time when the decree was passed; or

(ii) on account of some mistake or error apparent on the face of the record; or

(iii) for any other sufficient reason.

Thus, although the remedy of review is a unique concept, it is self-limited in its application, in so far as a review can be granted only in the above circumstances. Where the court feels that there is no sufficient ground for review, it rejects the application.

The grounds for review explained

(i) The first ground, i. e., the discovery of new and important matters or evidence, will depend upon the facts and circumstances of each case. However, the new and important matters should be such as, if produced at the appropriate time, might have changed the decision; they should have existed at the time of the hearing of the case, but only their discovery was somehow prolonged.

(ii) A mistake or error apparent on the face of record will include both errors of facts and law. The test should be that no error would be apparent unless it is evident in itself and it should not require any elaborate argument to establish it.

(iii) The expression 'any other sufficient reason' has quite a wide scope. Nevertheless, it would still consist of the grounds that are incidental or analogous to the other two grounds.

Incidental provisions

Before an application for review is granted by the court, a notice is issued to the opposite party, so as to enable him to appear and be heard in the matter. However, a court or tribunal has no inherent jurisdiction to review its decisions. It can do so only if it is specifically authorised by a statute.

Under the Limitation Act, 1963, the limitation period for a review is 30 days for judgments of all courts except the Supreme Court.

XXXIV. REVISION

Concept of Revision under CPC

The provisions of the CPC empower the High Court to interfere in revision in any case decided by a subordinate court in specified circumstances. Under this provision, the High Court may call for the

records of any case decided by a subordinate court in cases in which no appeal lies to such a High Court, if such subordinate court appears—

— to have exercised a jurisdiction not vested in it by law; or

— to have failed to exercise a jurisdiction so vested; or

— to have acted in the exercise of its jurisdiction illegally or with material irregularity.

The object of conferring the power of revision to the High Court is to prevent subordinate courts from acting capriciously, arbitrarily or illegally in the exercise of their jurisdiction. It enables the High Court to correct errors of jurisdiction committed by the lower courts.

It is also provided that the High Court, cannot, under this provision, vary or reverse any order made in the course of a suit or proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

The High Court has the power to revise any decision, as aforesaid, either suo motu or on an application made to it by either party.

However, it cannot vary or reverse any decree or order which is appealable.

The following four conditions must be satisfied before a High Court can exercise its power of revision in civil matters:

(a) A case must have been decided.

(b) The court which has decided the case must be subordinate to The High Court.

(c) The order of the subordinate court should not be an appealable order.

(d) The subordinate court must have passed such an Order in one of the three ways referred to above.

Revision under the CrPC

Under the CrPC, the High Court or any Sessions Court may call for and examine, the records of any proceedings before any subordinate criminal court within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or other order passed by such court or as to the regularity of any proceeding of such a subordinate court.

Revision under the Constitution of India

The power of revision has also been conferred on the High Courts under Article 227 of the Constitution of India, by giving them the power of superintendence over the lower courts and tribunals within their jurisdiction. However, this power is distinct from the one given by the CPC or the CrPC, because it is wider in nature, and is not limited by any statutory provisions, as in the case of the CPC and the CrPC.

XXXV. OFFENCE

An act which is wrong in the eyes of law may be wrong from the angle of civil law or from the angle.of criminal law. The former is called a tort, whereas the latter is referred to as an offence.

The Indian Penal Code (IPC) defines an offence as something which is made punishable under the IPC or under any special or local law, as for instance, the Indian Arms Act or the Bombay Prohibition Act.

Punishments for offences under the IPC are also to be found in the said Code. These range from the death penalty (for grave offences), imprisonment (which may be simple, rigorous or solitary), fine and forfeiture of property.,

The IPC deals with the following offences:

(a) Criminal conspiracy

(b) Offences against the State, e.g. waging war against the Government of India

(c) Offences relating to the Army, Navy and Air Force

(d) Offences against public tranquility, e.g. unlawful assembly, rioting and affray

(e) Offences by or relating to public servants

(f) Offences relating to elections

(g) Offences relating to coins and Government stamps

(h) Offences relating to weights and measures

(i) Offences relating to public health, safety, decency and morals

(j) Offences relating to religion

(k) Offences affecting the human life, e.g. culpable homicide and murder

(I) Offences against the human body, e.g. hurt, assault, kidnapping and abduction

(m) Offences against property, e.g. theft, robbery, extortion and dacoity

(n) Offences relating to documents, currency, bank-notes and cheating

(o) Offences relating to marriage

(p) Offence of defamation

(q) Offences of criminal intimidation, insult and annoyance.

Four stages in the commission of an offence

The first stage in the commission of an offence is the intention to commit the offence. Before A actually shoots his rival, B, at some point of time prior to the actual killing, he forms an intention to eliminate his rival. However, mere intention to commit a crime (murder, in this case), not followed by any overt act, is not an offence.

The second stage is preparation to commit the crime. Even this stage is not punishable by the IPC, except in two cases : preparation to wage war against the Government and preparation to commit dacoity. So, when A goes to a licensed ammunition shop and buys a gun to kill B, he has still not committed any offence, — presuming, of course, that he was in possession of a valid license to purchase a gun. He may still change his mind and spare the life of B. He has not gone beyond the stage of preparation, and so, is not guilty of any offence.

The third stage is the attempt to commit the offence, — which is a direct movement towards the commission of the crime after preparations are made. An attempt to commit an offence is punishable, whether or not the person succeeds in committing the ultimate crime. Thus, A aims the gun at B, and with the intention of shooting B, pulls the trigger. The bullet misses B, but A is nevertheless guilty of an attempt to murder B.

The last stage is when the commission of the crime or offence is complete, and the attempt is successful. If the bullet hits B, killing him, A has committed the offence of murder.

XXXVI. COMPLAINT

The concept of a complaint is of prime importance in the law of criminal procedure. The CrPC defines complaint as any allegation made orally or in writing to a Magistrate, with a view to his taking action under the CrPC, that some person, whether known or unknown, has committed an offence. A complaint is, in a criminal matter, what a plaint is in a civil matter. It is one of the modes in which a Magistrate can take cognizance of an offence.

Any oral or written allegation to a Magistrate would be a complaint, if it satisfies the following four conditions:

(i) The complaint must be to a Magistrate, and not to a Judge.

(ii) It must be made with a view that the Magistrate may take action on it. If it is only by way of information, with no request that action be taken on it, it will not amount to a complaint.

(iii) It should be a request that the Magistrate should take action under the CrPC. If action is requested to be taken under some other law, e. g. the Bombay Gambling Act, it would not amount to a complaint. (Hotu v. Emp. 1914 15 Cr. L. J. 657)

(iv) It must allege the commission of an offence. If there is no such allegation, it cannot be a complaint.

Thus, the following have been held to be complaints:

(a) the presentation of a petition by a complainant, requesting that his complaint should be inquired into;

(b) the petition of a complaint who has withdrawn his case and asks to be allowed to proceed with the same;

(c) a letter addressed to a Magistrate, conveying the information of an offence and requesting the Magistrate to take appropriate action.

However, the following have been held not to be complaints:

(a) a statement made in a deposition;

(b) an application for issue of process;

(c) a petition by a wife against her husband for maintenance under S. 125 of the CrPC.

When a complaint is made to a Magistrate, he must examine the complainant on oath to satisfy himself about the veracity of the complaint. If he finds no prima facie reason to distrust the complainant and the facts constitute an offence under the law, he must issue a process forthwith. If, on the other hand, he distrusts the complaint, he must dismiss the complaint.

If it is found that the complaint relates to a dispute of a civil nature, it must be dismissed, even if dressed up as a criminal offence. If, on the other hand, the allegations disclose a crime, the Magistrate should not dismiss it, simply because proper technical language is not used in the complaint.

Q. Explain : Charge. B.U. Nov. 2001 Nov. 2003 Apr. 2006

XXXVII. CHARGE

"Charge" under the Criminal Law

A charge is an important step in a criminal proceeding, which separates the state of inquiry from a trial. A charge may be defined as a precise formulation of a specific accusation made against a person for an offence alleged to have been committed by him.

The purpose of a charge is to inform the accused, as precisely and concisely as possible, about the matter with which he is charged. The framing of a proper charge is thus vital to a criminal trial and is a matter on which the Judge ought to bestow the most careful attention.

The object of a charge is to warn the accused about the case which he has to answer. It therefore cannot be an accusation in the abstract, but should be a concrete accusation of an offence alleged to be committed by a person. In the words of the Privy Council, "The necessity of a system of written accusation specifying a definite criminal offence is of the essence of criminal procedure." (Subramania, 5 C. W. N. 866)

The following are the four ingredients of a charge:

(a) It must state the offence with which the accused is charged.

(b) If the law has given a specific name for that offence (as for instance, murder, kidnapping, abduction, theft, robbery, etc.), it must be described by that name only. If there is no such specific name, so much of the definition of the offence must be stated, as to give the accused notice of the matter with which he is charged.

(c) The law (i.e. the name of the Act, e.g. the Indian Penal Code) and the section of such an Act under which the offence is alleged to have been committed must be mentioned in the charge.

(d) The charge must be written in the language of the court.

The whole idea of framing a charge is to enable the defence to concentrate its attention on the case that it has to meet. Hence, if the charge is framed in a vague manner, so that the necessary ingredients of the offence are not brought out, the charge would be defective.

There must be a separate charge for every distinct offence for which a person is accused, and every separate charge must be tried separately. However, a Magistrate may try together all or any number of charges framed against an accused, if the accused applies in writing and the Magistrate is also of the opinion that such a person is not likely to be prejudiced thereby.

"Charge" under the Transfer of Property Act

Under the Transfer of Property Act, the term "charge" has a totally different connotation. The said Act provides that where immovable property of one person is made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on such property. This may happen either by act of parties or by operation of law. A charge is governed by all the provisions of the said Act which apply to simple mortgages.

The word "charge" is a wider term than "mortgage". A mortgage can be created only by act of parties, whereas a charge can be created either by act of parties or by operation of law.

Q. Explain : Bail. B.U. Nov. 2000 May 2001 Apr. 2003

XXXVIII. BAIL

The dictionary meaning of 'bail' is setting an accused person free before he is tried, often on a condition that a sum of money would be forfeited if he does not attend the trial. Thus, a bail is a security given to the court to assure that the accused person shall remain present on the day of the trial.

All offences are either bailable and non-bailable. In the case of a bailable offence, bail must be granted to the accused, and the magistrate has no discretion in the matter. Thus, in the case of bailable offences,the grant of bail is a matter of course. However, in the case of a non-bailable offence, the court may release such a person on bail, only subject to the conditions laid down in S. 437 of the Criminal Procedure Code. Needless to state, bailable offences are relatively minor in nature, whereas non-bailable offences are more severe in nature. To find out whether an offence is bailable or not, one has to refer to the Schedule of the Criminal Procedure Code.

While granting bail, the court has the discretion to put restrictions on the movements of the accused. It can direct the accused to remain present in the police station at a particular time; it may also direct him not to leave that particular city or not to go abroad, in which case, it may also direct the accused to surrender his passport.

Kinds of Bail

There are various kinds of bail. Bail can be in the form of cash amount to be deposited in the court which is forfeited in case the accused remains absent. Bail can be also in the nature of a personal bond executed by the accused, undertaking to pay to the court, the amount of money decided by the court, in case he remains absent on the day of the trial. This bond can be with one or more sureties, wherein the sureties undertake to pay to the court, the amount of money mentioned in the bond on the failure of the accused to so remain present.

Yet another kind of bail is anticipatory bail. As the very name suggests, it is a bail in anticipation of arrest. If any person has reason to believe that he may be arrested on an accusation that he has committed a non-bailable offence, he may apply to the High Court or to the Sessions Court for anticipatory bail. The Supreme Court has defined anticipatory bail as a pre-arrest legal process when the court directs that if such person is thereafter arrested on that particular charge, he should be released on bail. It is thus an insurance against police custody upon arrest on a particular charge. (Gurbaksh Singh v. State of Punjab, 1980 2 SCC 565)

Judicial discretion in granting or refusing bail

The process of granting or refusing bail involves a careful use of judicial discretion, so as to serve the twin object of social defence and individual freedom. This discretion should, therefore, be exercised in a sound and judicious manner, and not arbitrarily or capriciously. All relevant considerations must be kept in mind, as for instance, the gravity of the offence, the nature of the evidence, the possibility of the accused influencing the witnesses, the possibility of his going "underground", and so on.

There is a strong feeling that, in India, the worst sufferers of the legal provisions relating to bail are the poor, whilst the not-so-poor (to put it mildly) take undue advantage of such provisions. One recalls the recent Tandoor case, where the accused was alleged to have killed the victim in a tandoor, and whilst the Police were trying to arrest him, he obtained an anticipatory bail from the Sessions Court in Chennai.

It is in this context that the mechanical granting of bail, sometimes as a matter of course, and sometimes for undesirable reasons, came in for vehement criticism from the Supreme Court in Hussainara Khatoon v. State of Bihar (AIR 1978 SC 1675), where it was observed as under:

"The system of bail operates very harshly against the poor, and it is only the non-poor who are able to take advantage of it by getting themselves released on bail."

XXXIX. CONVICTION : ACQUITTAL : DISCHARGE

The terms conviction, acquittal and discharge are peculiar to the branch of criminal law, although the word discharge is also used in a totally different sense in civil law, particularly in the law of contracts. Incidentally, the term conviction also has another connotation in the English language, when it means a strong belief or opinion, as, when one says that a person has a strong conviction about a particular religion.

Under the criminal law, if the court finds no ground to proceed against an accused brought before it, the court may discharge him. However, if the court deems otherwise, the trial begins and at the end thereof, it is proved that the accused had, in fact, committed the offence, he is convicted of that offence. If it is shown that he had not committed the act for which he was charged, he is acquitted.

Under the provisions of the CrPC, when an accused appears, or is brought before the court, the latter examines all the relevant documents and gives an opportunity, both to the prosecution and to the accused, to be heard in the matter. Thereafter, if the court considers that there is no sufficient ground for proceeding against him, it must discharge the accused, and record its reasons for doing so. The object of the provision (of recording the reasons) is to enable a superior court to examine the correctness of the order discharging the accused. (L. M. Muniswamy, AIR 1977 SC 1489)

On the other hand, if such court is of the opinion that there is ground for presuming that the accused has committed the offence, the court frames a charge against him, and such charge is to be read out and explained to him. The accused is then asked whether he pleads guilty of such offence, or whether he claims to be tried by the court.

When the accused pleads guilty, the court records such plea, and may, in its discretion, convict him on such plea. If, however, he refuses to plead, or does not plead, or claims to be tried, or when he is not convicted despite pleading guilty, the case proceeds against him. At the end of the trial, if the court finds that the accused is not guilty, i.e., if the court considers that there is no evidence that he committed the offence, it must acquit him, and record an order of acquittal. If, on the other hand, the court finds that the accused is guilty, it convicts him of that offence.

However, before a sentence is passed, the accused has to be heard on the question of the sentence to be passed against him. Only after this, the court passes a sentence against him according to law. This requirement gives an opportunity to the accused to urge some ground in regard to the quantum of the sentence, as for instance, that he is the sole bread-earner of the family, a fact that may not have come out during the entire trial. This provision has serves a healthy social purpose.

The Supreme Court has held that when the minimum sentence provided by law is imposed by the court, as for instance, in the case of murder, the question of providing an opportunity to make submissions on the quantum of punishment, does not arise. (Tarlok Singh, AIR 1977 SC 1747)

In cases where the court discharges or acquits all or any of the accused and it is of the opinion that there was no reasonable cause for making the accusation against him or them, it may order the person against whom the offence was alleged to have been committed, to pay compensation to the accused, or to each of them, as the case may be.

Rule against double jeopardy

In England, the common law maxim, nemo debet bis vexari, postulates that "a man cannot be brought into danger for one and the same offence more than once". Therefore, if a person is, once again, charged for the same offence, he can plead, as a complete defence, his former acquittal or conviction, as the case may be. In other words, he can take the plea of autrefois acquit or autrefois convict.

This rule is also referred to as the rule against double jeopardy, and in India, this right is conferred by Article 20 of the Constitution of India and S. 300 of the CrPC. It is, however, also clarified (by S. 300 of the said Code) that the dismissal of a complaint or the discharge of an accused does not amount to an acquittal for the purpose of the rule against double jeopardy.

The American Constitution also recognizes this rule and provides that no person shall be subject, for the same offence, to be put twice in jeopardy of life or limb.

Other legal connotations of the term "discharge"

The term discharge is also used in the law of contracts, albeit in a totally different sense. There are several ways in which a contract is discharged, as for instance, by performance, breach, frustration, novation, and so on. (A reference may be made to a book on the law of contracts for a detailed discussion on discharge of contracts.)

Likewise, a bankrupt may be discharged under the Insolvency Acts, or a surety may be discharged, as when he is released from his liability as a surety. Similarly, when a debtor pays all his debts, he is discharged from further liability towards his creditors. In the same way, a jury is discharged after it gives its verdict or on failure to agree on a verdict. So also, when an employee is discharged for unlawful reasons, one talks of his wrongful discharge. Under English law, the term constructive discharge is used when an employer makes the working conditions of an employee so intolerable that the employee is compelled to leave the job.

Chapter II

LEGAL MAXIMS

INTRODUCTION

In law, as in all other sciences, reference is often made to what are known as "first principles". One look at the early Law Reports would show the importance attached, even in those days, to legal maxims (which are usually expressed in Latin). Although Latin may be a dead language today, these maxims are so manifestly steeped in reason, public interest and convenience, that they find a place in the jurisprudence and laws of every civilized country.

The last few centuries have seen a tremendous increase in commerce, unfortunately accompanied by a corresponding increase in commercial and personal litigation. This, in' turn, has brought about many subtleties and nice distinctions in the application, and sometimes, even the exclusion, of these maxims. This development has, however, not diminished their value, but has rather emphasised the importance of studying them even more intimately, so that they may be applied, qualified or limited, as required by the facts and circumstances of each case.

A knowledge of these maxims or first principles is therefore of utmost value, not only to a student of law, but also to the legal fraternity, the lawyer and the judge.

Thirty important maxims of law are given below, with a brief discussion of their meaning, contents, illustrations and references in case-law. Equally important are their exceptions and limitations, if any, because such qualifications to the maxims are always to be borne in mind before a particular maxim is argued by the lawyer or applied by the judge. The cases where courts in India and in England have applied these maxims, as well as cases where they have refused to do so, have also been highlighted.

Q. Explain : Ubi jus ibi remedium. B.U. Apr. 2000 Apr. 2003 Apr. 2006 Apr. 2006

I. UBI JUS IBI REMEDIUM

(There is no wrong without a remedy)

"Jus" means the legal authority to do or demand something, and "remedium" means the right of action in a court of law, i.e., a right to sue. Thus, the maxim lays down that whenever there is a legal right, there is also a legal remedy. In other words, there is no wrong without a remedy. Needless to say, both the right infringed and the remedy sought should be legal.

The principle underlying this maxim was explained by Holt C. J. in Ashby v. White (discussed below) thus:

"If a man has a right, he must have a means to vindicate and maintain it, and a remedy, if he is injured in the exercise and enjoyment of it, and indeed it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal."

Exceptions

Although, in a way, the law of torts owes its development to this maxim, it should not be understood to mean that there is a legal remedy for every wrong. If the damage suffered is not legal damage (injuria), no suit will lie, and the maxim will not apply. Such damage would be a case of damnum sine injuria or damnum absque injuria, i.e., damage without legal injury. (A reference may be made to the discussion under the next Maxim.)

At times, the law offers immunities to certain classes of persons, as for instance, the Crown, Judges, Diplomats and Members of Parliament. Likewise, no action will lie against a witness in a legal proceeding for defamation. (Seaman v. Netherclift, 2 C.P.D. 53)

Moreover, there are many moral and political wrongs, which are not recognised by law and are, therefore, not actionable. A cruel war may raze houses to the ground, or oppressive legislation may reduce men to moral slavery, or a contract required to be made on a stamped paper may be made orally; in all these cases, irreparable harm may be caused, and yet, a legal remedy may not be available.

It has, therefore, aptly been remarked by Justice Stephen that the maxim would be more intelligibly and correctly stated, if it were to be reversed to say that where there is no legal remedy, there is no legal wrong.

Illustrative cases where the maxim was applied

Ashby v. White : (1703) 2 Raym Ld. 938

In this leading English case, the defendant, a returning officer at a voting booth, wrongfully and maliciously refused to register a duly tendered vote of the plaintiff, who was a qualified voter. The candidate for whom the vote was sought to be tendered was, however, elected and no actual loss was suffered by the rejection of the plaintiff's vote. The court held that the plaintiff had a right to

vote and this legal right was violated by the defendant. He would, therefore, have a remedy at law. The plea that the rejection of the vote did not result in an injury was not allowed as a defence.

D.K. Basu v. State of West Bengal : (1997) 1 SCC 416

In this landmark case, the Executive Chairman, Legal Aids Services, West Bengal, a non-political organisation wrote a letter to the Chief Justice of India, drawing his attention to the news items published in some newspapers regarding custodial deaths. Applying this maxim, the court held that a mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Hence, although the Constitution has no provision for compensation, the Supreme Court judicially evolved a right to compensation in such cases.

(This case is discussed at length in a later Chapter.)

Illustrative cases where the maxim was not applied

Munster v. Lamb : 11 Q.B.D. 588

A lawyer who is working in his professional capacity under the instructions of his client, will fall under the class of privileged persons and hence, no action will lie against an advocate for slander uttered in the course of a judicial inquiry. In such a case, this maxim will not hold good.

Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan : AIR 1997 S. C. 152

This writ petition was filed by pavement dwellers who were in unauthorised occupation of footpaths on the main road in Ahmedabad, contending that the Corporation sought to remove their encroachments before granting them an opportunity of being heard. Reversing the decision of the High Court, the Supreme Court held that the encroacher cannot claim any legal right so as to have a remedy, and therefore, cannot demand compliance with the principles of natural justice.

Q. Explain Damnum Sine Injuria. B.U. Nov 2000, May 2001, Dec 2002.

II. DAMNUM SINE INJURIA

(Actual damage suffered without legal injury)

By "damnum" is meant damage or injury in the ordinary sense of the term, as for instance, loss of money, physical hurt, loss of health or reputation, and so on. The term "injuria', on the other hand, connotes a legal injury, as for instance, a tort. Such injuria may or may not be accompanied by damnum, i.e. actual loss or damage.

The maxim thus covers actual damage, where there is no infringement of a legal right. In such cases, the mere fact of harm or loss does not make the act wrongful, although the loss may be substantial, and in some cases, irreparable. Damage thus suffered in the absence of the violation of any legal right is referred to as damnum sine injuria or damnum absque injuria.

Thus, in order to make a person liable in law, some legal injury must be proved. Actual damage without such legal injury would not be actionable. There are many acts, which though harmful, are

not wrongful in the eyes of law, and therefore, do not give rise to a right of action in favour of the person who suffers such harm.

This maxim is a reflection of the fact that there are many acts which may inflict the most terrible harm, and yet, no legal redress is available in respect of such acts. Thus, if Dr. A is the only doctor in his neighbourhood, and Dr. B decides to open his clinic just across the same street, Dr. A may suffer a huge financial loss, but he will have no remedy at law, as his damnum is not accompanied by injuria.

The general principle underlying this maxim is that exercise of one's ordinary rights, within reasonable limits, does not give rise to an action, merely because it causes damage to another. If it were otherwise, it would become almost impossible to carry on the ordinary affairs of life without doing anything which may cause loss or inconvenience to others. Every act of one man may, in this sense, cause detriment to another.

Illustrative cases in which the maxim was applied

Gloucester Grammar School Case : (1410) Y. B. 11 Hen. IV

In this case, the defendant, a school-master, set up a rival school next to that of the plaintiff, with the result that boys from the plaintiff's school flocked to that of the defendant. The plaintiff sued the defendant for the loss thus suffered by him. The court held that no suit would lie, because bona fide competition can afford no ground of action, whatever damage it may cause.

Chasemore v. Richards : (1895) 7 H. L. C. 349

In this case, the plaintiff was the owner of an ancient water-mill. For more than sixty years, the occupier of the mill was enjoying the flow of a river for the purpose of working the mill. The Local Board of Health sank a well in their own land and pumped up large quantities of water. The result was that the percolating underground water, which would otherwise have found its way to the river and helped to work the plaintiff's mill, was obstructed, and the plaintiff could not work his mill. When he sought to make the defendant liable, the court held that doing of an act which is otherwise lawful cannot give rise to a cause of action in tort, however much the loss caused to the other party may be.

Illustrative cases of injuria sine damnum

The expression injuria sine damnum is just the reverse of damnum sine injuria. There are cases where "legal injury" is present, though no actual loss or damage has been inflicted. The law believes that if there is an infringement of a legal right, the same is actionable, whether or not any actual loss or damage has been caused, — as will be clear from the following cases.

Ashby v. White : (1703) 2 Raym. Ld. 938

In this leading English case referred to earlier, the defendant, a returning officer at a voting booth, wrongfully and maliciously refused to register a duly tendered vote of the plaintiff, who was a qualified voter. The candidate for whom the vote was sought to be tendered was, however, elected and no actual loss was suffered by the rejection of the plaintiff's vote. The court held that the plaintiff had a right to vote and this legal right was violated by the defendant. He, therefore, would

have a remedy at law. The plea that the rejection of the vote did not result in an injury was not allowed as a defence.

Marzetti v. Williams : (1830) 1 B. & Ad. 415

In this case, it was held that a suit can be filed against a bank which has sufficient funds belonging to the customer in its hands, for refusing to honour the customer's cheque. In such cases, whether the customer has or has not sustained any actual loss or injury would be immaterial. Although the customer could not show that he suffered any actual loss, the court held that he was entitled to damages.

Q. Explain: VOLENTI NON FIT INJURIA. B.U. Apr 2000, Nov. 2001, May 2002, Apr. 2003, Apr 2004, Apr 2007.

III. VOLENTI NON FIT INJURIA

(Damage suffered by consent is not a cause of action)

The maxim, volenti non fit injuria, means that an act is not actionable at the instance of any person who has expressly or impliedly consented to it. If an act is done with the consent of the plaintiff, or the plaintiff has freely and voluntarily, with full knowledge of the nature and extent of risk, agreed to an act, he cannot complain against that act.

This maxim, which is based on sound principles of justice and good sense, has a dual application. It applies, in the first place, to intentional acts, which would otherwise be torts, as for instance, consent to a physical harm which would otherwise be an assault, consent to entry on land which would otherwise be a trespass. In the second place, it applies to consent to run the risk of accidental harm, which would otherwise be actionable, as due to the negligence of*the person who caused it. On this ground, a master is not liable for an injury inflicted on a servant who has undertaken the service knowing the risks incidental thereto. So also, spectators at cricket or football or hockey matches or at motor races are presumed to undertake the risk which may reasonably be expected to occur at such meets.

Although consent is sometimes manifested by words, it may often be implied by conduct or by acts which speak louder than words. As observed by one American author, the girl who makes no protest at a proposal to kiss her in the moonlight may have mental reservations that it is without her consent, but the man who kisses her is nonetheless protected.

Exceptions

The maxim has four important exceptions which may be summed up as under:

(i) No consent can legalise an unlawful act, e. g., a duel with sharp swords, where such a duel is prohibited by law.

(ii) The maxim has no validity against an action based on a breach of statutory duty.

(iii) The maxim does not apply where the plaintiff has, under an exigency caused by the defendant's wrongful misconduct, consciously and deliberately faced a risk, even of death, whether the person endangered is one to whom he owes a duty of protection (as a member of his family) or is a mere stranger to whom he owes no such special duty,

(iv) The maxim does not apply to cases of negligence. For instance, one could give consent to the risk arising out of surgery, but such a person can never be deemed to give consent for such operations being conducted negligently.

Illustrative cases where the maxim was applied

Hall v. Brooklands Auto-Racing Club : (1933) 1 K. B. 205

In this case, a racing car shot over the railing and killed two spectators. It was proved to the court that this was the first time that such an accident took place. It was held that there was no negligence, and that this type of danger to spectators was inherent in car racing. The defendants were, therefore, held not liable.

Scalon v. Wedgor : 156 Moss. 462

In this American case, the plaintiffs were injured by the explosion of a bomb during a display of fireworks conducted by the defendant in a square falling on a public highway. It was proved that the defendant, in firing the bomb, had in fact exercised reasonable care. It was also shown that the plaintiffs were present at the fireworks display as voluntary spectators, and were of ordinary intelligence. The court held in favour of the defendant, observing that a voluntary spectator who is merely present for the purpose of witnessing the display must be held to consent to it, and he suffers no legal wrong if he is accidentally injured without any negligence on anyone's part.

Illustrative cases where the maxim was not applied

Dann v. Hamilton : (1939) 1 K.B. 509

In this case, the plaintiff, knowing that the driver of a motorcar was under the influence of drink, and that, consequently the chances of accident were thereby increased, chose to travel by that car, although there was no compulsion of necessity or otherwise, to do so. She was injured in an accident caused by the drunkenness of the driver, in which the driver was killed. In an action against the personal representative of the driver, the defendant raised the defence of volenti non fit injuria. The court held that, except perhaps in extreme cases, the maxim does not apply to the tort of negligence and that the plaintiff was entitled to recover damages.

Haynes v. Harwood : (1935) 1 K.B. 146

The defendant's horses, negligently left unattended in a crowded street, bolted when a boy threw a stone at them. The plaintiff, a constable on duty inside a police station, seeing that persons were in

grave danger, ran out, stopped the horses, and was severely injured in doing so. It was held, in the circumstances, that he was entitled to recover. The defendant was negligent in keeping the carriage unattended in the public street. Therefore, the defence of voluntarily incurring the risk would not be open to him. He could have foreseen the consequences.

Q. Explain: DE MINIMIS NON CURAT LEX. B.U. Nov 2000, May 2001, Nov. 2001, May 2002, Nov. 2003, Apr. 2005, Apr.2006.

IV. DE MINIMIS NON CURAT LEX

(The law does not concern itself about trifles)

The law does not take trifling things into account. Nothing is a wrong which a person of ordinary temper would not complain about. If A is driving along a dusty road at a good speed, and a little bit of dust is thrown on B, a pedestrian, which does no harm to him, A would not be liable to B. This would be a case of de minimis non curat lex. Thus, some injuries merit so little consideration of law that no suit can be filed in such cases.

In other words, the Courts do not generally take trifling and immaterial matters into consideration, except under peculiar circumstances. Thus a housewife who takes grains of wheat to a chakki (flour mill) would not be allowed to complain that, in the process, a few scattered grains of wheat were retained by the owner of the mill in his machine and not returned to her.

Likewise, in normal circumstances, the Courts would not take into account a fraction of a day. However, in the case of a claim for demurrage of a ship, a fraction of a day would be counted as one full day (Commercial S.S. Co. v. Boulton, L. R. 10 O. B. 346). However, in such a case, good drafting.,would provide an answer, and explicitly lay down, for instance, that a certain sum would be payable per day or any part thereof.

This maxim is also recognized in Section 95 of the Indian Penal Code, which provides that "Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

Illustrative cases where the maxim was applied

Coward v. Baddley : (1859) 4 H & N 478

In this case, a bystander touched a fireman on the arm to attract his attention to another part of a building where a fire was raging. On a suit filed by the fireman against the bystander for battery, the court held that the bystander was not liable for the tort of battery as this amounted to a trivial act.

Branson v. Didsbury : 12 A. & E. 631

Here, the court approved a practice followed by the Courts at Westminster, that where the amount involved was less than twenty pounds, no re-trial would be allowed, at the instance of either party, on the ground that the court's judgment was contrary to the evidence produced in court.

[Note ; In India also, S. 96 of the Civil Procedure Code provides that, unless a question of law is involved, no appeal can be filed against a judgment in a suit decided by the Small Causes Court, if the subject-matter of the original suit is less than Rs. 10,000.]

Illustrative cases where the maxim was not applied

Holford v. Bailey : (1849) 18 L. J. Q. B. 109

In this case, X casts and draws a net in water where Y has an exclusive right of fishing. Now, whether any fish is caught or not, X has committed a tort against Y, because the act, if repeated, would tend to establish a claim or right to fish in that water. So even if the act in itself is trivial, yet this maxim cannot be invoked.

Glanville v. Stacey : 6 B. & C. 543

In this case, a farmer followed a particular mode of harvesting barley, resulting in a considerable amount of the barley being left scattered after the barley was bound into sheaves. On the question whether tithe (-a payment made to the Parish calculated on the amount of crop harvested, which is now abolished-), was payable on these rakings also, or whether such rakings could be ignored, the court held that the tithe would be payable on such rakings, although the farmer had taken great care to minimise the rakings as much as possible.

Q. Explain : Res ipsa loquitor. B.U. Nov. 2003 Apr. 2005 Nov. 2006

V. RES IPSA LOQUITOR

(The thing speaks for itself)

There is a general rule of evidence that a person has to produce proof before he can get the court's judgment in his favour. Notwithstanding this general rule, in certain cases, the mere fact that a particular accident has taken place may become prima facie evidence of negligence. Such cases are referred to in Latin as res ipsa loquitor.

The connotation of this maxim has been explained thus: 1 Where the thing is shown to be under the management of the defendant or his servants, and the accident is such, as in the ordinary course of things, does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of any explanation by the defendant, that the accident arose from want of care.'

Thus, if a hammer falls out of a window, it could be a case of somebody's negligence, or even mischief. But it is not a case of res ipsa loquitor, as it is not unusual for small things to fall out. But if a chair or a cupboard or a table falls out of a window, surely such articles never fail, or should fall, like that. This very fact is itself clear evidence of somebody's gross negligence. So also, if a man's dead body is found on the railway lines near a level crossing, having been apparently run over by a

passing train, it is not a proper case for the application of this maxim. It cannot be presumed, in such cases, that persons who cross railway lines are always careful.

The principal requirement for the application of the maxim is that the mere fact of the accident having happened should tell its own story, and raise the inference of negligence, so as to establish a prima facie case against the defendant. Thus, the following are the three essential requirements of the application of the maxim :

(1) The thing causing the damage shpuld be under the control of the defendant or his servants.

(2) The accident must be such as would not, in the ordinary course of things, have happened without negligence.

(3) There must be no evidence of the actual cause of the accident.

However, it is not enough for the plaintiff to prove that he has sustained an injury under circumstances which may lead to a suspicion that there may have been negligence on the part of the defendant. Thus, if injury is caused by a horse bolting in the street, the maxim would not apply, as horses do sometimes become unmanageable from fright or some other cause, without any want of care or skill of the person in charge. So also, if a car skids and runs into a person, the maxim cannot be invoked, as skidding can result from many causes other than the negligence of the driver.

Illustrative cases where maxim was applied

Byrne v. Boadle : (1863) 2 H. & C. 722

In this case, the plaintiff was passing along the street, and when he came near the defendant's shop, was injured by the fall of a barrel of flour which rolled out of a window on the second floor. There was no evidence on the part of the plaintiff as to how the accident happened, beyond the facts that, while on the road, he was knocked down by the barrel and was injured. It was held that the accident was a prima facie case of negligence.

The Annot Lyle : 11 P. D. 114

Here, when a ship in motion collided with a ship which was anchored, it was held that such collision is prima facie evidence of the negligence of the moving ship.

Illustrative cases where maxim was not applied

Crisp v. Thomas : (1891) 63 L. T. R. 756

In this English case, the blackboard of a classroom slipped down and fell, injuring one of the stuoents. It was held that the mere fall of the blackboard was not evidence of the teacher's negligence.

State of Punjab v. V.K, Kalia : A I R. 1969 P & H 172

In this case, a Superintendent of Police, while on an official tour, received injuries as a result of the accident to the official jeep registered in his name and under the control of the constable driver. The jeep was not, at that time, in a road-worthy condition. The cause of the accident was established to

be the worn out tyres and tubes and slippery roads during rainy season. Here, the court held that the State could not be said to be negligent, through the constable or otherwise, when the plaintiff was fully aware of the facts and circumstances. Hence this maxim was held not to be applicable.

Q. Explain : Rex non potest peccare. B.u. Dec. 2002, Nov 2003, Nov. 2006, Apr. 2007.

VI. REX NON POTEST PECCARE

(The King can do no wrong)

One of the most fundamental principles of the English Constitution is that the King can do no wrong. In the early twentieth century, the proponent 0f the doctrine of sovereign immunity was Mr Justice Holmes who (in Kawanakoa v. Polybank, (1903) 205 U.S. 349) observed as follows:

"A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." Today, the ground of exemption stated by Justice Holmes appears neither logical nor practical, and total immunity of the State from tortuous liability is not acceptable in the modern context. Therefore, this maxim must not be understood to mean that the king is above the law, and that whatever he does is necessarily just and lawful.

English Law

In England, the Crown Proceedings Act, 1947, has diluted the efficacy of this maxim to a considerable extent. Today, the Crown is made liable in all cases in which, if it were a private person of full age and capacity, it would be liable on the ordinary principles of vicarious liability.

Indian Law

Under Article 361 of Constitution of India, the President, Governors . and Rajpramukhs of states are not answerable to any court for the exercise and performance of the powers and duties of their office or for any act done by them in the exercise of those powers and duties.

The legal position in India as regards the liability of the Government can be summed up as under:

(i) The Government is liable for the torts of its servants in the course of a transaction which any private person can also engage in, e.g. trading, selling timber, etc.

(ii) The Government cannot, however, be sued in respect of acts done by its servants in the exercise of its sovereign powers.

(iii) The Government is liable for injury to any person resulting from an act done by its servants, if such act is done under colour of municipal law.

(iv) The Government is liable to restore property or money wrongfully obtained by it or its servants.

(v) The Government is, however, not liable for any wrong done by its servants in the course of their official duty, unless the wrong was expressly authorised or ratified by it.

Illustrative cases where the maxim was applied

State of M.P. v. Chironji Lai, AIR 1981 M. P. 65

In this case, whilst regulating a procession, the State Police made a lathi-charge to prevent a riot. Unfortunately, the Respondent's property was badly damaged during this lathi-charge, and he filed a suit against the State Government for damages. Rejecting his claim, the court held that the powers of the State Police to regulate processions and quell riots are part of its sovereign functions, and, if in doing so, the Respondent's property is damaged, the State Government is not liable to compensate him.

Kasturilal v. State of U.P. : A.I.R. 1956 S. C. 1039

In this case, Police Officers of the State of U. P., in the exercise of their statutory powers, seized some gold from Kasturilal. Owing to their negligence in keeping safe custody of the gold, it could not be returned to Kasturilal. In a suit filed by him against the State for return of the gold or its value in cash, the Supreme Court held that the State was not liable for the tortuous acts of its servants done in the exercise of its sovereign power.

Illustrative cases where maxim was not applied

State of Rajasthan v. Vidyawati : A.I.R. 1962 S. C. 933

In this case, the defendant was a driver employed on probation by the State of Rajasthan. While he was driving a jeep car to a workshop for repairs, he knocked down a person who was injured, and later died. His widow filed a suit for damages against the State of Rajasthan. The court held that the State was liable for the tortuous acts of its servants like any other employer, on the ground that the maxim " The king can do no wrong", had no place in the Constitution of India. It was observed that the immunity of the Crown was based on a feudal concept not accepted or recognised in India.

Union of India v. Sugrabai : 70 B. L. R. 212

A military driver of a School of Artillery was transporting in a lorry, a machine for locating enemy guns. Due to his rash and negligent driving, he knocked down A and killed him. In a suit filed against the Government of India by A's widow, the Government pleaded that the driver was doing a duty in discharge of the Government's sovereign power. Rejecting this contention, the court held that the transport of this machine could even have been arranged through a private carrier. The Government was, therefore, held liable for the tort of its driver.

Q. Explain : Respondeat Superior. B.U. Apr. 2000 May 2001 Dec. 2002 Apr. 2003 Nov. 2006

Q. Explain : Qui facit per aiium facit per se. B.U. Nov. 2000

VII. RESPONDEAT SUPERIOR

(Let the principal be responsible)

Every person is, no doubt, responsible for his own acts, but in certain circumstances, he also becomes liable for wrongs committed by other persons. This is called vicarious liability, i. e., liability incurred for, or instead of, another. Thus, a master is liable for the wrongful acts of his servants, and

a principal for the wrongful acts of his agent. The underlying principle on which such liability is fixed is Respondent Superior : Let the superior be responsible.

If this were not so, a master would employ a servant to do a wrongful act, and a principal would likewise employ an agent, and in both cases, the master or the principal would get away scot-free, and the wronged person would be left without a remedy.

The two main reasons underlying the principle of this maxim are :

(i) It would generally be very difficult to show that the master had actually authorised the servant to commit the act in question.

(ii) Secondly, the servant would normally not be financially sound to bear the monetary liability, and a rich master could employ a poor servant to commit wrongful acts.

Thus, to borrow a familiar example from English law, if the master is himself driving a carriage and causes injury to a passerby on account of his want of skill, he is, of course, liable. So also, if instead of driving it himself, he employs a servant to do it, the servant is only an instrument set in motion by the master, and whatever the servant does would, in law, be regarded as the act of his master. Qui facit per alium facit per se : He who does an act through another is deemed, in law, to do it himself.

Illustrative cases where the maxim was applied

Milner v. Great Northern Railway : (1884) 5 L. T. N. 367

A cloak-room clerk in the employment of a Railway Company had to take parcels of the passengers in the cloak-room to the train as part of his duty. Whilst doing so one day, when he was coming back, he ran against another porter, who in turn dashed against the ticket collector, and the ticket collector collided with the plaintiff's wife, causing injuries which resulted in her death. When the plaintiff sued the Railway Company, it was held that the Company was liable in damages, as, at the time of the accident, the clerk was acting within the scope of his employment.

Lambert v. Great Eastern Railway : (1909) 2 K. B. 776

A Railway Company was empowered to employ special constables.

One such constable arrested a person for felony, without any reasonable cause. The court held that the Railway Company was liable for the constable's act.

Illustrative cases where the maxim was not applied

Brinkly v, Farmers Elevator Mutual insurance Co. : 485 F. 2d 1283

In this case, the interesting issue before the court was whether, under the above maxim, a client is liable for the conduct of his lawyer, which causes injury to a third party. The plaintiffs had sustained serious injuries in a collision due to the negligence of their lawyer, Mr. A, who was returning home after representing his client's case when the accident occurred. The client denied any vicarious liability on his _ part. The court held that, even if it is argued that the relationship between the client and Mr. A was one of agency at the time of the collision, he was not engaged in furtherance of the

client's business to such a degree that it could be said that the client had the right to direct and control his physical conduct. Accordingly, it was held that the client was not vicariously liable.

Deatons Proprietary Ltd. v. Flew : (1949) 79 C. L. R. 370

In this case, X entered the defendant's hotel and spoke to a barmaid, who threw a glass of beer on his face. According to X, he had asked her a polite question, but the bar-maid said that he had insulted her. When the matter went to court, it was held that although the barmaid was liable, the owner of the hotel was not liable, as the barmaid's act was an independent personal act, which was not connected to the work which she was employed to perform.

Q. Explain : Actus non facit reum nisi mens sit rea. B.U. Nov. 2001 Apr. 2005 Nov. 2005 Apr. 2006

VIII. ACTUS NON FACIT REUM NISI MENS SIT REA

(The intent and the act must both concur to constitute the crime)

As a general rule, a guilty mind is an essential ingredient of an offence. The fundamental principle of penal liability is that a mere act does not amount to g crime. It must be accompanied by a guilty mind, as laid down by this Latin maxim. Therefore, if a person is to be punished under criminal law, it is generally agreed that he must have not only done some criminal act, but he must have done such act with a guilty mind (mens rea). No person can be punished merely because his act has led to some mischievous result. The law must also inquire into the mental component of the person doing the act.

Although a guilty mind normally consists of either intention or negligence, even knowledge of the consequences of an act can be a part of the guilty mind.

It is to be noted that mens rea should extend to all the three parts of an act, namely, the physical doing or not doing, the circumstances, and the consequences. If the mens rea does not extend to any part of the act, there will be no guilty mind behind the act.

Thus, in an English case, where a woman was charged with an attempt to commit suicide, and it was shown that she was totally drunk at that time, Jervis C. J. observed : "If the prisoner was so drunk as not to know what she was about, how can you say that she intended to destroy herself ?" (R. v. Moore, 3 C. & K. 319)

Exceptions to the maxim

Though this is the general principle of penal liability, there may be some exceptional cases when the law might impose absolute or strict liability, as in the case of liabilities created by some special statutes. In such cases, the legislature can create an offence which may consist solely in doing an act, whatever the intention or state of mind of the person acting may be.

Sir J. Stephens has been rather critical of this doctrine of mens rea. According to him, this doctrine originated when criminal law dealt with offences which were not defined. However, today we have come a long way from that stage and each crime has a precise definition. Hence, at a stage of criminal law where every offence has been well defined, the general doctrine of mens rea is misleading and also unnecessary. Similarly, J.D. Mayne, the learned author of Criminal Law in India,

has pointed out that since each offence in the Indian Penal Code is well-defined, all that the prosecution has to do is to prove the ingredients of the particular offence {e.g., dishonest or fraudulent intention, and so on) in the relevant section of IPC. And hence this doctrine has little scope under the Indian Penal Code.

Some exceptions where mens rea is not required in criminal law are :

(i) Mens rea is not required when it is difficult to prove it, where the penalties are petty fines and where a statute has done away with the necessity of mens rea on the basis of expediency.
(ii) In cases of public nuisance. In the interest of public safety, strict liability may be imposed, and if one causes public nuisance with or without a guilty mind, he must be punished.
(iii) In cases which are criminal in form, but are in fact only a summary mode of enforcing a civil right.
(iv) If a person violates a law without the knowledge of the law, the fact that he was not aware of the rule of law and that he did not intend to violate it, is no defence; he would be liable although he had no intention to commit an offence. This is so because 'Ignorance of the law is no excuse.'

Illustrative cases where the maxim was applied

In Re. Tunda : (1950) 51. Cr. L. J. 402

In this case, the accused and the deceased were wrestlers. They arranged a bout in the course of which the deceased fell as a result of a blow from the accused and broke his skull. Under the circumstances, the court held that this was a case of an accident and there was no guilty intention on the part of the accused. Therefore, he was not liable.

R. v. Tolson : 23 Q. B. D. 164

In this indictment for bigamy filed against a wife, she proved that she believed, on reasonable grounds, that her husband was not alive. The court accepted the defence, as the crucial element of mens rea was not present.

Illustrative cases where the maxim was not applied

Parker v. Alder : (1899) 1 Q. B. 20

In this case, it was held that a person may be guilty of an offence of selling milk adulterated with water under the Food and Drugs Act, although the water may have been added without his knowledge or authority and without any default or negligence on his part or on the part of his servant or employee.

R. v. Prince : L. R. 2 C. C. R. 154

Here, the accused was charged with unlawfully taking an unmarried girl under sixteen out of the possession, and against the will, of her father. His defence was that he believed that the girl was over sixteen. The court rejected the defence, observing that, notwithstanding such belief, the

accused intended to do, and in fact did, an unlawful and immoral act, and not an innocent act, when he took away the girl.

Q. Explain : Audi Alteram Partem. B.U. Nov. 2003 Apr. 2004 Nov. 2006

IX. AUDI ALTERAM PARTEM

(No man shall be condemned unheard)

"Audi Alteram Partem" literally means 'to hear the other party'. This maxim is the first principle of civilised jurisprudence, and forms the basis of the fundamental rule of natural justice. It means that a person deciding an issue should hear both the sides and give an opportunity to the person to defend himself against what is being alleged against him. Thus, this maxim postulates that no one is to be condemned, punished or deprived of property, in any judicial proceeding, unless he is afforded a fair opportunity of answering the case against him. In other words, any person against whom action is proposed to be taken or whose right or interest is being affected, should be given a reasonable opportunity to defend himself. A decision taken without following this procedure violates the basic rule of natural justice. As observed by Fortescue J. in one English case, "The laws of God and man, both give the party an opportunity to make his defence, if any."

As observed by Lord Wright, " If the principles of natural justice are violated in respect of any decision, it is indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of natural justice. The decision must be declared to be no decision." In other words, if rules of natural justice are not followed, the decision is bad, and it cannot be argued that even if such rules were to have been followed, the decision would have been the same.

This rule is now applied not only in judicial or quasi-judicial proceedings, but as regards administrative acts also. So, if the Disciplinary Committee of the Law Society considers a complaint against a solicitor, it is bound to give the solicitor an opportunity of being heard in the matter.

The rule laid down in this maxim is flexible, and whether the rule was or was not observed in a particular case always depends on the facts and circumstances of that case. What is necessary is that a "fair hearing" must be given, and a man "should not be hit below the belt".

Illustrative cases where maxim was applied

Maneka Gandhi v. Union of India : A. I R. 1978 S. C. 597

This writ petition was filed by the petitioner-journalist, whose passport was impounded by the Central government 'in public interest', without giving her a fair hearing as also without furnishing her the reasons for passing such an order. The Supreme Court held that the impugned order was clearly in violation of the rule of natural justice embodied in the maxim, Audi Alteram Partem.

R v. University Of Cambridge : 93 E. R. 698

In this case. Dr. Bentley was deprived of his degrees by the Cambridge University on account of his alleged misconduct, without giving him any notice or opportunity of being heard. The Court declared the decision to be null and void, being in violation of the rule embodied in the present maxim. As

Fortescue J. observed in this case, even God himself did not pass a sentence upon Adam before he was called to make his defence.

Illustrative cases where maxim was not applied

Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan :

A. I. R. 1997 S.C. 152

This writ petition was filed by pavement dwellers in unauthorized occupation of footpaths on the main road in Ahmedabad, contending that the Municipal Corporation sought to remove their encroachments before granting them an opportunity of being heard. Reversing the decision of the High Court, the Supreme Court held that the encroacher cannot claim any right so as to have a remedy, and therefore, such a person cannot call for compliance with the principles of natural justice.

Hira Nath Mishra v. Principal, Rajendra Medical College : A. I. R. 1973 S.C. 1260

In this case, some boy students, almost totally naked, entered the compound of the girls' hostel late at night. Thirty-six girls filed a confidential complaint and the boys were informed of the charges against them. Their defence was that they had never left their hostel on that night, and were, therefore, innocent. However, the College Committee found them guilty, and they were expelled from the College. Although the statements of the girl students were recorded behind the back of the boy students and no opportunity was afforded to the boy students to cross-examine the girl students, the order of expulsion from the college passed against the boy students was upheld by the Supreme Court. The court observed that if the girls had ventured to make statements in the presence of the miscreants, they would have exposed themselves to retaliation and harassment later on, and that this would be undesirable.

X. NEMO DEBET ESSE JUDEX IN PROPRIA SUA CAUSA

(No man can be judge in his own cause)

It is a fundamental rule in the administration of justice, that a person cannot be a judge in a cause in which he is interested. The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties in controversy.

A person cannot, and should not, be a judge in his own cause, for he cannot discharge his duties objectively, fairly and impartially, if he is hostile to one of the parties before him. He must be in a position to act judicially and to decide the matter objectively. His mental equipoise must always remain firm and non-deflected. He should not allow his personal prejudice to go into decision-making. The object is not merely that the scales be held even; it is also necessary that they must not appear to be inclined.

In the words of Lord Denning, the reason underlying this maxim is simple : "Justice must be rooted in confidence, and confidence is destroyed when right-minded people go away thinking that the Judge was biased."

Thus, the rule is based on the doctrine of bias. Bias can be defined as 'a predisposition to decide for or against one party, without proper regard to the true merits of the dispute.' There are three types of bias:

(i) Pecuniary bias

(ii) Personal bias

(iii) Official bias or bias as to the subject-matter.

Illustrative cases where the maxim was applied

Dr. Bonham's case : 77 E. R. 646

In this case, Dr. Bonham, a doctor of Cambridge University, was fined by the College of Physicians for practising in London without the license of the college. The Statute under which the college acted provided that the fines should go half to the king and half to the college. The fine was set aside by Coke, C. J. as the college had a financial interest in its own judgment and was a judge in its own cause.

Mahapatra & Co. v. State of Orissa : A. I. R. 1984 S.C. 1572

In this case, some of the members of the Committee set up for selecting books for educational institutions were themselves the authors of the books which were to be considered for selection. It was held by the Supreme Court that the possibility of bias could not be ruled out and that " it is not the actual bias in favour of the author-member that is material, but the possibility of such bias."

Illustrative cases where the maxim was not applied

Jaswant Singh Nerwal v. State of Punjab (1991) Supp 1 SCC 313

In this case, at the viva voce examination held by the Public Service Commission for recruitment of officers, where the marks were distributed between the examiners, one of the examiner's son was appearing. Hence, that examiner was not present and his marks were distributed amongst the other examiners. When the examiner's son was declared successful, the unsuccessful candidates challenged the results as being in violation of natural justice due to existence of reasonable likelihood of bias. Reversing the order of the lower court, the Supreme Court held that, considering the manner in which the viva voce was conducted, there was no material evidence showing the father's involvement in the selection of his son, and hence this maxim could not apply.

Gullapali v. State of A. P. : A. I. R. 1959 S. C. 1376

In this case, the Petitioners were carrying on motor transport business. The Andhra State Transport Undertaking published a Scheme for nationalisation of the motor transport industry in the State and invited objections. Objections were filed by the Petitioners, and a hearing was given to them by the Minister. When this was challenged on the ground that the Minister would ultimately be the person who would approve the Scheme, the Supreme Court did not accept this argument, observing that the Minister was only primarily responsible for the disposal of the business pertaining to that Department.

Q. Explain Nemo dat quod non habet. B.u. Apr.2003, Apr. 2005.

XI. NEMO DAT QUOD NON HABET

(No one can give what he does not possess)

The general rule that applies to transfer of property is that the seller cannot give to the buyer, a better title to the goods than what he himself has. Nemo dat quod non habet: He who has not, can give not. So, if A obtains possession of goods by theft, and sells them to B, the latter acquires no title to the goods, even though he may have acted honestly and in good faith, and paid A for such goods. A had no title to the goods, and therefore, he could not pass any title to B. The real owner can recover the goods from B, without paying anything to him.

The strict application of this rule does sometimes result in hardship to the innocent buyer, but the rule is nevertheless necessary in the larger interests of society and for the security of property.

Exceptions

The rule reflected in the maxim admits of nine important exceptions, as under :

I - Sale with consent or authority of the owner

If A is the owner of goods, B can sell such goods, —

(a) if he is authorised by A, or

(b) if A has consented to such sale.

II - Title by estoppel

If B sells goods belonging to A, the sale will be valid, if A, by his words or conduct, causes the buyer to believe that B was the owner of such goods. This is also known as title by estoppel.

III - Sale by mercantile agent

If a mercantile agent is in possession of goods or a document of title of goods with the consent of the owner, i.e., his principal, and he makes a sale of those goods in the ordinary course of business as mercantile agent, the sale would be valid, provided the buyer acted in good faith, and had no notice, at the time of the sale, that the mercantile agent had no authority to sell such goods.

IV — Sale by a joint owner

If goods belong jointly to A and B, but B has sole possession thereof with A's consent, B can make a valid sale of those goods, provided that the buyer acts in good faith, and has no notice, at the time of the sale, that B had no authority to sell such goods.

V — Sale by a person having possession under a voidable contract

If B has obtained possession of goods from A, under a voidable contract, but if such contract has not been rescinded, B can sell the goods, if the buyer acts in good faith and has no notice of B's defect of title.

VI — Sale by a seller in possession

If A sells goods to B, but B allows A to continue in possession, any sale of such goods by A has the same effect as if he was expressly authorised by B to sell the goods, provided the subsequent buyer buys them in good faith and had no notice of the previous sale.

VII — Sale by buyer in possession before property has vested in him

If B has bought, or agreed to buy, goods from A, and with As consent, he has taken possession of the goods, any sale by B of such goods to a buyer who buys them in good faith and without notice of any lien or other right of A over the goods, has effect as if such lien or other right did not exist.

VIII — Sale by unpaid seller

If A has sold goods to 6, but has not received the full amount of the price, he may resell the goods if B does not pay or tender the price within a reasonable time, if the goods are of a perishable nature, or if A has given notice of his intention to resell the goods.

IX — Sale in market overt

Under English law, if goods are sold in a market overt (open market), according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.

Bailment

Just as a person who has no title - or a defective title — to the goods cannot sell such goods, so also, he cannot make a valid bailment of such goods. This rule is also subject to the exceptions discussed above.

Illustrative cases where the maxim was applied

Farguharson Bros. v. King & Co. : (1902) A. C. 325

A found a gold ring belonging to B. He tried to find the owner of the ring, but having been unable to do so, sold it to C, who did not know that the ring was a lost ring. When B sued C for the ring, it was held that 8, the true owner, could recover it from C.

Lee v. Bayes : (1856) 18 C. B. 599

A stolen horse was sold at a public auction. However, both the auctioneer and the buyer did not know that it was stolen. When sued by the true owner, the court held that the title of the true owner was better than that of the innocent buyer, and therefore, the buyer had no title to the horse.

Illustrative cases where the maxim was not applied

Falkes v. King : (1923) 1 K. B. 282

In this case, A entrusted his car to a mercantile agent for sale, stipulating that the car should not be sold below a certain price. The agent, however, sold it at a lower price to B, misappropriated the sale

proceeds, and absconded. B, who had bought it in good faith, subsequently sold the car to C. When A sued C to recover the car, it was held that the sale of the car to B by As mercantile agent passed on a good title to B. Therefore, C, who subsequently bought the car, also acquired a good title, as he would stand in the shoes of B. So, A could not recover the car from C. It was also observed that the fact that the mercantile agent intended to defraud the owner would not affect the title of B, who acted in good faith.

Johnson v. Credit Lyonnais : (1877) 3 C. P. D. 32

X had fifty hogsheads of tobacco lying in his name at a warehouse belonging to a dock company, which had issued the dock warrants in his name. X sold the tobacco to Y, who left the dock warrants with X, and took no steps to have the tobacco transferred to his name. Later, X pledged the tobacco to Z, who acted in good faith, and handed over the dock warrants to him. When Y sued Z, it was held that Z had acquired a good title to the tobacco, as against Y.

Q. Explain : Caveat emptor. B.U. Apr. 2000 Nov. 2001 May 2002 Dec. 2002 Apr. 2004 Apr. 2006

XII. CAVEAT EMPTOR

(Let the buyer beware)

This maxim is a general principle of English law, and lays down that the buyer must take care when buying specific things like a cow or a painting, upon which the buyer can, and usually does, exercise his own judgment and skill. In other words, except in the case of fraud, the purchaser buys goods at his own risk, unless the seller gives a guarantee or warranty.

In Wallis v. Russel (1902 2 I. R. 585), which was a case involving the sale of unwholesome crabs, the court observed : "Caveat emptor does not mean, in law or Latin, that the buyer must take a chance] it means that he must take care."

Exceptions

The rule of caveat emptor owes its origin, in England, to the fact that, in the olden days, most sales in that country were in the market overt (open market), and since the purchaser had the time, he was expected to exercise proper care, skiii and caution in buying his goods. However, with the passage of time, the following two exceptions to the rule have evolved.

Firstly, if the buyer makes known to the seller, expressly or by implication, that he requires the goods for a particular purpose, and the seller supplies such goods in the ordinary course of his business, there is a condition implied by law that the goods which are sold will be reasonably fit for such purpose. So, when sardines or bacon or condensed milk is bought, these should be fit for human consumption. Similarly, a watch which is sold should show the correct time, and likewise, undergarments should not cause skin diseases like dermatitis.

Secondly, when goods are bought by description from a seller who deals in such goods, the law implies a condition that such goods are of a merchantable quality.

Illustrative cases where the maxim was applied

Burnby v. Bollett : (1847) 16 M. & W. 644

In this case, the defendant, a farmer, bought a carcass of a pig from a butcher, intending to use it for a purpose other than eating. Later, he met the plaintiff, who bought it from him for consumption as food. When he discovered that it was unfit for eating, he sued the defendant. The court held that the defendant was not liable, as he had not held out any implied condition to the plaintiff that what was sold to him was fit for human consumption. Goddard v. Hobbes : (1878) 4 App. Cases 13

Here, there was a sale of pigs "with all faults" in the market. The buyer bought some pigs and put them with his own pigs. It turned out that the pigs which he had bought had typhoid fever, as a result of which other pigs of the buyer also got infected. When he sued the seller, it was held that, in the absence of fraud, the buyer had no remedy against the seller.

Illustrative cases where the maxim was not applied Priest v. Last : (1903) 2 K. B. 148

In this case, the plaintiff went to a shop and asked for a hot water bottle which he required for his wife. The defendant sold a rubber bottle to him, telling him that it would stand hot, but not boiling water. When the plaintiff went home and filled it with hot water, the bottle burst and his wife was injured. The court held that the defendant was liable, as there was an implied condition that the rubber bottle would be fit for the purpose for which it was meant to be used.

Baretto v. Pruce : A.I.R. 1939 Nag. 19

A agreed to make and deliver a set of false teeth to B. The teeth, when made, did not fit well in B's mouth. The court held that B was entitled to reject the teeth, as they were not fit for the purpose for which they had been ordered to be made.

Q. Explain : Actus dei nemini facit inju-riam. B.U. Nov. 2000 Nov. 2005 Apr. 2006

XIII. ACTUS DEI NEMINI FACIT INJURIAM

(The law holds no man responsible for an act of God)

This is a very important defense available to the defendant in any civil suit. An act of God is such a direct, violent, sudden, and irresistible act of nature as could not, by any amount of human foresight, have been foreseen, or if foreseen, could not, by any amount of human care or skill, have been resisted. Thus, an act of God is the antithesis of the act of man.

Acts which are occasioned by the elementary forces of nature, unconnected with the agency of man or other cause, come under the category of acts of God, e.g. storm, tempest, lightning, extraordinary fall of rain, extraordinary high tide, extraordinary severe frost, etc. The term is, at times, also used to cover acts such as a person's death or his incapacity to act through illness. The doctrine of frustration of contracts is also a reflection of the principle underlying this maxim.

The essence of the maxim is that it would not be in the interest of justice to hold anyone responsible for an act over which he has absolutely no control. Thus, where it is proved that a liability in tort has arisen due to an act of nature which is outside the control of the defendant, he is excused from this liability by placing reliance on this maxim. In doing so, the burden of proof lies on the defendant to prove that such unforeseen circumstances existed.

Illustrative cases where the maxim was applied

Nichols v. Marsland : L.R. 2. Ex. Div. 1

In this case, the defendant had a series of artificial lakes on his land, in the construction or maintenance of which there had been no negligence. Owing to a most unusual fall of rain, so great that it could not have been reasonably anticipated, some of the reservoirs burst and carried away four country barges. It was held that the defendant was not liable, inasmuch as the water escaped by an act of God.

Crossley v. Rawlinson : (1982) 1 W.L.R. 369

The defendant's truck caught fire owing to his negligence, and a patrolman (who was about 100 yards away) grabbed a fire extinguisher and rushed towards the truck. In doing so, he stumbled on a concealed hole on the pathway and injured himself. In a suit by the patrolman against the defendant, the court held that although the fire was caused by the defendant's negligence, the plaintiff's injury was caused by an accident which was not reasonably foreseeable, and therefore, the plaintiff could not succeed.

Illustrative cases where the maxim was not applied

Slater v. Worthington : (1941) 1 K.B. 488

Owing to the extraordinary severe snow storms, snow and ice had accumulated on the roof of the defendant's premises. No steps were taken to remove the snow or warn the public of its presence. The plaintiff, while standing on the pavement outside the premises, was injured by a fall of snow which had accumulated on the roof. The snow could have been removed from the roof, but this was not done. The plaintiff claimed damages,' alleging nuisance and negligence. It was held that the accumulation of snow constituted a public nuisance of which the defendants were expected to have knowledge. It was the duty of the defendants to safeguard the public from the danger occasioned by the snow, and as they had failed to perform this duty, they were liable for both nuisance and negligence. The plea that the storms were acts of God was no defence, as it was the snow and not. the storms, which directly caused the injury.

Municipal Corporation of Delhi v. Sushila Devi: A.I.R. 1999 SC 1929

Whilst a man was riding a scooter, suddenly, a branch fell on his head, injuring him, as a result of which he died. A suit was filed by his heirs for damages. The evidence before the court was that the tree in question was a dead tree, having no bark or foliage. The Corporation should have carried out periodic inspection of the tree and should have taken safety precautions to see that the road was safe for its users and such adjoining trees or their projecting branches, which could prove to be dangerous to passersby, were removed. As there was no act of God involved, like storm, lightning, etc., the corporation was held liable.

Q. Explain : Nemo tenetur seipsum accusare. B.U. Dec. 2002

XIV. NEMO TENETUR SEIPSUM ACCUSARE

(No man can be compelled to criminate himself)

This maxim expresses a characteristic principle of English law. Although an accused person may, on his own, make a voluntary statement as to the charge levelled against him, the judge, before receiving his statement, is required to caution him, that he is not obliged to say anything, and that what he says may be used in evidence against him. This principle ieads to the rule of evidence that a confession by the accused is not admissible, unless it be proved that such confession was free and voluntary.

However, it is to be noted that the protection does not extend to excuse a person from answering questions on the ground that the answers may establish, or tend to establish, that the accused's case is false.

This privilege against self-incrimination is also embodied in Article 20(3) of the Constitution of India which provides that no person accused of any offence shall be compelled to be a witness against himself.

In the case of State of Bombay v. Kathi Kalu Oghad (A.I.R. 1961 S. C. 1808), the Supreme Court laid down the following six propositions regarding the extent of the protection afforded by Article 20(3) :

(i) An accused person cannot be said to have been compelled to be a witness against himself, merely because he made a statement while in police custody, without anything more.

(ii) The mere questioning of an accused by a Police Officer, resulting in a voluntary statement, is not compulsion.

(iii) 'To be a witness" cannot be said to be equivalent to " furnishing evidence".

(iv) In its ordinary grammatical sense, " to be witness" means giving oral testimony in court. However, the expression has now come to mean imparting knowledge in respect of relevant facts by an oral or written statement, made or given in a Court or otherwise.

(v) Giving thumb impressions, finger prints or impressions of the foot or palm, or showing parts of the body by way of identification, cannot be said to lead to self-incrimination.

(vi) In order to obtain protection of Article 20(3), the person must have been "an accused person" «t the time when he made the statement in question. It is not enough that he became an accused at any time after the statement was made.

The American Constitution also guarantees a similar right, and the Fifth Amendment lays down that "No person shall be compelled in any criminal case to be a witness against himself." However, this provision does not prevent an accused from waiving this privilege and being a witness in a criminal proceeding in ^which he is accused.

Illustrative cases where the maxim was applied

Nandini Sathpathy v. P. L. Dani : 1978 2 SCC 424

In this case, Mrs. Sathpathy was examined at the Police Station in connection with investigation into corruption charges against her. On her refusal to answer questions put to her, she was charged with the offence. The Supreme Court accepted the argument that her refusal to answer police

interrogatories was justified under Article 20(3) of the Constitution. The court observed that the protection is available, not only to a person who is formally brought into the Police Diary as an accused, but also covers a suspect.

Ex parte Schofield : 6 Ch. D. 230

In this case, it was held that a witness who is summoned for examination as regards a bankrupt's affairs can refuse to answer a question on the ground that his answer might tend to incriminate himself.

Illustrative cases where the maxim was not applied

Mohd. Dasdadagir v. The State of Madras : A.I.R. 1960 SC 756

In this interesting case, X had gone to the bungalow of the Superintendent of Police to offer him a bribe which was enclosed in an envelope. The Superintendent of Police threw the envelope at X, who picked it up and went away. Immediately thereafter, some policemen came to X and asked him to produce the envelope, which he took out from his pocket, and the same was seized by the police. X argued that his envelope should not be allowed to be produced at the trial, because that would amount to admitting compelled evidence against him. The court held that since there was no compulsion used to produce the envelope, this was not a case of self-incrimination.

Narayanlal Bansilal v. M. P. Mistry : A.I.R. 1961 . S. C. 29

In this case, the Supreme Court had to decide whether compulsory production of documents by a company to an Investigating Officer (under S. 240 of the Companies Act, 1956) would be entitled to the protection of Art. 20(3) of the Constitution. Answering the question in the negative, the court held that Art. 20(3) is not at all applicable in such a case, as the Investigating Officer is not a "court" and the company is not an "accused", as there is no accusation against any person that he has committed any offence.

Q. Explain : Salus populi est suprema lex. B.U. May 2001 May 2002 Apr. 2004 Apr. 2007

XV. SALUS POPULI 3ST SUPREMA LEX

(Regard for the public welfare is the highest law)

This maxim is of prime importance and lays down that individual welfare must, in cases of necessity, yield to the welfare of the community. Not only that, but when necessary, an individual's property and liberty may be placed in jeopardy, or even sacrificed, for public good. As observed by Buller J. in Plate Glass Co. v. Meredith (4 T. R. 794) :

"There are many cases in which individuals sustain an injury for which the law gives no action, as where private houses are pulled down, or bulwarks are raised on property, for the preservation and defence of the kingdom against the king's enemies."

Thus, a person would be excused by the law for committing a private injury for the public good, as when a house is pulled down to stop a fire from spreading. As observed by Cockburn C. J., the ordinary right of property must give way to considerations of protection and safety of the public, but

only to the extent to which it is absolutely necessary that private rights should be sacrificed for the larger benefit of the people. (Greenwich v. Maudslay, L.R. 5 Q.B. 397)

It is also a settled principle of law that if a statute is capable of two constructions, one of which would have the effect of destroying properties of a large number of citizens and the other would not have such an effect, the courts would assume that the legislature had the latter in mind when the Act was passed. (Chelsea Vestry v. King, 17 C.B.N.S. 625)

As far as penal laws are concerned, it is to be noted that before a man is subjected to a penalty, a clear case should be made out for imposing a penalty on him. (Walsh v. Bishop of Lincoln, L.R. 10 C.P. 518)

Illustrative cases where the maxim was applied

Taylor v. Whitehead : 2 Dougl. 745

It was held in this case that if a highway is under repairs, a person can lawfully go over the adjoining private land of a person, since it is for the paramount public good, that there should be, at all times, free passage through the highways for all subjects of the realm.

Edginton v. Swindon Borough Council : (1939) 1 K.B. 86

In this case, power was given to a local authority to erect bus shelters, and it was found to be practically impossible to do so, without taking away the access of some persons from their properties to the highway. The court held that no action would lie against the local authority, even though the Act had not specified the exact locations of the shelters. When the legislature gave this power to the local authority it would have known that such construction would interfere with private rights of some persons. As the local authority had actea reasonably, no suit would lie against it.

Illustrative cases where the maxim was not applied

R v. Dudley, Stephens : (1884) 14 Q.B.D. 173

Three seamen, along with a young boy of eighteen years, were travelling on a small boat after a shipwreck. For many days, no food and water were available to them, and if this were to continue for some more time, they would have died of hunger. So, two of the seamen killed the boy, so that they could survive on his flesh. Later, they were rescued and brought to England, where they were tried for murder. Their defence of necessity was ruled out and they were held guilty of murder, as the court held that though self-preservation is a duty, self-sacrifice is a higher duty, and since all human lives are equal in value, it is unjustifiable to take another's life for self-preservation.

Metropolitan Asylum Bd. v. Hill : 6 Appeal Cases 193

In this case, it was observed that when the legislature has given authority to do an act, but the terms of the statute are not imperative, but permissive, and it is left to the discretion of the persons on whom such powers are conferred, to determine whether or not to execute their general powers, the inference is that the legislature intended that such discretion should be exercised in strict conformity with private rights, and without committing any nuisance.

XVI. QUOD AB INITIO NON VALET IN TRACTU TEMPORIS NON CONVALESCIT

(That which was originally void, does not, by lapse of time, become valid)

This maxim lays down a fundamental principle of law, applicable to all walks of life. As once remarked, an apple that is rotten today will stay rotten tomorrow too.

To take one simple illustration from the law of contracts, an agreement executed by a minor who is, say, seventeen years old is void under the Indian Contract Act. However, this agreement does not become valid a year later, when he becomes eighteen. Upon attaining majority, he cannot also ratify the earlier document, as there is nothing to ratify, the earlier document being void ab initio.

Exceptions

The law of prescription is, in a way, an exception to this maxim. Thus, under ancient Roman Law, if the owner of a piece of land was absent from the country for twenty years or more, and another person took possession of such land during this period, on the lapse of this period of twenty years, the other person's possession would mature into ownership, and give him a good title. The Indian law relating to prescription is to be found in the Limitation Act and the Indian Easements Act.

The law of ratification can also be looked upon as an exception to the maxim. Thus, if an agent does an act which lies outside his authority, it is null and void in the eyes of law. But, if that act is subsequently ratified by the principal, it becomes valid, and the law looks upon it as if it was done with the prior authority of the principal.

Yet another exception peculiar to English law is in the form of the "doctrine of aider by verdict". When an averment necessary to support the pleading is not properly stated, and the court comes to a finding favourable to such verdict, the defective averment is cured by the verdict. This doctrine will not, however, apply when the necessary averment is totally omitted. It is also to be noted that aider by verdict applies only to criminal proceedings, and is of no significance in civil proceedings.

illustrative cases where the maxim was applied

Doe Brammal v. Collinge : 7 C. B. 939

In this case, a bishop made a lease of certain lands for four lives in succession, which was contrary to the law. One of the lives fell in, and later, the bishop died. The court held that the lease was not binding on the bishop's successor, "for those things which have a bad beginning cannot be brought to a good end".

Indrau Ramaswami v. Anthappa Chcttiar : (1906) 16 Mad. L. J. 224

A minor signed and delivered a promissory note in consideration of money received by him at that time. On attaining the age of majority, he executed a second promissory note in settlement of the earlier one, no fresh loan having been taken by him at that time. When sued on the second promissory note, the Madras High Court held that the same was void for want of consideration. The argument that the consideration supporting the second promissory note was the first promissory note was rejected, as the first note was void in the eyes of law.

Illustrative cases where the maxim was not applied

R. v. Lord Newborough : L. R. 4 Q. B. 585

After special constables were paid by ^county treasurer, it was discovered that neither their appointment nor me order for their payment was done in accordance with the provisions of the Special Constables Act, 1831. When such payment was sought to be recovered, Lush J. held that since the order for payment was acted upon, and the money was also paid to them for the work they had put in, the proceedings need not be re-opened.

Blake v. Foster : 8 T. R. 487

A leases out a piece of land to B, but the land does not belong to A. Later, A purchases the same plot of land. Now, this becomes a good lease, and the relation of lessor and lessee will exist as perfectly between A and B, as if A was actually the owner of the land when he leased it to B.

Q. Explain : In jure non remota causa, sed proxima spectator. B.U. Nov. 2005

XVII. IN JURE NON REMOTA CAUSA, SED PROXIMA SPECTATUR

(In law, the immediate, not the remote, cause of any event is regarded)

Sometimes, a person who suffers damage on account of a wrongful act cannot claim compensation for that particular damage, because the connection between such damage and the wrongful act is too remote. In jure non remota causa, sed proxima spectator.

The commonest application of this maxim is in the field of marine insurance. If the owner of a ship sues to recover a loss under a maritime insurance policy, the loss must be one which was directly occasioned by some peril covered by the policy. It is not enough that the loss was incurred indirectly through a peril which was insured. In other words, the loss must be occasioned by a peril acting immediately on the ship, and thereby causing the loss. In England, the Marine Insurance Act, 1906, provides as under :

"The insurer is liable for any loss proximately caused by a peril insured against, but he is not liable for any loss which is not proximately caused by a peril insured against."

Application of the maxim under the Law of Contracts

Under the well-established principles of the law of contracts, no compensation can be recovered for any remote or indirect loss or damage sustained by a breach of contract. This principle was accepted in the leading English case, Hadley v. Baxendale (9 Ex. 341) and is the basis of S. 73 of the Indian Contract Act, 1872. Thus, A has agreed to pay a certain sum of money to B on a specified date, but he fails to do so. B, in consequence of not receiving this amount on that day, is unable to pay his own creditors and is declared insolvent. In these circumstances, B cannot claim anything from A, except the principal amount, together with interest upto the date of payment. The loss suffered on account of his being declared insolvent is a remote loss and cannot be recovered.

Application of the maxim under the Law of Torts

Under the law of torts, when a plaintiff sues on the ground of negligence, he must show that the defendant was under a legal duty to exercise due care and skill towards him — which he did not exercise. However, he must also show that the breach of such duty was the causa causans, i.e., the direct and proximate cause of his loss or injury. If the connection between the negligent act and the damage suffered is not direct, the damage is too remote and the plaintiff cannot succeed.

In an action under the law of torts, the defendant is, as a rule, not liable, if the chain of causation has been snapped by novus actus, i. e., by the intervention of a third party. Thus, in England, it is the duty of railway companies not to allow their compartments to be over-crowded, but theft, though it may be facilitated by over-crowding, is not the direct or natural consequence of over-crowding. Therefore, a passenger whose purse is stolen by another passenger in an over-crowded compartment, cannot sue the Railway Co. for his loss, (Cobb v. G. W. Rly. Co., 1893 1 Q. B. 459)

Illustrative cases where the maxim was applied

Redman v. Wilson : 14 M. & W. 476

In this case, a ship was insured against the perils of the sea. When the ship was being loaded, it was damaged by negligent loading of cargo by the natives of Africa, and since it was pronounced unseaworthy, it was run ashore to prevent it from sinking and to save the cargo. In the circumstances, the court held that the maxim, "In jure non remota causa, sed proxima spectator", would apply. The immediate cause of the loss, i.e. the stranding of the ship, was a peril of the sea.

Wadsworth Lighterage & Coaling Co. v. Sea Insurance Co. : 1930 35 Co. Cas. 1

In this case, a steam barge, which was docked on a calm, windless night, sank as a result of its decayed condition. When the insurers were sued for the loss, it was held that the loss was due to ordinary wear and tear, and was not covered by perils of the sea. The Insurance Company was, therefore, not liable.

Cases where the maxim does not apply

In cases of marine insurance, the maxim would not apply where a loss is occasioned by the assured himself. If it were otherwise, it would contravene the fundamental rule of insurance and also the intention of the parties. Thus, if a ship is sunk by being intentionally run on a rock, the Insurance Co. would not be liable.

Secondly, the maxim does not also apply to any transaction which is originally founded in fraud. In such cases, the law also looks at the corrupt beginning, and not only at the proximate cause. The series of events may be considered as one entire act in the eyes of law in such cases.

Lastly, as pointed out by Lord Bacon, the maxim also does not ordinarily hold good in criminal matters, as will be clear from the following example. A, intending to kill B, fires a gun at him, but misses. So, he throws down his gun and runs away. B, however, runs after him in order to kill him. Thereupon, A takes out a dagger and stabs B, resulting in B's death. In this case, if only the immediate cause is to be taken into consideration, A may go scot-free, as his act would be justified as being in self-defence. But law would look beyond the immediate cause, and when the remoter

cause is seen, A would be guilty of murder, having done an act, in execution of his earlier murderous intentions.

Q. Explain : Ignorantia juris non excusat B.U. Apr. 2007

XVIII. IGNORANTIA FACTI EXCUSAT : IGNORANTIA JURIS NON EXCUSAT

(Ignorance of fact excuses : Ignorance of law does not excuse)

These two maxims are recognised by almost every legal system. Ignorance may be either of fact or of law. For instance, if an heir is ignorant of the death of his ancestor, he is ignorant of that fact; but, if being aware of the death, and of his own relationship with the ancestor, he is nevertheless ignorant of those rights that have thereby become vested in him, he is ignorant of the law.

Thus, generally, a mistake of fact is excused in law but a mistake of law is not. What then is to lie treated as a mistake? It has to be noted that mere forgetfulness is not a mistake. A mistake is a slip made by mischance and not by design. Even under English Common law, an honest and reasonable belief in the existence of circumstances which would have made that act an innocent act, has always been a valid defence.

The plea of mistake of fact as a defence has been recognised by the Indian Penal Code in Sections 76 and 79.

When mistake of fact is no defence

Though a mistake of fact is normally considered as a good defence, it is not a defence if the fact itself is illegal. One cannot do an illegal act and then plead ignorance of a fact. Thus, a person cannot by mistake of fact, shoot X and then plead in defence that he did not intend to kill X at all, but had mistaken him for Y whom he actually wanted to eliminate from this world. The plea of mistake of fact cannot operate in such a case, because killing a person is itself illegal and cannot be pleaded as a defence. But, if a person, intending to kill a burglar in justifiable self-defence, mistakenly kills one of his neighbours, he would not be guilty of an offence.

Why mistake of law is not an excuse

The basic reason for not excusing a mistake or-ignorance of law is that every man is presumed to know the law of the land. If mistake of law was to be allowed as a defence, it would be urged in almost every case and lead to absurd results.

This maxim is of great importance in the law of crimes. When a person commits a wrong, it is not open for him to say that he did not know that it was an offence, and that, but for his ignorance of the law, he would not have committed it.

The three main reasons underlying this rule are:

(1) Firstly, the law is definite. It is something which can be known and it is the duty of every man to know at least that part which most concerns him. Even if he does not know a specific point of law, it is always open to him to consult a lawyer.

(2) Secondly, it would be very difficult for a court to decide whether a given person is really ignorant or is only pretending to be ignorant.

(3) Lastly, the law is generally based on* natural justice and common-sense. So, even if he is not aware that he is breaking the law, a sane man would know that he is violating a rule of right.

When mistake of law is excused

However, the above rule has its own limitations. Modern systems of law use language which is both technical and complex, and it would be impossible for everyone to know all the laws of the land. Thus, this maxim must be understood in its qualified, and not in an absolute, sense, as will be clear from the following three illustrations :

1. It was held in Re Barry & Staines Linoleum Ltd. (1934 1 Ch. 227), that ignorance of some of the provisions of the Companies Act may amount to inadvertence and the person concerned may be reasonably excused.

2. Section 78 of Indian Penal Code states that total ignorance of the law is no excuse, but a mistaken interpretation of the law can be considered a good excuse.

3. A mistake of foreign law is considered as a mistake of fact, because though everyone is supposed to know the law of his own country, he cannot be expected to know the law of other countries. This is, however, not so in the field of criminal law.

Illustrative cases where the maxim was applied

Higgs v. Scott : 7 C. B. 63

A, a tenant of B received a notice from C, a mortgagee of B's property, that his interest was in arrears, and requiring payment to C of the rent due to B. Notwithstanding this notice, A paid the rent to B and afterwards was compelled by distress to pay it again to C. It was held that the money had been paid to B with full knowledge of the facts, but on account of ignorance of the law, and hence could not be recovered.

Tolson's case : (1889) 23 Q. B. 168

Mrs. Tolson, who had been deserted by her husband, and had married again within seven years of desertion, was held not guilty of the offence of bigamy, because she had believed, on reasonable grounds, that her husband had died (which was a mistake of fact), and her act of getting married could not be regarded as an act which was illegal per se.

Illustrative cases where the maxim was not applied

Prince's case (1875) L. R. 2 C. C. R. 15

It was held, in this case, that a person who kidnaps a girl under the legal age of consent (i.e., eighteen years) is guilty of kidnapping, even though the girl might have urged the accused to take her away from her parents, and she lied about her age and even appeared to be more than eighteen. The accused was held guilty, as the girl's consent was immaterial, she being a minor. In such cases, the accused must take the risk of having involved himself with a minor, which is an act

mala in se (bad in itself). Thus, in such case^, ignorance of fact (in this case, the fact being the age of the girl) does not excuse.

Consolidated Co. v. Curtis and Son : (1982) 1 Q. B. 495

The owner of certain furniture assigned it by a bill of sale to the plaintiff. Subsequently, he employed the defendants, a firm of auctioneers, to sell it by auction. The defendants, who had no notice of the bill of sale, accordingly sold the furniture and delivered it to the purchaser. The defendants pleaded that they had acted under a mistake as to the true ownership of the property, but the court held that the mistake of fact was no excuse for interfering with the plaintiff's property and the defendants were liable for the value of the property wrongly sold and delivered.

XIX. NULLUS COMMODUM CAPERE POTEST DE INJURIA SUA PROPRIA

(No man can take advantage of his own wrong)

It is a well-recognised maxim of law that no man can take advantage of his own wrong, and this maxim, which is based on elementary principles, is fully recognized in every branch of the law. As observed by Lord Hatherley, "a wrong-doer ought not to be permitted to make a profit out of his own wrong". This rule has been used by the courts to promote justice in various, and often dissimilar, situations.

The doctrine of estoppel is also based on this maxim. For instance, if A, the owner of goods, by his conduct, gives a wrong impression to the world at large, that B is his agent, he cannot, when B sells A's goods as agent, challenge the sale on the ground that B was not, in fact, his agent. Similarly, if at the time of accepting a bill of exchange, the acceptor knew that the payee was a fictitious person, he cannot later take advantage of his own fraud and set up this defence.

It is also a sound principle of law that he who prevents a thing from being done cannot complain of the non-performance by the other side, for which he himself is responsible. Thus, if A has agreed to paint a house for S, under a contract where B has to supply the scaffolding, if B does not supply such scaffolding, A cannot be made liable for a breach of his contract to paint the house.

As observed by Lord Redesdale, "At law, fraud destroys rights. If I mix my corn with another's, he takes all; but if I induce another to mix his corn with mine; I cannot then insist on having the whole." So also, under the Indian Contract Act, if A makes a bailment of his corn to 6, the latter is obliged, under the law, to return that corn to A. So, if he mixes it up with his own inferior corn, he will have to compensate A for the value of A's corn.

Illustrative cases where the maxim was applied

Trueman v. Lader : 11 A. & E. 589

In this case, A executed an instrument under an assumed name. When sued by the other party, he sought to deny his liability on the ground that he could not, in law, be bound by such an instrument. Rejecting this argument, the court held that he was bound by this instrument in the same manner as if A had executed it in his true name.

Harris v. Truman : 7 Q./B. ^340

An agent represented to his principal that some barley lying on the agent's premises had been bought by him for his principal, and thereby induced the principal to make a payment to him to cover the price of such barley. In fact, only a part of the barley lying on the agent's premises had been bought on behalf of the principal, but the agent had mixed it up with his own barley, in a way that the two could not be separated or distinguished. When the agent became bankrupt, the trustee-in-bankruptcy claimed to hold tho entire barley as belonging to the agent, on the ground that the portion actually bought for the principal could not be identified. The court held that he could not do so, — as no man can take advantage of his own wrong.

XX. NEMO DEBET BIS VEXARI PRO UNA ET EADEM CAUSA

(It is a rule of law that a man shall not be twice vexed for one and the same cause)

This maxim is an important safeguard against abuse of judicial process by vexatious and repetitive litigation, and also forms the bedrock of the fundamental rights of an individual. Thus, in England, where an act or omission constitutes an offence under two or more Acts, the offender can be punished under either Act, but is not liable to be punished twice for the same offence.

In the field of criminal law, this maxim is the foundation of the protection against double jeopardy and the pleas of autrefois convict and autrefois acquit. Thus, S. 300 of the Criminal Procedure Code provides that if a person has once been tried by a competent court for any offence, and convicted or acquitted, he cannot be tried again for the same offence.

In the field of civil law, this maxim is reflected in S. 11 of the Civil Procedure Code, which prohibits a court from trying any suit where the subject-matter was directly and substantially in issue in a former suit between the same parties and a competent court has heard and finally decided the same. In such cases the second suit is barred by the doctrine of res judicata.

In the field of constitutional law this protection against double jeopardy is to be found in most Constitutes of the world, including the English, the American and the Japanese. In India, Art. 20(2), which is a guarantee against double jeopardy, lays down that no person can be prosecuted and punished for the same offence more than once.

Applying this maxim, an acquittal in a charge of murder can be pleaded to a subsequent charge for manslaughter of the same person. But, a previous conviction for one offence, "e.g., hurt, does not bar a subsequent trial for a separate offence, e.g. affray, even if both the offences arise out of the same facts. (Sardul Singh v. State of Maharashtra, 1964 2 S. C. R. 378)

The rule will also not apply where the liability for a debt is joint and several. In such cases, a judgment against one of the debtors is not a bar to a suit against the other debtor, unless the amount has already been fully paid by the first debtor under the earlier suit.

Illustrative cases where the maxim was applied

Conquer v. Boot : (1928) 2 Q. B. 336

In this case, A successfully sued B for a breach of contract to build a bungalow in s good and workmanlike condition and recovered damages from B. Later, he discovered other defects of a similar nature in the same bungalow and filed a second suit for damages under the same contract.

Applying the maxim, the court held that the second suit could not be entertained, although A pleaded that he was ignorant of the second set of defects when he filed the first suit.

Bai Sada v. Gangaram : (1932) 34 B. L. R. 236

The plaintiffs first filed a suit against the defendants for recovery of land from the defendants who were annual tenants of such land. In this suit, the court refused to pass a decree for possession, on the ground that a proper notice to quit had not been given to the defendants. However, the court ordered the defendants to pay damages to the plaintiffs for the use and occupation of the land for a period of three years prior to the suit. Then, the plaintiffs filed a second suit to recover possession with mesne (past) profits from the defendants, who resisted the suit, relying on the decree passed in the earlier suit. In the circumstances, the court held that the question of the plaintiff's ownership of the land had already been heard and finally decided in the first suit, and therefore, the second suit was barred.

Illustrative cases where the maxim was not applied

Brunsden v. Humphrey : 14 Q. B. D. 141

In this case, the defendant had damaged the plaintiff's cab, and also caused him personal injuries, by the same act of negligence. Having sued for and recovered damages in respect of the cab, the plaintiff sued again for the personal injuries. The Court of Appeal, by a majority, held that the maxim did not apply, and the second suit was not barred, — as two distinct rights of the plaintiff had been infringed.

Muhammad Safi v. State of West Bengal : 1966 A.I. R. SC 69

In this case, it was held that an order of acquittal passed by a court which believes, though erroneously, that it had no jurisdiction to take cognizance to try the case, is a nullity, and a subsequent trial for the same offence is not barred by the plea of autrefois acquit.

XXI. CESSANTE RATIONE LEGIS CESSAT IPSA LEX

(Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself)

This maxim, also sometimes expressed as "Cessante ratione cesat et lex", reflects the fact that every law is based on sound reasoning, and when this very foundation ceases to exist, the law cannot be sustained. Thus, for instance, a Member of Parliament is privileged from arrest or civil process during the session and for some time thereafter, so that he may discharge his public duties and the trust reposed in him; but, the reason of this' privilege ceases at a certain time after the termination of the parliamentary session, because the public has then no longer an immediate interest in the personal freedom of the individuals composing the legislature.

Another illustration is afforded by the rule of English law that a person cannot make felony the foundation of a civil action. This can be true only where the felon himself is the defendant or a necessary party, and the claim is founded on the felony. "The rule is founded on a principle of public policy, and where the public policy ceases to operate, the rule shall cease also." (Stone v. Marsh, 6 B. & Cc. 551)

As far as consent of the parents to the marriage of their minor children is concerned, in Holmes v. Simmons (L. R. 1 P. & D. 523), the court observed as follows :

"Any analogies which existed between marriages by banns and marriages by notice to the registrar have been effaced — the attempt at securing that consent in marriages of the latter class by publicity relinquished - and the procurement of actual consent substituted in the same manner as had always been used in marriages by licence. There is no reason, therefore, why those decisions which have hitherto only been applied to marriage by banns, and which have their foundation in the necessity for securing that publicity through which it is the subject of banns to reach the parents' consent, should be applied to marriages in which that consent is otherwise attained and secured. Cessante ratione cessat et lex."

This maxim was urged as a reason for removal of a husband's liability for post-nuptial torts of his wife as a result of the passing of the Married Women's Property Act. The Court of Appeal observed : "The whole reason and justification for joining husband in an action against his wife for her post-nuptial tort (i. e. that she could not be sued alone) has therefore disappeared; and it would seem to follow upon the principle 'cessante ratione cessat lex' that he is no longer a necessary or proper party to such an action." (Edwards v. Porter 1925 A. C. 1)

XXII. ACTA EXTERIORA INDICANT INTERIORA SECRETA

(Acts indicate the intention)

It is said that, in some cases, the law judges a man's previous intention by his subsequent acts. In a famous case, it was observed that if a man abuses an authority given to him by the law, he becomes a trespasser ab initio, but that if he abused an authority given to him by the other party, he does not. The reason given for this distinction is that, where a general license is given by the law, the law judges, by the subsequent acts, with what intent the original act was done. But, where the party himself gives a license, he cannot, for any subsequent cause, punish that which is done by his own license, in the latter case, therefore, the abuse alone is punishable.

To take a simple example, the law gives authority to the owner of land to distrain cattle which enter into his property and to detain them until he is compensated for the loss caused to him and his property by such cattle. However, if the landowner, after distraining, kills the cattle, the law presumes that he distrained the cattle for the specific purpose of committing the particular injury. In other words, the subsequent illegality shows the original intention of the person.

In this connection, Broom (in Broom's Legal Maxims) observes as follows :

"With respect to the proposition that the abuse of a license given by the party does not make a man trespasser ab initio, it may be noticed, that if a person wrongfully takes my goods and places them on his own close, I may enter for the purpose of reception, and that the reason given is that I have an implied license from the wrong-doer. For the like reason, if my neighbour has wrongfully placed goods upon my close, I may enter his for the purpose of there depositing them for his use.

On the other hand, the mere fact that my goods are upon my neighbour's land does not justify my entry thereon to recover them; nor does the fact that they were placed there by a trespasser who had wrongfully taken them from me."

Illustrative cases where the maxim was applied

Elias v. Pasmore : (1934) 2 K. B. 164

In order to effect the arrest of a person, the defendant who was a Police Officer, entered the plaintiff's premises. Whilst there, he seized and carried away documents found on the premises. Amongst the documents, there were some which constituted evidence on the trial of the person who was arrested, but there were others which did not so constitute, and these were subsequently returned. In an action for trespass, it was held that the defendant was trespasser ab initio only as regards documents that were seized and returned, — but was not liable for any damages on the-oremises for the purpose of the arrest.

Price v. Woodhouse : 1 Exch. 559

In this case, it was held that both, the entry by the lord of the manor to seize a beast and the seizure, were rendered unlawful, because of the wrongful seizure of an additional beast. As the court observed, "to make the entry good, it must be good with reference to the seizure".

Illustrative cases where the maxim was not applied

Vaux v. Newman (The Six Carpenters' Case) : (1610) 1 L. C. 134

In this case, the proprietor of an inn brought an action for trespass against six carpenters, who having entered the inn, ordered a quart of wine, drank it, and refused to pay for it. The question was, whether, in these circumstances, the failure to pay for the wine could be treated as misfeasance, which would make their original entry unlawful as a trespass. Answering the question in the negative, the court observed that "not doing cannot make the party who has authority by the law, a trespasser ab initio, because not doing is no trespass. So, in the case at the Bar, for the denying to pay for it is no trespass, and therefore, they cannot be trespassers ab initio."

Winterbourne v. Morgan : 11 East 395

In this case, it was observed that the Distress for Rent Act provides . that where a distress is made for rent justly due, and an irregular or unlawful act is afterwards done, the distress is not deemed to be unlawful, and the party distraining cannot be looked upon as a trespasser ab initio, — although compensation for the special damage can be recovered from him by filing an action against him.

XXIII. DOMUS SUA CUIQUE EST TUTISSIMUM REFUGIUM

(Every man's house is his castle)

The house of every one, however small or humble it may be, is for him his castle, not only for his defence against injury and violence, but also for his repose and quiet enjoyment. So, although human life is a precious thing in the eyes of law, yet if thieves come to a man's house to rob or murder him, and he or, his servants kill any of the thieves in defence of himself and his house, this will not be a crime.

Accordingly, if a person attempts to break and enter a dwelling-house in the night-time, or attempts to break open a house in the daytime with intent to rob, and he is killed in the attempt, the slayer

will not be punished, for such homicide is justifiable. And in such cases, not only the owner whose person or property is thus attacked, but also his servants and the members of his family, or even strangers who are present at the time, are equally justified in killing the assailant. In general, however, in order that a case may fall within this rule, the intent to commit the crime above mentioned must be clearly manifested by the offender. Even a violent and unlawful attempt to take from a man possession of his house may be resisted with as great force as would be permissible in defence of his person, although there is no intention to commit one of the above offences.

This right of private defence of property is, in India, conferred by S. 98 of the Indian Penal Code, which allows every person to protect his property against theft, robbery, mischief, criminal trespass, etc.

However, this rule will not be allowed to be used to evade the law. So, if a defendant escapes from arrest, the sheriff may, after demanding admission, and on the defendant refusing such demand, break open either his own house or that of a stranger for the purpose of retaking him; and if an officer or bailiff, who has lawfully entered a house to execute a process, is forcibly ejected, or locked in, he may break open the outer door to re-enter the house, or to quit it, as the case may be. In such cases, a request to re-open the door may not even be necessary.

Moreover, although a man's house is surely a castle for himself, it is not one for fugitives or persons who flee to his house, or for the goods of any other person which are brought into his house to prevent a lawful execution, or to escape the ordinary process of the law. In such cases, after requesting that the house be opened, the sheriff or the police officer, or anyone authorised by law, may break open the house.

Illustrative cases in which the maxim was applied r

Smith v. Shirley : 3 C. B. 142

In this case, the court held that mere entry by an open door, by an officer of law,' into a man's house on suspicion of felony, but without a warrant, is not justified by a plea which does not show that the defendant had reason to believe that the suspected person was there, and entered for the purpose of apprehending him.

Burdett v. Abbot : 14 East 1

The importance of this maxim was highlighted in this case, where the court observed as under :

"Nothing is more certain than that in the ordinary cases of the execution of civil process between subject and subject, no person is warranted in breaking open the outer door in order to execute such process; the law values the private repose and security of every man in his own house, which it considers as his castle, beyond the civil satisfaction of a creditor."

Cases where the maxim does not apply

Statutory provisions relating to search and seizure constitute important exceptions to this maxim.

Thus, S. 132 of the Income-tax Act empowers the tax authorities to enter and search any place or building, and even break open the door of any lock, if the keys are not available. Likewise, under S.

37 of the Foreign Exchange Management Act, the Directorate of Enforcement and certain other officers have been conferred the same powers as are conferred on income-tax authorities.

Similarly, if Customs Officers have reason to believe that any goods which are liable to confiscation are secreted in any place, they may, under the Customs Act, conduct a search of that place.

S. 93 of the Criminal Procedure Code also empowers the court to issue search warrants and S. 165 of that Code confers powers on Police Officers to conduct searches in certain cases.

XXIV. NEMO EST HAERES VIVENTIS

(No one can be heir during the life of his ancestor)

It is not only law, but also sound common sense, that no inheritance can vest, nor could any person be the heir of another, till the ancestor is dead. Before the happening of this event, i.e., the death of the ancestor, he is only an heir-apparent or heir-presumptive, a description that can be applied to the son of a man, who has no wife, daughter, etc. In the life-time of the father, the son cannot claim to be the heir of the property of the father. When the father dies, his claim would be limited only to that property of which his father was the owner at the time of his death. Property which the father had gifted away in his lifetime, or which he has willed to some other person under a valid will, would, naturally, not go to the son.

S. 6 of the Transfer of Property Act recognises this maxim when it lays down that the chance of an heir-apparent succeeding to his estate cannot be transferred. Likewise, the chance of a relation obtaining a legacy on the death of the ancestor cannot be transferred. The technical expression for such a "chance" is spes successionis, i. e., the hope of succession. Such a chance does not amount to "property" under the said Act, and even if it is attempted to be transferred, such "transfer" is totally void.

Illustrative cases where the maxim was applied

Doe Winter v. Peratt : 7 Scott N. R. 1

Under a will, a piece of land was given to A for life, and the remainder to the heirs of B. If A dies before B, at the time of A's death, it cannot be said that B has any "heirs", as B is very much alive. Therefore, the remainder under the will would fail.

However, in this case, if B had died before A, B would have heirs at the time of A's death, and the land would vest in B's heirs immediately on the death of A.

Ram Nath v. Nagina

In this case, a Hindu of advanced age made a "will", dividing his property amongst his sons. The "will" ended with the following clause : "If I, at any time, come back from pilgrimage, and find mismanagement or the character of anyone bad, then, I shall have the power to cancel this will."

The court held that the effect of this clause was to make the document a family arrangement, and not a "will". In a true will, the disposal of the testator's property can take place only after his death.

Illustrative pases where the maxim was not applied

In Re Hooper : (1936) Ch. 442

In this case, a testator gave his property to his wife for life, and after her death, "to such person as, at the decease of my wife, shall be my heir", and the testator's wife predeceased him. In the circumstances the court held that the property went to the person who would have been the testator's heir if he had died at the time of his wife's death, — for the law leans against intestacy.

Lightfoot v. Maybery : (1914) A. C. 782

In this case, it was held that the maxim under consideration has no place where the testator uses the word "heir", not in its strict legal sense, but in a popular sense of giving a child, even during the life of his parent. If "the plain and undeniable intention" of the grantor, who knows of the existence of the parent, is that the devise to the child shall take effect during the life of the parent, this "popular idea of heirship" would be given effect to.

Q. Explain : Leges posteriores priores contrarias abrogant B.U. Nov. 2006

XXV. LEGES POSTERIORES PRIORES CONTRARIAS ABROGANT

(Later laws repeal earlier laws inconsistent therewith) t

The legislature is the supreme law-making authority in the State, and by definition, it has not only the power to make laws, but also to amend and abrogate the existing laws. To say that one Parliament can, by its laws, bind future Parliaments, would be a total negation of this basic principle. Thus, if an Act of Parliament contains a clause that it would not be lawful for Parliament to repeal that Act for the next seven years, such a clause (technically called "clausula derogrataria') would be void, and the Act could be repealed at any time, even within the next seven years.

The principle embodied in this maxim is of universal application. Thus, the English Parliament can amend, alter or repeal an Act in any of its sittings, including the same session in which such Act was passed. Likewise, the Indian Parliament also enjoys the same power. The only limitation of such power in India is that the Parliament cannot alter the basic structure or framework of the Constitution of India. (.Kesavananda Bharti v. State of Kerala, AIR 1973 S. C. 1461)

From what is stated above, it follows that an earlier Act must give way to a later Act, if the two cannot be reconciled. Moreover, one Act can repeal another by express words or even by necessary implication. However, a repeal by implication is not favoured by the law, and must not be imputed to the legislature unless absolutely necessary. (Dobbs v. Gr. Junction Waterworks Co., 9 Q.B.D. 151)

But, if two Acts are merely affirmative, and their substance is such that both can stand together, the later Act would not repeal the earlier one, and both would have concurrent efficacy. (Foster's Case, 11 Rep. 56)

The principle underlying this maxim is also reflected in S. 88 of the Indian Succession Act, which lays down that if two clauses of a will cannot be reconciled, it is the later clause that will prevail. So, if at the commencement of his will, A gives his house to B, and towards the end of the will, he states that his house (i.e., the same house) is to be sold, and the sales proceeds thereof be invested for the benefit of C, the later clause will prevail, and C, and not B, will be the rightful legatee of the house under A's will.

Illustrative cases where maxim was applied

Fortescue v. St. Matthew : (1891) 2 Q. B. 170

In this case, it was held that when an Act lays down the quality of an offence or prescribes a particular punishment for it, and a later Act alters the quality of the offence or prescribes some other punishment for it, the earlier Act is impliedly repealed by the later Act.

R. v. J. J. of Middlesex : 2 B. & Ad. 818

In this case, the court held that if two Acts are passed in the same session of Parliament, and are repugnant or contradictory to each other, that Act which last received the royal assent (or, the President's assent in India) prevails, and has the effect of repealing the other Act, either wholly or pro tanto.

Illustrative cases where maxim was not applied

R. v. St. Edmund's Salisbury : 2 Q. B. 72

An Act of Parliament provided that a particular offence was triable in Court X. Later, another Act was passed, which made the same offence triable in Court Y, without adding any express words such as "... and not elsewhere". It was held that in the circumstances, the earlier Act was not repealed, and Court X did not lose its jurisdiction. In the circumstances, the offence could be tried by either court.

Daw v. Metropolitan Board : 12 C. B. N. S. 161

In this case, when a special Act was already in force, a general Act was passed by the legislature. The question before the court was whether the earlier (special) Act stood repealed by the later (general) Act. The court held that special Acts are not repealed by general Acts, — unless there is an express reference to the previous legislation, or a necessary inconsistency, if both the Acts stood together. It was, therefore, held that the earlier Act was not repealed.

Q. Explain : Nova constitutio futuris forman imponere debet, non praeteritis. B.U. Nov. 2005

XXVI. NOVA CONSTITUTIO FUTURIS FORMAM IMPONERE DEBET, NON PRAETERITIS

(A new law ought to be prospective, not retrospective, in its operation)

The general principle of jurisprudence is that legislation by which the conduct of men is sought to be regulated ought to deal with future action, and ought not to change the character of past transactions carried out on the faith of the then existing laws. Logic and good sense require that a new Act must interfere as little as possible with vested rights, and that any law which creates new duties, obligations and disabilities in respect of past transactions would be opposed to sound and well-established principles of legislation. Therefore, prima facie, a new Act is construed to apply prospectively, i.e. to future, and not past, events.

It is a fundamental principle of English law that no statute is to be construed to have a retrospective operation, unless such an intention appears very clearly in the terms of the Act or arises by necessary implication. The injustice involved in retrospective legislation is most clearly seen in the case of a new law in the field of criminal laws. As Erie, C. J. once observed, —

"It manifestly shocks our sense of justice that an act which is legal at the time it was done should be made unlawful by a new enactment."

In the words of Craies (On Statute Law), a statute is retrospective "which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed." Other statutes, though they may relate to acts or events which are past, are not retrospective in the sense in which the word is used for the purposes of this rule.

Art. 20(1) of the Constitution of India also provides against ex post facto laws, and guarantees that no person can be convicted of any offence, except for a violation of a law which was in force when the act was done. As observed by the Supreme Court, "There can be no doubt as to the paramount importance of the principle that ex post facto laws, which retrospectively create offences and punish them, are bad as being highly inequitable and unjust."

Limitations to the maxim

This maxim is to be treated as a guide only where the intention of the legislature is not clear. However, where the words of a statute express its intention clearly, this maxim cannot be used to modify the express words or intention of an Act, whatever be the resultant hardship.

Secondly, alterations regarding procedural formalities are normally taken to be retrospective, unless there is a good reason to hold to the contrary. A litigant has no right or vested interest in matters of procedure, and he cannot, therefore, complain, if during the course of his litigation, a new procedure is brought in by the law, provided that no injustice is done to him thereby.

Illustrative cases where the maxim was applied

Kanaiyalal v. Indumati Potdar : A.I.R. 1958 SC 444

The Bombay Rent Act (now replaced by the Maharashtra Rent Control Act, 1999) provided that no landlord can, without just or sufficient cause, cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him. The interesting question before the Supreme Court, in this case, was whether it would be enough that this essential supply was "enjoyed" by the tenant at any time in the past, however remote, or should it have been enjoyed at any time after the Act came into force. The court held that if this section was to be construed to mean that the supply should have been enjoyed some time in the remote past,i. e. before the Act came into force, the act of an landlord, when committed, may not be penal, but the same act would become penal on the coming into force of the Act. In this sense, it would amount to ex-post facto legislation, and therefore hit by Article 20(1) of the Constitution of India. Therefore, the correct interpretation would be that such supply should have been enjoyed by the tenant at some time when the Act was in force.

Moon v. Durden : 2 Exch. 2

In this case, the plaintiff filed a suit upon a wager, before the passing of the Gaming Act, 1845, which laid down that all contracts by the way of wagering would be null and void, and that no suit could be brought to recover any money alleged to be won upon a wager. This Act was passed while the

plaintiff's suit was pending, and the question was whether it would defeat the plaintiff's claim. The court held that it did not. A statute should not be interpreted as taking away a vested right to sue which arose before such statute was passed.

Illustrative cases where the maxim was not applied

Croxford and Others v. Universal Insurance Company : (1935) 2 K. B. 409

The Road Traffic Act, 1934, avoids the cancellation by an insurer, of a policy against liability to third parties, where judgment is obtained against the insured by a third party. It was held that the Act applied in every case where such a judgment was obtained after coming into operation of the Act, even though the accident occurred before the Act came into force.

Barber v. Pigden : (1937) 1 K. B. 664

In this case, it was held that the Law Reform (Married Women and Tortfeasors) Act, 1935, which removed the liability of a husband for torts committed by his wife, applied although the cause of action arose before the Act came into force.

XXVII, NOSCITUR A SOCIIS

(The meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it)

Where two or more words which are capable of similar meaning are coupled together, they take their colour from each other. In other words, a word is known by the company it keeps.

Therefore, in such cases, the meaning of the word which is more general is restricted to a sense that is similar to the less general word. So, if an Act speaks of "houses for public refreshment, resort and entertainment", the word entertainment is not to be construed as a theatrical or music performance, but as something connected with the enjoyment of refreshment rooms. (Muir v. Keay, L. R. 10 Q. B. 594)

In other words, where the meaning of a particular word is doubtful or obscure, or where a particular expression, when taken singly, is inoperative, the intention of the party who used it may frequently be ascertained by looking at adjoining words or at expressions occurring in the others parts of the same instrument. Courts of law, when construing a written instrument, always endeavour to discover and give effect to the intention of the party, and when doing so, will examine carefully every portion of the instrument. The maxim is moreover applicable like other rules of grammar, whenever a construction has to be put on any document, and in particular, on the words used in a will, where the maxim- is most frequently applied.

Difficulties which frequently arise in applying the rule generally result from the particular word used and from the particular facts in each individual case. Therefore, one decision, as to the connotation of a word and the intention of its user, can be considered as an authority to guide a subsequent decision, only if the circumstances are similar and the words are wholly or nearly identical.

The rule also applies when interpreting words in a statute, where the meaning of a word, and consequently, the intention of the legislature, is ascertained by reference to the context, and by

considering whether the word in question and the surrounding words are, in fact, referable to the same subject matter. The sense and meaning of the words used in an Act can be ascertained by comparing one part of the statute with another, and by viewing all the parts together as one whole, and not by trying to put meaning in one such part in isolation.

Thus, although the word "land" is generally understood as including buildings on such land, if an Act, after imposing a tax on houses, buildings, works, tenements, and hereditaments, exempts "land", this word would be restricted to land unburdened with houses, buildings or other construction. (Gilmore (Valuation Officer) v. Baker-Carr, 1962 1 W.L.R. 1165)

Illustrative cases where the maxim was applied

R. v. Harris : (1836) 7 C. & P. 446

in this case, an Act made it an offence to shoot at or to stab, cut or wound any person. The court held that the word wound would be restricted, on account ot * e preceding words (namely, stab and cut) to injuries inflicted by an instrument, and would not cover biting off someone's finger or nose or burning someone's face with acid.

Foster v. Diphways Casson Slate Co. : (1887) 18 Q. B. D. 429

Under a statute, carrying gunpowder in a mine was prohibited, except in a "case or canister". It was held that the accused was rightly convicted when he carried gunpowder in linen bags, as the language prevented a person from carrying it in such bags, as they are not of the same solid and substantial description as a case or a canister.

Illustrative cases where the maxim was not applied

Larsen v. Sylvester & Co. : (1908) A. C. 295

in a Charterparty Agreement, the parties exempted each other from all liability arising from "frosts, floods, strikes and any other unavoidable accident of what kind so ever, beyond their control, delaying the loading of the cargo". The court held that these words excluded a strict application of this maxim, and the Charterers were not liable for delay in loading caused by a block of other ships at the port of loading.

Monck v. Hilton : 2 Ex. D. 268

In England, under the Vagrancy Act, 1824, it was an offence to use any subtle means or device, by palmistry or otherwise, to deceive any person. When the defendant falsely pretended to have the supernatural facility of getting answers from the spirits of the dead, it was held that he was liable to be convicted under the Act, as the words "or otherwise" covered deceptions which were similar in nature to palmistry.

XXVIII. EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS

(The express mention of one thing implies the exclusion of another)

This maxim, which incorporates one of the basic principles of legal interpretation, lays down that mention of one or more things of a particular class silently excludes all the other members of that class. The maxim is sometimes also stated as : Expressum facit cessare taciturn.

Thus, if in a contract, one finds certain express stipulations, such stipulations should not be extended by implication. It is to be presumed that since the parties have incorporated some stipulations, they have expressed all the conditions by which they have agreed to bind themselves under that instrument. So, if A and B enter into a contract, A should not be allowed to prove that A meant something different from what is stated in the contract, and that B also agreed to it. If such proof were to be allowed, in the words of Pollock, "every written document would be at the mercy of witnesses, who might be called to swear anything". So, when there is an express contract between the parties, none can be implied.

This maxim is, however, to be applied with a great degree of caution. When general words are used in an instrument, at the outset, it must be determined if such words were intended to include other things which are not specifically mentioned, or to exclude such things, in which case the present maxim can be applied.

Illustrative cases where the maxim was applied

Dickson v. Zizinia : 10 C. B. 602

!n this case, the seller of a horse warranted it "to be sound". The buyer discovered that the horse, though sound, was not fit for the purpose of carrying a lady, and sued the seller. The court held that the present maxim applied in this case, and the seller was, therefore, not liable.

Mathew v. Blackmore : 1 H. & N. 762

In this case, a mortgage was created on dwelling houses, foundries and other premises, with "all boilers, bells and other fixtures in the said dwelling houses and the brew-houses". On the question of whether the fixtures of the foundries were also covered by the mortgage, the court answered the question in the negative, observing that the fixtures falling under the mortgage would only be those which were in the dwelling houses and the brew-houses, as expressly stated in the document. The fixtures in the foundries would not thus be part of the mortgage.

Morgan v. Crawshay : L. R. 5 H. L. 304

Where the Poor Relief Act provided that every occupier of lands, houses and coal mines would have to pay a tax, it was held by the House of Lords, that as coal mines alone were mentioned in the Act, iron mines would not have to pay this tax.

Illustrative cases where the maxim was not applied

Cripps v. Gee : 4 Bro. C. C. 472

In this case, it was held that, if because of fraud or mistake, the written document expresses something other than what was, in fact, agreed to between the parties, oral evidence can be given of the real agreement between the parties.

Illustrative listing in a statute

If the language of an Act cover many different cases or situations, whereof only some are expressly mentioned by way of example, the maxim cannot be applied to exclude others of a similar nature, which are not mentioned in the Act. Thus, the definition of the term "unfair trade practice" under the Consumer Protection Act, 1986, runs as under :

"Unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice, including any of the following practices, namely,—

" This is followed by a long list of different types of trade practices. Now, from the above language, it is clear that the list of such trade practices is merely illustrative, and not exhaustive, and a trade practice which is not specifically enumerated in the list can nevertheless amount to an unfair trade practice.

Similarly, when defining 'fraud", the Indian Contract Act lays down that "Fraud means and includes ..." This language shows that the categories of fraud which follow are merely illustrative, and not exhaustive, and that there may be other types of fraud which have not been enumerated.

Q. Explain : Vigilantibus, non dormientibus, jura subveniunt. B.U. Nov. 2005 Apr. 2007

XXIX. VIGILANTIBUS, NON DORMIENTIBUS, JURA SUBVENIUNT

(The law assists those who are vigilant and not those who sleep over their rights)

In the olden days, there was a system of Equity Courts (or Chancery Courts, as they were sometimes called), which ran parallel to the law courts. The statutes of limitation were not applicable to Equity Courts, as these were courts of conscience, deciding matters, not on the basis of Acts and statutes, but on the basis of equity, justice and good conscience. The Latin maxim under consideration is one of the twelve maxims which form the basis of Equity, its literal translation being "Equity aids the vigilant and not the indolent".

What this maxim calls for is reasonable diligence. If the plaintiff is careless or negligent for a long and unreasonable time, the law refuses to lend him any assistance. Thus, this doctrine works as "a punishment for the negligence of the creditor". Hence, in order to enforce a claim in a court of equity, the plaintiff must approach the court as quickly as possible and there should be no delay on his part. Even a comparatively short period of delay goes against the plaintiff in equity, and he must satisfactorily account for the same, because equity considers delay to be evidence of waiver of the right of action, and sometimes a release of the right itself.

Delay which prevents a party from obtaining an equitable remedy is technically called "laches". Where a person is guilty of laches, he loses a remedy which would otherwise have been available to him. Laches is not, however, constituted by mere delay, but only by delay of such a length, or in such circumstances, or accompanied by such conduct, as either to raise the inference that the plaintiff has waived his right or to affect the position of the defendant and to put him in a situation in which it would not be reasonable to put him if the remedy was afterwards to be asserted. (Blake v. Gale, 32 Ch. D. 581) Exceptions

In the first place, the maxim would not apply when the period of limitation is fixed by law. In India, the provisions of the Limitation Act would apply and the courts are bound by its provisions. However, as regards matters wherein the said Act does not apply, as for instance, filing of writ petitions, undue deiay would be fatal, and to that extent, the maxim can be to apply.

Secondly, the maxim would not apply when the defendant is guilty of fraud, as it has always beets a principle of equity that "no length of time is a bar to relief in cases of fraud, where there has been no laches on the part of the person defrauded".

Lastly, it is well-accepted that "time does not run against a party who is unable to act". If, for instance, a loan is repayable after ten years, the limitation period will begin only when the ten years have passed. In such circumstances, it cannot be said that the creditor could have sued during this period of ten years.

Illustrative cases where the maxim has been applied

Allcard v. Skinner : (1887) Ch. D. 145

In this leading English case, a young girl joined a Sisterhood at the age of 27, and bound herself to observe the triple vows of chastity, poverty and obedience. The rule of obedience required her to regard the voice of Mother Superior as the voice of God. Moreover, no sister was allowed to take any independent advice from an outsider without the leave of Mother Superior. When the girl's father died, leaving considerable money and shares, she made a gift thereof to the sisterhood, and also made a will bequeathing everything to the sisterhood on her death. In 1879, she left the sisterhood, and revoked her will soon thereafter. In 1885, she filed a suit to revoke the gift (which she had made to the sisterhood at the time of her father's death) on the ground that the transaction was vitiated by undue influence, and therefore, voidable at her option. The Court came to the conclusion that religious influence is indeed a strong form of undue influence. However, in the present case, since six years had elapsed between the date of her leaving the sisterhood and the date of filing the suit, the Court held, by a majority (Cotton, L.J. dissenting) that her claim was barred by laches.

Cases relating to mortgages

This maxim has been applied :

(i) to a claim to redeem a mortgage (Weld v. Petre); and

(ii) a claim to foreclose a mortgage (Brooks v. Mukleston).

In such cases, delay is fatal to a claim for equitable relief, not only because it is a reflection of the negligence of the plaintiff, but also because it would result in the destruction or loss of valuable evidence on which the defendant could have relied.

Illustrative cases where the maxim was not applied

Hemp v. Garland : 4 Q. B. 519

In this case, it was held that where a debt is repayable on the happening of a certain event, time begins to run only on the happening of that event, and no delay can be imputed to the creditor before the event has occurred.

Musurus Bey v. Gadban : 1894 2 Q. B. 352

Here, the court held that if a person incurs a debt whilst he is immune from legal process, as for instance, because he is an ambassador of a foreign country, the period of limitation does not begin to run until such immunity has ceased, i.e., when he has ceased to be ambassador.

.In such cases, however, once the statute has begun to run, the plaintiff cannot plead subsequent disability.

XXX. ACTIO PERSONALIS MORITUR CUM PERSONA

(A personal right of action dies with the person)

This maxim refers to extinction of liability on the death of a person. At common law, if an injury was done either to the person or the property of another, for which only damages could be recovered, the action died with the person to whom, or by whom, the injury was caused. In other words, a personal right of action did not survive on the death of either party.

Under English law

In England, the passing of the Law Reform (Miscellaneous Provisions) Act, in 1934, virtually abolished this doctrine. Under this Act, on the death of any person, all causes of action vested in him survive for the benefit of his estate,— except actions for (i) defamation, (ii) seduction, and (iii) claim for damages for adultery.

Another exception to the maxim is where the deceased has committed a tort which involves the wrongful appropriation of the plaintiff's property and has added it (or its proceeds) to his own estate, in which case, an action can be maintained.

Further exceptions to the application of this maxim in England are to be found under the Fatal Accidents Act, 1846, the Employers Liability Act, 1883, and the Workmen's Compensation Act, 1925.

Under Indian law

Exceptions to the maxim are almost the same under Indian law also, the statutory exceptions being contained in the Legal Representatives Suits Act, 1855, the Fatal Accidents Act, 1855, and the Indian Succession Act, 1965.

Illustrative cases where the maxim was applied

Prusti v. Mohanty : A.I.R. 1978 . Ori. . 217

In this case, the Orissa High Court held that where a money decree was passed against a Hindu in respect of the amount received by him from the decree-holder by misrepresentation of facts, the liability would be personal, and could not be extended to his son under Hindu Law. It was held that

whatever relief the decree holder had against the father under the law of torts did not subsist against his son, as it ended with his father's death.

Philips v. Homfray : 24 Ch. D. 439

The wrongful act, in this case, was a trespass to land by the secret use of certain underground ways without the land-owner's knowledge. The action was brought by the land-owner against the trespasser to recover compensation. While the action was pending, the trespasser died and thereupon the land-owner sought to continue the action against his executors on the ground that, as no fees had been paid for the use of the underground ways, the estate of the deceased had derived a profit from his wrong. The court held that the maxim applied, and that such unliquidated and uncertain damages could not be traced after his death to his assets.

Illustrative cases where the maxim was not applied

Hyde v. Dean of Windsor : Cro. Elliz. 552

In this case, the court held that the personal representatives of the deceased defendant were liable insofar as they had assets related to the contracts of the deceased, broken during his lifetime, and also contracts broken after his death, for the performance of which the deceased's skill was not required, and which were not to be performed by the deceased in person.

Batthyany v. Walford : 36 Ch. D. 280

It was held, in the above case, that an action for damages in respect of dilapidations to a building could be filed against the executors of the deceased. The reason given was that the omission to repair the building was not a tort, but a breach of a duty, analogous to an implied contract, with regard to the property. The liability of the deceased did not, therefore, die with him.

Chapter III

LAW REPORTS & MAGAZINES

This Chapter contains a discussion on law reports and magazines, under the following five heads :

A. Law Reports

B. Law Magazines

C. Explanation of citations

D. Search for case law

E. Abbreviations of Law Reports.

Q. What is meant by a law report ? B.U. Apr. 2000 Nov. 2000 May 2001 Nov. 2001 May 2002 Dec. 2002 Apr. 2003 Nov. 2003 Apr. 2004 Apr. 2005 Nov. 2006 Apr. 2007

Q. What is a Law Report ? How do you distinguish it from a Law Magazine ? B.U. Nov. 2005

Q. What is a Law Report ? What is its importance ? B.U. Apr. 2006

A. LAW REPORTS

Although legislation still remains the main source of law in most countries of the world, precedents or judge-made law is now emerging as an equally important, if not more important, source of law. The principle that judges do not make the law, but only declare it, is now largely a myth, all the more so in fields where legislation is at its minimum, as for instance, the law of torts or the law relating to Hindu undivided families.

The law laid down by higher courts is binding on the lower courts. Under Art. 141 of the Constitution of India, the law declared by the Supreme Court is binding on all courts within the territory of India. If this be so, some interesting questions arise. How are lower courts informed about the numerous judgments of the higher courts ? Likewise, how are all courts in India made aware of all the pronouncements of the Supreme Court ? The answer is simple : Law Reports.

A law report is a compilation of judgments of higher courts, published at regular intervals. All decisions of a particular court are not mechanically reported. Only those that involve an important interpretation of the law or lay down an important or new principle of law, find a place in the law reports.

Broadly speaking, law reports are of two types:

Official law reports and

Private law reports.

Official law reports are the official publications of the Government. Thus, the Supreme Court Reports (SCR) is an official report, published under the authority of the Supreme Court by the Controller of Publications, Delhi. On the other hand, the All India Reporter (AIR) is a private publication of the All India Reporter Pvt. Ltd., Nagpur.

Again, there are some general reports like AIR, which publish judgements in all fields of law. Specialized law reports, on the other hand, report judgments only in a particular field of law. Thus, the Criminal Law Journal reports judgments in criminal matters, the Income-tax Reports contain tax cases, and Company Cases has judgments in the field of company law and related matters.

Most law reports are published on a monthly basis. However, there are some that are published every fortnight (as for instance, Unreported Judgments), and some that come out every week (as for instance, Supreme Court Cases (SCC) and the Weekly Law Reporter).

Most law reports follow a standard format. Before the full text of the judgment appears, one finds the citation, the name of the court, the names of the parties and their pleaders, the case number, the names of the Judges and the date of the judgment. These details are followed by the head-notes prepared by the law reporter, which give a synopsis of the judgment with cross-references to the relevant paragraphs of the text of the judgment. Cases which were referred to, followed, distinguished or over-ruled are generally shown along with their citations. This is followed by the name of the Judge who has dictated the judgment, followed by the full text of the judgment of the court.

Mr. M. C. Setalvad, the then Attorney General of India, once formulated the following guidelines for reporting a case, namely, —

(i) The report must contain proper head-notes. The head-notes must be accurate and must contain the salient points raised and decided in the case.

(ii) Judgments dealing with construction of documents may be omitted, except when they state definite rules or principles of law which are aids to construction.

(iii) Minority judgments should not be omitted, as the dissenting view is equally important.

(iv) Quotations in a judgment are important too, and hence, they should not be omitted.

(v) Judgments of a single Judge should also be reported, if they contain binding principles of law.

Some Law Reports, frequently referred to by lawyers and Judges, will now be discussed briefly.

Q. Write a note on : All India Reporter. B.U. May 2001 Nov. 2001 Apr. 2003 Apr. 2004 Apr. 2005 Apr. 2006 Nov. 2006

(1) All India Reporter

The All India Reporter heads the list of the most popular and the most widely used law reporters in India. Published monthly by All India Reporter Private Ltd. from Nagpur, it was founded in 1922 by the late Mr. V. V. Chitale. Its current Chief Editor is Mr. V. R. Manohar, Advocate. Familiarly referred to as "AIR" by lawyers and judges alike, this reporter is a comprehensive journal covering recent judgments from all branches of law, — civil, criminal, revenue, etc.

The AIR, sometimes fondly described as a "treasure house of Indian case law", reports the latest cases decided by the Supreme Court as well as all the High Courts of India. These cases cover all central and local (State) Acts.

Perhaps the most interesting feature of the AIR is the head-notes which precede every judgment. A lawyer can always refer to these meticulously prepared head-notes for a quick gist of the entire judgment. One gets a fast glimpse of the ratio of the case, along with references to the relevant paragraphs of the judgment where such proposition of law is discussed by the Judge. This feature is extremely useful when a judgment runs into several pages — sometimes hundreds of pages — and a quick review thereof is urgently required. Cases referred to in the body of the judgments are also separately listed after the head-notes, ' followed by the names of the Advocates representing the parties.

Another prominent feature of the AIR is its Journal Section, where one finds interesting and enlightening articles on various topics of legal interest. In yet another section, recent Acts passed by the Parliament are published, so that Judges and lawyers alike can keep themselves abreast with the latest legislation in the country. The extensive coverage and quick reporting of recent judgments have made this reporter one of the most familiar names in the legal fraternity. From February 2003 onwards, the AIR includes a Digest of the latest cases of the Supreme Court of India, which has remarkably enhanced the utility of this reporter.

Almost all textbooks on Indian law make copious references to cases with reference to citations from the AIR. It is difficult to imagine a legal commentary in India without liberal references to the AIR.

Mode of citation: AIR (Name) 2004 (Year) SC (Court) 102 (Page)

Note: The above citation would appear as AIR 2004 SC 102. The line below has been added (in this citation and others that follow) only to explain to the reader, the various components of this citation, and would, naturally, not appear in the actual citation.

Q. Write a note on : Supreme Court Cases B.U. Apr. 2004 Apr. 2006

2. Supreme Court Cases

Familiarly known as SCC, this law reporter is published on a weekly basis from Lucknow. A publication of the Eastern Book Co., the reporter includes reportable as well as non-reportable judgments of the Supreme Court. Currently, the Editors of this law reporter are Mr. Surendra Malik and Mr. P L. Malik. As this is an exhaustive law reporter, it is published in about eight volumes every year, each volume running into approximately 800 pages.

Its prompt and authentic reporting, its maximum coverage and its analytical head-notes make SCC quite user-friendly. The head-notes give a fair gist of the case that follows, so that time is not wasted on perusing a lengthy judgment, in case the reader feels that it is not relevant for his purpose.

The Journal Section of this reporter contains interesting and thought-provoking articles on topics of current interest in the legal field. Like most other law reporters, SCC has a list of reported cases as also a useful Subject Index. In a section called "Notable Excerpts", it lists interesting quotations from judgments in recently decided cases. The Supreme Court Cases (Cri) contains useful judgments of the Supreme Court in criminal matters.

The full text of Supreme Court Cases is now also available on a CD-Rom, and updates can be downloaded from the site of the Publishers on the internet.

Mode of citation: (2004)(Year)1 (Vol)SCC (Name)25 (Page)

Q. Write a short note on : Supreme Court Reports B.U. Apr. 2003

3. Supreme Court Reports

Familiarly referred to as "SCR", this reporter is published under the authority of the Supreme Court of India by the Controller of Publications, Delhi. An official publication of the Supreme Court, it is published on a monthly basis. Its current Editor is Mr. Rajendra Prasad and the Assistant Editor is Dr. Tirlok Nath Arora.

SCR reports all judgments in important cases decided by the Supreme Court of India. These cases are reported in a chronological order in a series of volumes which are fully indexed for ready reference. In order to accommodate the vast number of cases, this reporter runs into several volumes every year. It contains a simple "Contents", giving only the names of the cases, followed by a detailed Subject Index of all the reported cases.

This reporter has brief head-notes, followed by detailed head-notes. Cases referred to or relied upon or overruled are also listed with their citations before the text of the judgment. This is followed by the names of the parties and the name of the Judge delivering the judgment. Then comes the full text of the judgment.

As Judges and lawyers refer extensively to SCR in the court-room, this law reporter has acquired an enviable reputation in the legal fraternity. Along with the frequently used AIR (-see above-), the SCR occupies a prominent place in every law library and in every court-room.

Mode of citation: (2004)(Year)3 (Vol)SCR (Name)44 (Page)

Q. Write a note on : Criminal Law Journal. B.U. May 2002 Apr. 2003 Nov. 2003 Apr. 2004 Apr. 2006

4. Criminal Law Journal

The Criminal Law Journal, as the name suggests, is a collection of landmark judgments of the Supreme Court, as well as all the High Courts, in cases involving criminal matters. It is published monthly by the All India Reporter Private Ltd., from Nagpur. It was first published in 1904, and its current Chief Editor is Mr. V. R. Manohar, Advocate.

This law reporter is a veritable gold mine of judgments of Indian courts in matters involving criminal law. With a sense of remarkable promptness, it reports a plethora of cases relating to criminal matters from all over the country. At a moderate price, one can avail of a coverage of more than 5,000 pages every year.

This reporter contains a Nominal Table of the reported cases and a Subject Index with detailed head-notes of reported cases, arranged subject-wise. A List of Cases which are followed or overruled or reversed or dissented from, during a given period, adds tremendously to the utility of this reporter. Another interesting feature is the Journal Section, containing interesting and illuminating articles in the field of criminal law and jurisprudence. Two or three important decisions are also summarised in a few lines on the cover page of each issue. - Interestingly, the Journal accepts articles, not only from lawyers and jurists, but also from Government Officers, — and even from law stadents.

Given its prompt and accurate reporting, the Criminal Law Journal is an indispensable tool for all practitioners in the interesting field of criminal law.

Mode of citation: 2004(Year)Cri. L. J. (Name) 1 (Vol)(Kerala) (State)55 (Page)

Q. Write a note on: Maharashtra Law Journal. B.U. May 2002 Dec. 2002 Nov. 2005 Nov. 2006

5. Maharashtra Law Journal

This law reporter is published every month by Chandurkar Publishing House, Nagpur, since 1963, its current Chief Editor being Mr. Chandurkar. Its utility lies in the fact that it reports all important judgments of the Bombay High Court, including its Benches outside the city of Mumbai, namely, Nagpur, Aurangabad and Goa. As it is published monthly, it is of immense value, as it keeps the lawyer - as well as the Judge - up-to-date with judicial decisions passed in the previous month. The reporter also publishes the bare texts of new statutes passed by the Legislature of Maharashtra, as well as recent amendments to the existing statutes.

Although this law reporter is mainly concerned with cases from Maharashtra, it also contains an interesting section called "Notes from Supreme Court cases", where cases of general importance, recently decided by the Supreme Court, are briefly discussed.

Maharashtra Law Journal (or MLJ, as it is familiarly referred to) is well-indexed, having a short Nominal Index, a detailed Subject Index, an Index of Notes from Supreme Court Cases and an Index of Cases. The Publishers have also come out with a useful 32-years' Digest of the Maharashtra Law Journal, covering the period 1960 to 1991. Subsequent thereto, 6-years' Digests have also been published. MLJ is now also available on a CD-Rom, right from the date of its first publication, that is, 1963, till date.

Mode of citation: 2004(Year)(2) (Vol) Mh. L. J. (Name)10(Page)

Q. Write a note on: Bombay Law Reporter.B.U. Nov. 2001

6. Bombay Law Reporter

The Bombay Law Reporter (BLR for short) is a leading law reporter, popular with lawyers and Judges alike since 1899. Published from Pune, this law reporter, which describes itself as "the premier Law Journal of Maharashtra" contains all important judgments recently delivered by the Supreme Court of India and the Bombay High Court, including its Benches at Aurangabad, Nagpur and Goa. It was founded by the late Mr. Ratarilal. The present Editor of this reporter is Mr. Divekar, and the Managing Editor is Mr. Tipugade. Its Editorial Board and its Advisory Board consist of distinguished lawyers.

The Bombay Law Reporter contains a List of Cases reported therein, with a separate Subject Index. The Journal Section, which is separately indexed, also includes recent amendments, mainly relating to Acts which are in force in Maharashtra.

This law reporter is very popular with the lawyers and Judges and is cited very often by lawyers arguing in courts in Maharashtra. Interestingly, it is relied upon in judgments passed all over the country. Previous volumes of BLR, from 1978 onwards, are also available with the Publishers.

Mode of citation : (2004) (Year) (3) (Vol) Bom.L.R. (Name)101 (Page)

7. Labour and Industrial Cases

This is a monthly law reporter dedicated to labour and industrial cases, including civil service cases. It is published by All India Reporter Ltd., Nagpur, and its Chief Editor is currently Mr. V. R. Manohar, Advocate.

The Nominal Table of this reporter gives a list of cases reported, and the Subject Index gives a subject-wise classification of the cases reported in this journal. Its Journal Section contains not only interesting articles, but also the latest Notifications, Rules, Schemes, etc.

A veritable treasure-house of judgments on labour and industrial matters, this law reporter is a must for any lawyer practising in the field of labour laws.

Mode of citation: 2004 (Year) Lab. I. C. (Name) 101 (Page) Kerala (Court)

Q. Write a short note on: Income tax Reports. B.U. Apr. 2005

8. Income Tax Reports

Founded in 1933 by Mr. Aiyar, this law reporter, familiarly referred to as "ITR", publishes cases pertaining to tax matters, namely, income tax, wealth tax, gift tax, etc. Published from Chennai, this reporter contains all important cases decided by the Supreme Court and the various High Courts in the field of direct and indirect taxation.

This reporter also publishes statutes, rules, notifications and circulars relating to tax laws, as for instance, Circulars issued by the Central Board of Direct Taxes. Recent amendments to existing statutes, the Finance Bill and the Finance Act, passed by Parliament every year, are also to be found in this reporter. Cases contained in this reporter are profusely cited before several courts, like the High Court and the Supreme Court, as well as before Tribunals like the income-tax Appellate Tribunal. This law reporter is thus a must for every tax practitioner.

Mode of citation: [2004] (Year)48 (Vol)ITR (Name)(S.c.) (Court)20 (Page)

9. Company Cases

Reports of Company Cases (including cases on banking and insurance), popularly referred to as "Company Cases", is a law reporter dedicated to the corporate sector. Published by Company Law Institute of India, Chennai, it was founded in 1931 by Mr. A. M. Aiyar. Currently, its Editors are Mr. T. A. Rajgopal, Advocate, Mr. T. A. Ramchandran, Advocate and Mr. T. A. Ramakrishnan, Advocate.

One finds in this law reporter, important judgments of the Supreme Court, as also of all High Courts, on corporate law. Apart from reporting judgments on cases under the Companies Act, it also includes judgments on related topics like banking, insurance, mortgages, taxation, arbitration, etc.

Apart from a Table of Reported Cases, it also has a Table of Cases Cited, along with a General Index, which follows a subject-wise classification. All these features add immensely to the utility of this reporter. A separate Index refers the reader to Statutes, Rules, Circulars and Notifications.

Mode of citation: [2004] (Year)88 (Vol)(Comp. Cas.) (Name)10 (Page)

10. Consumer Protection & Trade Practices Journal

This monthly journal is being published since 1993 by Kumar Publications, New Delhi, its Chief Editor being Mr. S. S. Kumar, Advocate. The journal contains a comprehensive reporting of all cases involving consumer protection, whether under the Consumer Protection Act or under the Monopolies & Restrictive Trade Practices (MRTP) Act. Its Journal Section contains highly stimulating articles penned by leading lawyers and jurists.

The three main sections of this journal are: (i) Judgments on consumer-related cases decided by various courts constituted under the Consumer Protection Act, as for instance, the National Commission in New Delhi and the various State Commissions all over India; (ii) Judgments passed by the MRTP Commission in New Delhi; and (iii) Judgments passed by the Supreme Court and the High Courts in cases relating to consumer protection.

Apart from consumer cases, the journal also includes full-length Orders passed by the MRTP Commission in matters relating to restrictive, unfair and monopolistic trade practices. It is thus an extremely useful journal, not only for lawyers, but also for professionals and businessmen.

Mode of citation: 2003 (Year)CTJ(Name)22(Page)(MRTP)(Under the MRTP Act)

O R

2003 (Year)CTJ (Name)101(Page)(CP) (Under the Consumer Protection Act)

Q. Write a short note on : Divorce & Matrimonial cases.B.U. Apr. 2007

11. Divorce and Matrimonial Cases

This monthly reporter is published by DLT Publications, Delhi, its current Editor-in-Chief being Mr. S. M. Suri, Advocate. Its Editorial Committee consists of eminent lawyers and retired judges.

This law reporter (familiarly known as "DMC") deals exclusively with cases in the matrimonial field, as for instance, divorce, judicial separation, maintenance, etc. Interestingly, it also reports judgments on allied matters like dowry and dowry death cases. One also finds English matrimonial cases in this law reporter, which are of great use, even to Indian lawyers.

A very brief but precise head-note, followed by the result of the case, e.g. "Appeal allowed" or "Appeal dismissed" adds to the utility of this reporter dedicated to matrimonial matters. Apart from a Nominal Index, it also has a topic-wise Subject Index as well as a separate section-wise Subject Index.

Owing to its wide coverage of latest cases from all over the country, DMC is a must for all practitioners in the matrimonial field.

Mode of citation : I(vol)(2004)(Year)DMC (Name)22 (Page)

Q. Write a note on : Bombay Cases Reporter. B.U. Nov. 2000

12. Bombay Cases Reporter

This Law Reporter describes itself as "a complete Journal of the Bombay High Court", and is published monthly from Mumbai, since 1975. Its Advisory Committee consists of eminent lawyers and ex-Judges. The current Chief Editor is Mr. V. G. Madhbhavi, Advocate and the current Editor is Mr. J. C. Agnihotri, Advocate.

The Bombay Cases Reporter publishes judgments of the Bombay High Court in Mumbai, as also its Benches at Nagpur, Aurangabad and Goa. The Subject Index of this Reporter is followed by a Nominal Index of cases. Another section called "Acts and Amendments Section" gives all the latest Acts passed, mainly by the Maharashtra Legislature, as also recent amendments to existing local Acts. Yet another interesting feature is a Table showing the names of all the Judges of the Bombay High Court, along with their dates of birth, their dates of appointment and their dates of retirement.

Bombay Cases Reporter has served the Bench and the Bar since 1975, and has grown from a single volume of 500 pages to six volumes running into over 6,000 pages today. Previous issues have now been converted into a digital format for providing easier access to all its readers.

This reporter is very useful to lawyers who are concerned mainly with State legislation of Maharashtra, as well as with cases decided by courts in Maharashtra. However, relevant judgments of the Supreme Court, particularly where judgments of the Bombay High Court have been appealed against in the Supreme Court, are also to be found in this reporter.

A separate law reporter, Bombay Cases Reporter (Criminal), dealing with cases in criminal matters is also brought out by the same Publisher.

Mode of citation: 2004 (Year)(2) (Volume)Bom. C.R.(Name)10(Page)

13. All Maharashtra Law Reporter

This law reporter is published on a monthly basis from Indore, its current Editors being Mr. Lai C. Sahita and Mr. R. S. Kelkar.

Contrary to what its name may suggest, this reporter also gives the full text of important judgments of the Supreme Court, with a separate Nominal Table for those cases Although its main aim is to report cases from the Bombay High Court (including its Benches outside the city of Mumbai), it also reports important cases from other High Courts, a feature that adds considerably to the utility of this reporter. It also has an enlightening Journal Section.

An interesting feature of this reporter is that it also contains a Consolidated Nominal Table (separately for the High Court and the Supreme Court), as also a Consolidated Topical Index and a Consolidated Statutory Subject Index, which makes search for case law much easier. The top ten decisions reported in any particular issue of this law reporter are all listed on one page in the opening pages of this reporter.

Mode of citation: 2004 (Year)(2) (Vol)ALL MR(Name) 10(Page)

Q. Write a note on: Indian Law Reports. B.U. Apr. 2000, May 2001, Nov- 2001, Dec. 2002 Nov. 2003

14. The Indian Law Reports

This is an official publication of various High Courts of India. These Reports are divided into various series, as for instance, the Gujarat Series, the Kerala Series, and so on, containing reports of cases from that particular High Court. For instance, the Bombay Series is published under the authority of the Governor of Maharashtra, and is edited by Mr. Tipnis, Advocate.

The Table of Cases in this Reporter neatly divides all cases into Original Cases, Appellate Cases (sub-divided into Civil Appellate Cases and Criminal Appellate Cases), Income-tax References, and so on. Cases which are cited in the reported cases are also shown separately in an alphabetic Index, it also has a fairly exhaustive General Index, sometimes running into seventy to eighty pages.

The cases are reported in a fairly simple manner. First comes the name of the Judge of the Court, followed by the names of the parties. Next comes a meticulously prepared head-note that gives the

reader an excellent gist of what was decided in that case. This is followed by a list of cases referred to in the body of the judgment, with the relevant citations by way of footnotes. Next comes a sentence which states : "The material facts of the case are stated in the judgment." Then come the names of the lawyers representing the parties, followed by the name of the Judge delivering the judgment, followed lastly, by the full text of the judgment.

Mode of citation : ILR (Name)(1999) (Year)3 (Vol)Mad. (Court)102 (Page)

Q. Write a short note on : Madras Law Journal. B.U. Apr. 2007

15. Madras Law Journal

The Madras Law Journal is perhaps the oldest privately published law reporter in India. It was first published in 1891 from Madras (now, Chennai), from where it continues to be published even today. As its name suggests, it reports all important cases decided in Tamil Nadu, and in particular, by the Madras High Court.

The remarkably long innings of this law reporter speak volumes for this journal's popularity and dependability. Every year, this journal runs into several volumes, and currently, its Editor-in-chief is Justice Subramani, a former Judge of the Madras High Court and the Editor, Mr. Kannan, Advocate. For a lawyer practising in the State of Tamil Nadu, this law reporter is indeed indispensable.

Mode of citation : 2004 (Year)(2)(Vol)MLJ(Name)10(Page) tip Unreported Judgments

This law reporter-cum-magazine with an interesting name reports almost all judgments, reported and unreported, of the Supreme Court of India, on civil, criminal and revenue matters. It is published fortnightly from Jodhpur, Rajasthan. Currently, its Chief Editor is Dr. S. K. Awasthi and its Publisher is Mr. G. C. Sachdeva. The Advisory Board of this law reporter is an impressive list of not only senior lawyers and Judges, but also of Law Professors. This Magazine is one of the newer ones, having been introduced to the legal fraternity as recently as in 2002.

Being a fortnightly publication, it reports the most recent cases of the Supreme Court, though only about 10 to 15 in every issue. This law reporter has a useful Table of Cases and a Subject Index, with detailed head-notes. It also has a Journal Section, containing interesting articles penned by leading lawyers and jurists on topics of current interest.

The full text of the judgment is preceded by a short head-note, as also a detailed head-note, with reference to the corresponding paragraphs of the body of the judgment. This is followed by the names of the Advocates representing the parties, as also a list of cases referred to in the body of the judgment.

Mode of citation: 2004 (Year)(1)(Vol)UJ(Name)10(Page)(SC)(Court)

Q. Write a short note on : Judgments Today. B.U. Nov. 2005 Nov. 2006

17. Judgements Today

In this law reporter, one finds important cases decided by the Supreme Court of India. It does not confine itself only to civil or only to criminal cases, but encompasses all recent judgments of the

Supreme Court in diverse fields. Judgements Today is published by Taxation Publishers Private Ltd., New Delhi. Its current Editor is Mr. V. Gopalan, the Publisher being Manjula Pandit. The Editorial Advisory Committee of this popular law reporter consists of eminent members of the legal fraternity, including retired Justices and Chief Justices of the Supreme Court and various High Courts.

This law reporter is known for its quick and efficient reporting of the judgments of the Supreme Court. Every issue of Judgements Today contains only five to seven cases, some of which are decided as recently as three or four days before its publication. Its Nominal Table, Comparative Chart and Subject Index add greatly to its utility. The usefulness of its Subject Index lies in the fact that, under the appropriate topic, the relevant case is shown with the names of the parties, the names of the Judges, and even very short head-notes which give the reader a gist of what was held by the court in that particular case.

Although this law reporter is of immense value to all lawyers, it is of particular value to those whose aim is to keep themselves up-to-date with the latest cases decided by the Supreme Court.

Mode of citation : JT (Name)2004(Year)(4)(Vol)SC(Court)10(Page)

Q. Write a note on : All England Reports. B.U. Apr. 2000 Nov. 2001 Dec. 2002

18. All England Law Reports

The All England Law Reports is one of the best known and most reliable law reporters of England, which publishes important judgments of all the superior courts of Great Britain. Its publisher is a leading house of law publications in England, Butterworths.

The Editorial Board of this law reporter consists of eminent jurists and members of the Bar, who have contributed to its reputation in the past, and continue to do so today. The current Editor of this publication is Mr. Craig Rose, Barrister.

Apart from its Table of Contents, this reporter also has a Digest of Cases, which is a subject-wise classification of all the reported cases. An innovative feature is a separate Index of all statutes referred to in the judgments, indicating the page number on which a reference to such statute appears in the judgments. In a special Section, interestingly entitled "Notes-up", it gives a list of cases which were considered, approved, affirmed, applied, distinguished or over-ruled in the cases reported by it. The text of the judgment is preceded by the name of the case, the names of the Judges, excellent head-notes, a List or Cases referred to in the judgment, as also a List of Cases referred to in the arguments of the respective lawyers.

The credibility and utility of this law reporter become evident when one sees that it is extensively referred to, not only by English lawyers and Judges, but also by their Indian counterparts. Most references to English cases, whether in books on Indian law or in decisions of Indian courts, prefer to cite English cases with reference to this law reporter.

Mode of citation : [2004] (Year)2 (Vol)ALL E R (Name)22 (Page)

19. The Weekly Law Reports

As its name suggests, this law reporter, familiarly referred to as "WLR", is published every week by the Incorporated Council of Law Reporting (ICLR), London. Currently, its Editor is Mr. Robert Williams, Barrister. The ICLR for England and Wales has an impressive Council, consisting of a Chairman, ex-officio members, elected members, co-opted members and a secretary.

WLR is known for its meticulous standards of reporting. One has only to leaf through this reporter for the names of the Lord Chancellor and other Lords of the House of Lords, as well as Judges of the Court of Appeal, High Court, Queen's Bench Division and the current Attorney-General of England.

This law reporter enjoys an edge over others inasmuch as barristers, and even Judges, can keep themselves abreast of the latest case-laws on a weekly basis.

Mode of citation : [2004] (Year)2 (Vol)WLR(Name)10(Page)

Q. Name three Law magazines. B.u. Nov. 2005

B. LAW MAGAZINES

1. INDIAN BAR REVIEW

The Indian Bar Review was first published in 1972 as the Journal of the Bar Council of India. In April 1974, the Bar Council of India Trust was established as a Public Charitable Trust designed to serve two broad areas which from the statutory obligations of the Bar Council of India, being maintenance of professional standards and improvement of legal education. In keeping with this ideology, -inJ980, this Trust took over the publication of the Journal. Today, the journal is being brought out regularly as a quarterly publication in March, June, September and December every year.

Rechristened as the Indian Bar Review, this Journal enjoys a mass readership of judges, lawyers, law teachers and researchers. Its articles reflect the state of law and legal education in the country and it is rated as one of the top legal periodicals published in the country.

2. THE PRACTICAL LAWYER

The Practical Lawyer is one of the latest magazines to be introduced in the legal world. It is published on a monthly basis from Lucknow by the Eastern Book Company and is edited by Mr. Surendra Malik. A single issue costs Rs. 40, while an annual subscription is available for Rs. 600.

The Practical Lawyer is divided into numerous sections, affording in totality an all-comprehensive glimpse of the latest legal happenings. The "Important Enactments" section of the magazine enumerates the latest changes in the law, whether by way of legislative enacments or by subordinate legislation. Likewise, the "Important Judgments" section lists the latest judgments with a one-line gist.

The magazine also contains a section called "News Briefs", where current happenings in the judicial arena are provided court-wise. The magazine also publishes some scholarly articles relating to various areas of law-constitutional, corporate, intellectual property, etc. Additionally, the magazine provides detailed information of the most recently published law books.

The bulk of the magazine is formed by the digest of the Supreme Court Cases, the Law Reports and the Weekly Law Reports reporting the judgments of the Supreme Court and High Courts in a head-note style. Citations are provided so that one may trace the judgment in the corresponding law report without much effort.

3. MANUPATRA NEWSLINE

The first of its kind, Manupatra Newsline, founded in 2006, is a one-stop newsletter for judges, practitioners, professionals, academicians and students. A fine blend of the most critical articles, insightful interviews, captivating news, comprehensive information, latest events and the most recent happenings in the legal arena across the country, MANUPATRA NEWSLINE is a must read for all members of the legal fraternity. The goal of its publishers is to create an active forum for exchange of ideas and information amongst the legal fraternity in India.

The section on 'Law Firms' shares with the legal fraternity the achievements and happenings of the legal community at large. It provides information regarding new appointments, movements, relocations, mergers, promotions, formation of new associations, awards, degrees, honours, elections, authors and speakers.

The 'Campus Watch' section invites Law Colleges and Faculty to sent in their contributions for covering happenings and news from the campus on various Moot Competitions, Scholarships, Campus Placements, Meritorious Students, Outstanding Faculty, Seminars, Events, Festivals, New Courses and more.

This magazine is published monthly by Manupatra Information Solutions Pvt. Limited from Noida, U.P. The annual subscription is Rs. 540, while a single copy costs Rs. 75.

Q. Write a note on : Law Teller. B.U. Apr. 2000 Nov. 2000 Nov. 2001 May 2002 Dec. 2002

4. LAW TELLER

Law Teller is a legal awareness magazine published every month from Chandigarh, and nominally priced at Rs. 25. (Annual subscription : Rs. 300.)

The Magazine seeks to keep the reader up-to-date, by reporting important judgments of various courts, as well as publishing interesting articles on various socio-legal subjects,^ Summarised versions of recent pronouncements of courts (mainly the Supreme Court) are listed under a regular feature called "Flash Points".

Law Teller also has a regular feature called "Law For You", which contains useful extracts from cases decided by various courts, of interest not only to lawyers, but also to law students and the layman. The point decided by the courts, i. e., the ratio decidendi, is aptly summarised in one paragraph, and a reference is given to the name and number of the Petition, Appeal, etc., so that the interested reader can profitably refer to the entire text of the judgment.

Yet another unique feature of this Magazine is called "Lighter Side of Law", containing cartoons depicting court-room jokes, etc.

In its own words, Law Teller has only one policy : To strive for legal awareness. In furtherance of this policy, it even provides free legal advice to its readers to help them solve their legal problems, justifying its claim to be "a boon to the common man". This is what the Magazine has to say for itself:

"We feel if students are disclosed the latest case-law, they can act as torch-bearers for showing the legal path in their houses, neighbourhood and villages. Legal awareness should be created regarding certain important aspects which will help to remove numerous evils.

xxxxxx xxxxxx xxxxxxx xxxxxxxx

Keeping in mind that "Law is the last interpretation of the last Judge", we certainly hope to fulfill your requirements by keeping you abreast with the very latest."

Q. Write a note on : Lawyers Collective. B.U. Apr. 2000 Dec. 2002 Apr. 2003 Nov. 2003 Apr. 2004 Apr. 2005

Q. Who is the Editor of The Lowyers Collective ? B.U. Nov. 2005

5. LAWYERS COLLECTIVE

The Lawyers Collective, published since 1986, is a monthly Magazine, aiming to use law as an instrument of social change. Edited by Ms. Indira Jaising, and printed by All India Reporter (AIR) Pvt. Ltd., Nagpur, it is priced at Rs. 30. (Annual Subscription : Rs. 300.)

This Magazine provides legal information for use by lawyers and activists on issues of socio-legal concern. An interesting feature of this Magazine is that it invites articles from its readers, especially law students, which are then published. Thus, if any reader has strong views about any issue, legal, or even otherwise, the Magazine can be profitably used as a platform to voice his / her concerns and opinions.

The Magazine has a thought-provoking Editorial and a "Cover Story' section on current topics of general interest. Another interesting feature is "Monthly Updates", — which is a good summary of important Judgments of the Supreme Court of the previous month. Five or six Judgments of the Apex Court are summarised in plain language, so that a lawyer and student alike may keep himself abreast of the most recent pronouncements on Indian law. The citation of the Judgments given at the end of the summary allows the reader to refer to the text of the Judgment for further details.

Yet another feature of the Legal Diary is entitled "Court Round Up". This provides national and international tit-bits of legal happenings culled out from newspapers of the previous month. Another feature called "Adalat Antics" touches the lighter side of the law.

The Magazine does not accept commercial advertisements, — although one does find it advertising its own (i. e. AIR) publications.

Q. Write a note on : One India, One people. B.U. Apr. 2003 Apr. 2005

6. ONE INDIA, ONE PEOPLE

This is a unique monthly magazine, published since August 1997. As can easily be gauged from its name, this is not a law magazine. It describes itself as the "Magazine for a Great, Strong, United India". It is edited by Mr. Sadanand A. Shetty, and is published monthly from Mumbai. It is priced at Rs. 50. (Annual subscription : Rs. 500.)

This Magazine caters to a variety of readers with articles on multifarious topics. It has an in-depth and interesting Editorial. The objective of the magazine is to make the general public, as well as the policy-maker and the decision-takers, aware of the causes which come in the way of the progress of our nation.

Topics of national importance are taken up for discussion, as for instance, population, accountability in public life, alleviation of poverty, education, gender justice, corruption, judicial and electoral reforms, public accountability, globalization, the problem of migration, rural development, and so on.

Aiming at a united India, it incorporates articles of general interest, helping the reader to know his country better. In its own words, —

"In all cases, you are Indian first, last and always. Be a proud Indian. Make this country great, strong & united."

A popular feature of this Magazine is the Young India Quiz, which gives Questions with multiple-choice Answers, which test the readers' knowledge of various facets of India. Entries containing the answers can be posted to its office at Mumbai. Alternately, the Quiz can also be answered on-line. One winner is chosen as the "Cool Winner" every time, and his / her name is published in the next issue with a photograph, if available.

On "Morparia's Page", one finds some of the best cartoons of Morparia. Another column called "Great Indians" profiles Indians who have contributed to the betterment of the country in various fields, be it

Writi J.e on : Consui,,<*." Confrontation.

B.U. Nov. 2003

Write a note on : Lex et Juris.

B.U. Nov. 1999 Nov. 2000 Nov. 2001 May 2002 Apr. 2004

freedom struggle or politics or science or technology or theatre or music. Another important feature is called "Know your India better", introducing the reader to various places of interest and monuments of India.'

One noticeable feature of this Magazine is that it accepts commercial advertisements, — a practice that is rightly avoided by other Magazines like INSIGHT and Law Teller.

Q. Write a note on: Consumer Confrontation. B.U. Nov. 2003

7. CONSUMER CONFRONTATION / INSIGHT

Formerly known as "Consumer Confrontation", this bi-monthly Magazine, now called INSIGHT, is published by CERS (Consumer Education and Research Society), Ahmedabad, and priced at Rs. 40. (Annual Subscription : Rs. 180.)

INSIGHT is a comprehensive source of independent, objective information on consumer products in the areas of food, pharmaceuticals and household electrical appliances. It recommends brands based on comparative testing, evaluating and ranking of products at its independent testing laboratory, the first of its kind in India.

Every issue of this Magazine, whose guiding spirit is Prof. Manubhai Shah, contains a Test Report, which gives a detailed analysis of various brands of a particular item tested by CERS. Its past issues contain interesting Reports on tests conducted by it on soft drinks, fans, hairdryers, biscuits, ice-creams, and so on. INSIGHT also contains regular features on "Food and Health", "Environment", "Consumer Tips", "Corporate Crimes", "Unsafe Products", etc.

An interesting feature of this Magazine is its regular column called "Letters", where readers, vent their grievances and complaints about specific products and services. In another feature entitled "Complaint Resolved', the Magazine covers a list of complaints which have been successfully resolved, also indicating the time taken to resolve them. Under the caption, "Around the World', the Magazine brings to its readers, tit-bits on health, environment, consumer protection and related topics.

Write a note on: EX ET JURIS. B.U. Nov 1999, Nov. 2000, Nov. 2001, May 2002, Apr. 2004

EX ET JURIS

Lex et Juris is a law magazine published by Mr. Maneck Davar and Mr. Mahesh Jethmalani, the former also being the Editor of the magazine. Its Editorial Board includes legal luminaries like the ex-Chief Justice of India, Mr. Y. V. Chandrachud, Mr. Soli Sorabjee, Mr. Ram Jethmalani, Mr. Upendra Baxi and Mr. K. K. Venugopal.

Priced nominally at Rs. 10 per issue, with an annual subscription of only Rs. 90, this magazine is known for covering legal developments, judicial decisions and current legislation. It also contains analytical articles by some of the most eminent names in the legal profession, in an endeavour to keep the reader well-informed on all aspects of the law.

Its Editorial, aptly entitled "With Prejudice" is both bold and interesting. Every issue of this magazine has a Cover Story penned by an eminent writer. It has a special section called Special Features, containing short articles of interest to lawyers and laymen alike. Another feature called Corporate File includes articles which are of special interest in the corporate world. News Reports and Book Reviews add to the appeal of this popular magazine.

Yet another interesting, though unusual, feature of Lex et Juris is The Crossword, — a crossword with a difference, as all the words used in the crossword puzzle are legal terms. Those readers of the magazine who cannot get all the words are kept in suspense until the following month, when answers to the previous month's crosswords are published.

From April 1987, a feature that proved very popular with its readers was one entitled "Famous Murder Trials", where some renowned murder trials were discussed in successive issues of the magazine.

For those who may be of the view that humour has no place in the life of the lawyer and the Judge, the magazine regularly publishes humorous articles, as for instance, "Courtroom Humour", complete with cartoons, by Mr. K. Krishnamurthi.

Considering the immense popularity of this magazine, it is indeed a matter of great regret that publication of Lex et Juris has been discontinued since several years.

C. EXPLANATION OF CITATIONS

Until the fifteenth century, legal treatises seldom contained any reference to judicial decisions. Then came Bracton's Notebook and the Year Books, and the latter can be regarded as the first Law Report to be published in England.

A citation is a notation of a reported case. In support of arguments, lawyers on both the sides refer to decided cases that have a binding, or in some cases, a persuasive value on the court hearing the case. A reference to such a case or an authority is known as citing a case.

There is a standard format in which a case is reported. The exact manner of its citation differs from case to case, but generally speaking, it includes the names of the litigating parties, the abbreviated name of the law reporter in which the case is cited, the year of its publication, the court that decided the case, the volume number of the law report, if any, and the page number on which the case is reported.

To take an example of a case decided by the Supreme Court, the citation appears as : Hindustan Times v. State of U.P., AIR 2003 SC 250. This means that, in this case, Hindustan Times is the Petitioner or the Appellant (in case this is an Appeal from a High Court) and the State of U. P. is the Respondent. The case has been reported in the 2003 issue of All India Reporter, at page 250. The citation also indicates that the case has been decided by the Supreme Court of India.

At times, one finds a citation of this type : Hindustan Times v. State of U. P., AIR 2003 SC 250 at 258. Here, two page numbers are referred to, and it indicates that the judgment starts at page 250, but the relevant page (for a particular purpose) is page 258. In such a case, the reader can go directly to page 258, and save a lot of time and energy.

Needless to state, the reverse process also works in the same way; if the relevant details are known, the citation can be arrived at.

How to read a citation

Most citations of Indian cases found in legal text-books are either of the Supreme Court or of a High Court. Where it is a case decided by a High Court, the party whose name appears first would be a Plaintiff (in cases where the plaint is originally filed in that High Court), and the opposite party would then be described as the Defendant. If, however, he has filed a Petition in the High Court (as for instance, a Writ Petition or a Matrimonial Petition), he would be described as the Petitioner and the opposite party would be the Respondent. It is also possible, that the party whose name appears first,

has filed an Appeal in the High Court from a lower court, in which case, he would be called the Appellant and the opposite side would be described as the Respondent.

Just by looking at the citation, it is not possible to know as to which one of the above alternatives exists in a particular citation, and therefore, for all High Court citations, the first party can best be described as "the Plaintiff / Petitioner / Appellant", and the opposite party as "the Defendant / Respondent".

If, however, the citation is of a case decided by the Supreme Court, since no plaints are filed in that court, the party whose name is stated first can only be a Petitioner (if he has filed a Petition) or an Appellant (if he has filed an appeal). As one cannot make out which of these two alternates exist in a given citation, such a party can best be described as "the Petitioner / Appellant" (as he cannot be a Plaintiff). The opposite party, in both cases, is called the Respondent (as he cannot be a Defendant).

Examples of citations

1) Ramdas v/s Chinnappa (1958) 2 SCC 304

This is the citation of a case where Ramdas is the Petitioner / Appellant and Chinnappa is the Respondent. The case is reported in the Second Volume of Supreme Court Cases in the year 1958, on page 304.

2) Laxman versus Meena AIR 1997 Cal 312

This is the citation of a case where Laxman is the Plaintiff / Petitioner / Appellant and Meena is the Defendant / Respondent. The case is reported in All India Reporter in the year 1997 on page 312. This case was decided by the Calcutta High Court.

3) Allen V/s Hume (1957) 3 SCC 304

This is the citation of a case where Allen is the Petitioner / Appellant and Hume is the Defendant / Respondent. The case is reported in Supreme Court Cases in the third volume of the year 1957 on page 304.

4) Ranjit v. Mohan AIR 1997 Cal 310

This is the citation of a case where Ranjit is the Plaintiff / Petitioner / Appellant, and Mohan is the Defendant / Respondent. This case is reported in All India Reporter in 1997 on page 310. This case was decided by the Calcutta High Court.

5) Laxman v/s Radhika AIR 1995 Orissa 420

This is the citation of a case where Laxman is the Plaintiff / Petitioner / Appellant and Radhika is the Defendant / Respondent. This case is reported in the All India Reporter of 1995, on page 420. This case was decided by the Orissa High Court.

6) A. K. Gopalan v/s State of Madras AIR 1950 SC 27

This is the citation of a case where A. K. Gopalan is the Petitioner / Appellant and the State of Madras is the Respondent. This case is reported in All India Reporter in the year 1950 on page 27, and was decided by the Supreme Court.

7) Reena Mitra v/s Ashesh Mitra 95 (WN) 185

This is the citation of a case where Reena Mitra is the Plaintiff / Petitioner / Appellant and Ashesh Mitra is the Defendant / Respondent. This case is reported in Volume No. 95 of Weekly Notes on page 185.

8) Ramesh vs. Sanjeev AIR (1997) Cal 452

This is the citation of a case where Ramesh is the Plaintiff / Petitioner / Appellant and Sanjeev is the Defendant / Respondent. This case is reported in 1997 issue of the All India Reporter on page 452 and was decided by the Calcutta High Court.

9) Lakshman vs. Manu (2001) 2 SCC 420

This is a citation of a case where Lakshman is the Petitioner / Appellant and Manu is the Respondent. This case is reported in the Supreme Court Cases in the Second Volume of the year 2001 on page 420, and was decided by the Supreme Court.

10) S.T.O. v/s Shiv Ratan AIR 1966 SC 142

This is a citation of a case where S.T.O. is the Petitioner / Appellant and Shiv Ratan is the Respondent. This case is reported in the All India Reporter in the year 1966 on page 142, and has been decided by the Supreme Court.

11) Nagarjun v/s State 1985 Cr. L.J. 2071

This is the citation of case where Nagarjun is the Appellant and the State is the Respondent. This case is reported in Criminal Law Journal in the year 1985 on page 2071.

12) Raghavan v/s Sumitradevi (1989) 2 SCC 470

This is the citation of a case decided by the Supreme Court where Raghavan is the Petitioner / Appellant and Sumitradevi is the Respondent. This case is reported in the Second Volume of Supreme Court Cases of the year 1989, on page 470.

13) Shiv Prakash Naryan v/s S. K. Tiwari AIR 1956 Cal 273

This is the citation of a case where Shiv Prakash Naryan is the Plaintiff / Petitioner / Appellant and S. K. Tiwari is the Defendant / Respondent. This case is reported in All India Reporter in the year 1956 on page 273 and is decided by the Calcutta High Court.

14) Laxminarayan Iyer Vs. State of Maharashtra (1995) 3 SCC 583 This is the citation of a case decided by the Supreme Court where Laxminarayan Iyer is the Petitioner / Appellant and the State of Maharashtra is the Respondent. This case is reported in Supreme Court Cases in the third volume of the year 1995 on page 583.

15) Cheema Services Pvt.Versus Rajan Singh (1997) 88 Comp. Cas 400

This is the citation of a case where Cheema Services Pvt. is the Plaintiff / Petitioner / Appellant and Rajan Singh is the Defendant / Respondent. This case is reported in Volume 88 of Company Cases in the year 1997, on page 400.

16) Laxman Baburao Jadhav v. State of Maharashtra & others(1997) 99 Bom L R 220

This is the citation of a case where Laxman Baburao Jadhav is the Plaintiff / Petitioner / Appellant and State of Maharashtra and others are the Defendants / Respondents. This case is reported in Volume 99 of the Bombay Law Reporter of the year 1997, on page 220.

17) William Rodrigues & Anr. v. Goa University 1993(2) Bom C.R. 158

This is the citation of a case where William Rodrigues and another person are the Plaintiffs / Petitioners / Appellants and the Goa University is the Defendant / Respondent. This case is reported in the second volume of Bombay Case Reporter of the year 1993, on page 158.

[Where there are several Petitioners or Respondents, it is customary to refer to them as "X..... and others" or "X.... & Ors", rather than list out all the names of the parties. When there are two parties, the citation is "X..... and Another" or "X..... & Anr."]

18) P. Venkata Krishna Rao v. Dr. B. Seetharam 1990(1) RCJ 45

This is the citation of a case where P. Venkata Krishna Rao is the Petitioner/ Appellant and Dr. B. Seetharam is the Respondent. This case is reported in the first volume of Rent Control Journal in the year 1990, on page 45.

19) Sudarshan Marketing v. Chief Commercial Manager, Railway 2004(2) All M R 357

This is the citation of a case where Sudarshan Marketing is the Plaintiff / Petitioner / Appellant and Chief Commercial Manager, Railways, is the Defendant / Respondent. This case is reported in the second volume of All Maharashtra Reporter of the year 2004 on page 357.

20) Amritlal Patel v. Himmatbhai Patel 1969 (1) SCR 277

This is the citation of a case decided by the Supreme Court, where Amritlal Patel is the Petitioner / Appellant and Himmatbhai Patel is the Respondent. This case is reported in the first volume of Supreme Court Reports of the year 1969, on page 277.

21) Pratap Singh v. State of Punjab 1966(1) LLJ 458

This is the citation of a case where Pratap Singh is the Plaintiff / Petitioner / Appellant and the State of Punjab is the Defendant / Respondent. The case is reported in first volume of Labour Law Journal of the year 1966, on page 458.

22) M. H. Saiyad v. Z.S. Muhammad 29 CWN 486

This is the citation of a case where M. H. Saiyad is the Plaintiff / Petitioner / Appellant and Z.S. Muhammad is the Defendant / Respondent. This case is reported in the 29* volume of Calcutta Weekly Notes on page 486.

23) Sapna v. Subhra AIR 1995 Orissa 420

This is the citation of a case where Sapna is the Plaintiff / Petitioner / Appellant and Subhra is the Defendant / Respondent. The case is decided by the Orissa High Court -and is reported in the year 1995 in All India Reporter at page 420.

24) Sasanka v. Sanjeeb (1995) 3 SCC 210

This is the citation of a case, where Sasanka is the Petitioner / Appellant and Sanjeeb is the Respondent. This is a judgment of the Supreme Court of India, and is reported in third volume of Supreme Court Cases published in the year 1995. The case is reported at page 210.

Writing a citation from given facts

If all the details of the case are given, it is easy to formulate the citation of that case, as in the following examples :

Q. Sharma is the Appellant and Sinha is the Respondent. The case is reported in Supreme Court Reports in the supplement of the first volume in 1959 on page 806. Write the citation of the above case.

Ans. The citation of the above case is : Sharma v. Sinha 1959 Supp.(1) SCR 806.

O. Ravindra is the Petitioner. Chandrakant is the Respondent. The case was decided by the Supreme Court and is reported in All India Reporter of 1998 on page 216. Write the citation for this case.

Ans. The citation for the above case is: Ravindra v. Chandrakant AIR 1998 SC 216.

Q. Shashank is the Appellant and Sanjeev is the Respondent. The case is reported in Supreme Court Cases in the year 1995 on page 250. Write the citation for the case.

Ans. The citation for the case is: Shashank v. Sanjeev (1995) SCC 250.

Examples of citations of books and articles

In law books, treatises, and even in judgments of the courts, one often finds a reference to a book or an article or other publication. A few examples of such citations are given below.

1. Srikanta Mishra, "Adoptions amongst Mohamedans", J.B.C.I. 110-116 (1988)

This is the citation of an article written by Srikanta Mishra. The title of the article is "Adoptions amongst Mohamedans". The article is published in the 1988 Volume of the Journal of the Bar Council of India, New Delhi, at pages 110-116.

2. Srikanta Mishra, "Human Rights : A fundamental issue" J.B.C.I, 97-104 (1993-Vol.XXI)

This is the citation of an article. The title of the article is "Human Rights : A Fundamental Issue". It is written by Srikanta Mishra. The article is published in Volume XXI of the Journal of the Bar Council of India, New Delhi, at pages 97-104 in the year 1993.

3. Srikanta Mishra, Legal profession in India : Some random facts and facets - 1991 C.C.C., New Delhi (Jnl) 285-289

This is the citation of an article written by Srikanta Mishra. The title of the article is "Legal profession in India : Some random facts and facets." It is published at pages 285-289 in the Journal Section of Current Civil Cases, published from New Delhi in 1991.

4. Srikanta Mishra, "Marriage in Orissa - Rights and Rituals" in B. S. DAS (Ed.), Glimpses of Orissa, 234 (Punthi Pustak, Calcutta 1986)

The reference here is to an article written by Srikanta Mishra. The title of the article is "Marriage in Orissa -Rights and Rituals". It is published at page 234 of a book entitled "Glimpses of Orissa" edited by B. S. Das and published in 1986 by Punthi Pustak, Calcutta.

5. Srikanta Mishra, Modern Labour Laws and Industrial relations ^ (1st edn.) Deep and Deep Publications, New Delhi 1992

This is the citation of a book written by Srikanta Mishra. The title of the book is "Modern Labour Laws and Industrial Relations". This reference is to the first edition of book published in 1992 by Deep and Deep Publications, New Delhi.

6. Srikanta Mishra, Ancient Hindu Marriage-Law and Practice (1st edn., Deep and Deep Publications, New Delhi 1994)

This is the citation of a book entitled "Ancient Hindu Marriage-Law and Practice". It is written by Srikanta Mishra. The reference is to the first edition of the book published in 1994. Deep and Deep Publications, New Delhi, is the publisher.

D. SEARCH FOR CASE LAWS

"God forbid that it should be imagined that an Attorney, or a Counsel, or even a judge, is bound to know all the law."

Chief Justice Abbott

It is quite true that a good lawyer must have a good knowledge of law. However, it would be going too far to assume that he should be knowledgeable in all the laws of the country and also be well-versed with all the niceties of every field of law. Therefore, what is important for the lawyer is not only to know the law but also to know how to find the law. Acquiring a good command over the various techniques of finding case-law, calls for special techniques and methods of searching for case law.

A lawyer uses several methods of locating cases, but the most useful amongst them are the following four :

(a) Statute approach;

(b) Subject or topic approach;

(c) Case method approach; and

(d) Search on the Internet.

Each of these is briefly discussed below.

(a) Statute approach

Under this traditional method, the relevant case law is found by searching for cases under the relevant statute, rule, regulation, order, etc. The approach is mainly based on commonly used words, phrases and headings. After successfully locating the Act, one has to go to the relevant section which deals with the subject-matter in question. Thus, if one has to search for cases relating to a minor's agreement, one would go to the Indian Contract Act, and the relevant sections thereunder, namely, Sections 10 and 11. Practically every text would contain a plethora of cases under these sections, and the lawyer would have to judiciously pick up those that he feels are relevant for his purpose.

(b) Subject or topic approach

This approach is an easy and convenient method of finding cases, and is particularly useful where the law is not codified, as for instance, the law of torts or administrative law or the law relating to interpretation of statutes. It is, however, also very useful for locating cases under the codified law, like the Indian Contract Act or the Indian Penal Code. Thus, for instance, if the lawyer is looking out for cases on negligence, the relevant cases will be found under the chapter on Negligence in any book on the law of torts, as for instance, the book by Ratanlal and Dhirajlal. Following this method, me lawyer will find, not only cases which support his brief, but also those that have been decided against the point which is being canvassed by him in his case.

Even when a lawyer is not familiar with a given Act, most text books would have a Synopsis, listing all relevant statutes and sub-topics, thus further facilitating the search for the cases by a lawyer following this method. Moreover, in several text books, important concepts, doctrines and maxims, which have been discussed at several places in the book, are separately listed in the Index or in the Contents. Many text books not only give a synopsis, but also print the heading of the synopsis on the top of the column on all subsequent pages where the topic continues to be discussed.

(c) Case method approach

The case method approach is yet another widely-used method of locating cases. If one known case on the point in question is available, other cases can easily be traced, following their citations in the first mentioned case. For instance, a famous English case on negligence is Donoghue v. Stevenson, and a perusal of this judgment will take the reader to other cases on negligence, along with their citations. Likewise, the most notable case on the measure of damages in the case of breach of contract, namely, Hadley v. Baxendale, can be profitably read to discover other cases (with their citations) on the same point of law.

This method is also used to evaluate how useful a particular case is for the lawyer. If a given case is repeatedly followed in later cases, it adds to the weight that it carries. On the other hand, if such a case has been overruled by a higher court, its standing as a precedent is destroyed.

(d) Search on the Internet

This is the latest and the most high-tech method used by a lawyer to locate cases. Access to the Internet has opened up the floodgates of case-law, and the lawyer can get a plethora of cases on a given point at the touch of a button. One has only to go to legal sites like Lexsite, Manupatra, Legalpundits, Laws4india, Indlaws, Vakil No 1, or Grandjurix, or even do a Google search and locate as many cases as one wants. Most of these sites are quite user-friendly and contain simple instructions to locate al known case or all cases on a given point of law. All these sites are not free, however, the payment of a nominal subscription opens up hundreds and thousands of cases of the Supreme Court and all High Courts in India. The Internet is today the fastest way of locating a case, checking cross-references, and getting a print-out thereof, all in a matter of a few minutes.

Conclusion

The above methods of locating case law are not mutually exclusive, and are often used in conjunction by most lawyers. Relying solely on any one single method in all cases is, therefore, not advisable. A judicious combination of all the methods would yield the best results.

Q. How would you search for case law on the following :

A contract made without consideration is void except under certain circumstances. B.U. Nov. 2005

A gang rape of a social worker proves the threat of sexual harassment looming high in our country: B.U. Apr. 2006

The right to health is a fundamental right. B.U. Apr. 2006

Q. How would you search for case law on remoteness of damages? B.U. Nov. 2001

Q. How would you search for case-law on whether paying money to get a seat in a medical college amounts to illegal consideration? B.U. Apr. 2000

Q. How would you search for case-law on whether paying money to get a seat in an engineering college amounts to illegal consideration. B.U. May 2001

Q. How would you search for case-law on whether of a girl of tender age voluntarily elopes with a boy, it would amount to kidnapping ? B.U. Apr. 2000 May 2001 Dec. 2002

Q. How would you search for case-law on whether a statement made by a witness in a court proceeding can be the subject-matter of a prosecution for defamation ? B.U. Nov. 2000

Q. How would you search for case-law on whether a minor can be a beneficiary under a contact ? B.U. Nov. 2000

Q. How would you search for case-law on whether it is necessary to prove actual loss of reputation in a criminal case for defamation ? B.U. Nov. 2001 Apr. 2003

Q. How would you search for case-law on whether in a case of criminal intimination, it is necessary to quite the exact words used by the accused? B.U. May 2002

Q. How would you search for case-law on whether consideration must be adequate in the law of contracts ? B.U. Dec. 2002

Q. How would you search for case-law on whether a master is vicariously liable for a civil wrong ? B.U. Apr. 2003

Q. How would you search for case-law on whether statement of an accused person recorded by the Police during interrogation are admissible in a court of law ? B.U. Nov. 2003

Q. How would you search for case-law on whether a case can be filed with respect to defamation of a dcreased person ? B.U. Nov. 2003

Q. How would you search for case-law on whether a contract signed by a minor can be enforced against him. B.U, Apr. 2004

Q. How would you search for case-law on whether money, which was to be received three years ago, can now be recovered. B.U. Apr. 2004

Examples of search for case law

If the name of a particular case is known, it can be easily located by reference to the Nominal Index or Nominal Table of an appropriate law reporter, where one finds a list of reported cases, arranged alphabetically. If the case appears to belong to a particular field of law, as for instance, the law of crimes or company law, a specialised law reporter like the Criminal Law Journal (for cases on criminal law) or Company Cases (for corporate cases) should be referred to. However, in the case of a general search, where the lawyer is not sure of the field of law to which the case belongs, an all-round reporter like the AIR should be the first preference. Needless to say, if the case appears to be an English case, the appropriate law reports of England should be referred to. If access to the Internet is available, the site will have all the information and the entire process can be completed in a few minutes.

If, however, the citation of the given case is known, the task assumes greater simplicity, as one has only to go to that particular law reporter to locate the case in hand. Of course, the lawyer should be familiar with the abbreviated names of the law reports, a list whereof will be found later in this Chapter. He should know, for instance, that AIR means All India Reporter and SCR is the short form for the Supreme Court Reports. Thus, for instance, if the known citation is 2008 2 SCC 100, one should at once take hold of the second volume of the Supreme Court Cases of 2008, and go straight to page 100 thereof, to locate the case in question. If access to the Internet is available, one has only to log in the citation and the full text of the judgment will appear before the user in a matter of seconds.

It sometimes happens that the lawyer is interested in all possible cases on a particular legal topic, as for instance, murder, abduction, bill of exchange, negligence, defamation, and so on, in which case, the examples given below will be of great use to solve the problem at hand. The Table appearing after the examples will afford a good starting-point to the reader for this purpose.

(i) To search for case law on remoteness of damages

As every lawyer knows, remoteness of damages is a topic that is relevant to the law of torts as well as the law of contracts. One would, therefore, first refer to a leading text book on the subject, as for instance, The Law of Torts by Ratanlal and Dhirajlal or The Indian Contract Act by Pollock and Mulla.

In the book on torts, one would go to the Chapter on Damages, and look out for a topic with a title like Remoteness of damages or Remote Damages or When damages may be said to be remote. Once this is done, one will find a plethora of cases on the point, along with their citations. These citations are sometimes given in the body of the book along with the names of the cases, and sometimes by way of foot-notes. All these citations should be carefully noted, as the next step is to find these cases in the relevant law reporter, like the AIR, SCR, SCC, WLR, and so on. Once the case is located, its head-notes will reveal the principle iaid down in that case. The judgment will also refer to several other cases on remoteness of damages, referred to by lawyers on both the sides, and these can be profitably referred to. A list of such cases is also usually given before the text of the judgment. Each judgment, when referred to, will, in turn, refer to several other cases, and thus, the lawyer will end up with a gold mine of decided cases on remoteness of damages under the law of torts.

If, however, the topic is to be examined from the angle of the law of contracts, one would first locate the relevant section of the Indian Contract Act, in this case, S. 73 of that Act. The commentary under that section will open up a flood-gate of case law, and the procedure described above can be continued profitably.

If access to the Internet is available, the above search becomes even simpler. One has only to log on to the relevant site and use its Search Engine to arrive at a list of cases on the point of interest. When the relevant words are entered (-as for instance, "remoteness of damages" or "remote damages" or "damages-remote", in the present case-) a huge list of the names of the cases will appear. One can then open some or all of these cases to see the full text of the judgments and take print-outs of those which are relevant.

(ii) To search for case law on whether a case for criminal trespass can be filed if the ownership of the land is disputed

As one is dealing with a crime or an offence, a reference will first have to be made to a commentary on the Indian Penal Code, as for instance, the one by Ratanlal and Dhirajlal. One would then go to the Index of Sections, to locate the section of the Code which deals with criminal trespass, S. 141, in the present case. Within this topic, one would, look out for sub-topics like Disputed land or When the title of the land is in dispute, and so on. Once this is done, the procedure referred to in Example (i) above can be followed to arrive at several cases which have been decided on whether a complaint for criminal trespass lies where the ownership or title of the land is in dispute.

(iii) To search for case law on whether payment of money to obtain a seat in a medical or engineering college amounts to illegal consideration

The topic of illegal consideration is contained in the Indian Contract Act. Hence, one would go to a leading treatise on the Law of Contracts or on the Indian Contract Act, like the one by Pollock and Mulla. The Contents or Index would refer the reader to S. 23 of the Indian Contract Act, which lays down when the object or consideration of an agreement can be said to be unlawful. Within this topic, one would come across a reference to the situation where a seat is obtained in a college, not on merit, but on payment of money. Once a few cases on this topic are located, — or sometimes, even if one such case is located, — the procedure referred to in Example (i) above can be fruitfully followed to arrive at a collection of cases decided on this point by the Supreme Court and the High Courts all over the country.

(iv)To search for case law on whether if a girl of tender age voluntarily elopes with a boy, it would amount to kidnapping

Kidnapping is an offence under the Indian Penal Code. Hence, one would have to refer to a good commentary on the Code, as for instance, the one by Ratanlal and Dhirajlal. Once the appropriate section is located, S. 361 in the present case, - the procedure outlined in Example (i) above can be followed to arrive at a plethora of case law on the point.

(v) To search for case law on whether a statement made by a witness in a court proceeding can be the subject-matter of a suit or prosecution for defamation

Every lawyer is aware of the fact that defamation is both a tort and a crime. Hence, if a suit is proposed to be filed, a civil court would have to be approached, and a text book on the Law of Torts, as for instance, the one authored by Ratanlal and Dhirajlal would be looked into. One would go to the Chapter on Defamation, and trace the sub-topic relating to the matter in issue.

If, however, the question is whether a prosecution for defamation can be filed, one would turn to a good commentary on the Indian Penal Code, as for instance the one by Ratanlal and Dhirajlal, and locate the relevant section (S. 499).

Since the question of a witness giving evidence in court is involved, one would also check up the relevant provisions in a good commentary on the Indian Evidence Act, as for instance, the one by Sarkar.

Once the above steps are taken, the procedure outlined in Example (i) above can be followed with ease to collect numerous cases decided on the point in question.

(vi) To search for case law on whether, in India, a minor can be a beneficiary under a contract

As a lawyer is aware that the above topic is covered by the Indian Contract Act, one would first take a good commentary on the subject, as for instance, the one by Pollock and Mulla. Thereafter, one would have to locate the relevant sections, namely sections 10 and 11 of the Act in the present case. This can be done, either by going through the Contents in the beginning of the book, or the Index at the end thereof. Once the correct section is located, one has only to follow the procedure outlined in Example (i) above, to arrive at a list of cases which lay down whether a minor can be a beneficiary under a contract in Indian law.

(vii) To search for case law on whether it is necessary to prove actual loss of reputation in a criminal case for defamation

It was stated in Example (v) above, that since defamation is both a tort as well as a crime, a reference is to be made to treatises on both these laws. However, in the present case, it is clear that the lawyer is looking out only for cases on defamation as a crime, and so, he would refer to a good commentary on the Indian Penal Code, as for instance, the one by Ratanlal and Dhirajlal. Once the appropriate section is located, which is S. 499 in the present case, the rest of the procedure is exactly the same as the one outlined in Example (i) above.

(viii) To search for case law on whether, in a case of criminal intimidation, it is necessary to quote the exact words used by the accused

Criminal intimidation is an offence, and one would, therefore, begin by referring to a good commentary on the Indian Penal Code, as for instance, the one by Ratanlal and Dhirajlal. Once the relevant section is located, being S. 503 in the present case, the procedure referred to in Example (i) above can profitably be followed.

(ix) To search for case law on whether consideration must be adequate in the law of contracts

As the point question involves the law of contracts, one should first refer to a good text book on the subject, as for instance, the one by Pollock and Muila. On-going through the same, it will be found that S. 2(d) of the said Act defines the term "consideration". The commentary under this section will be the starting point of the search, and the procedure outlined in Example (i) above will have to be followed.

(x) To search for case law on whether a master is vicariously liable for a civil wrong

As a civil wrong is a tort, one would have to go straight to a good text book on the law of torts, as for instance, the one by Ratanlal and Dhirajlal. The topic of vicarious liability, i.e. liability for the acts and omissions of another person, would have to be located, and the procedure given in Example (i) above would then have to be followed.

(xi) To search for case law on whether statements of an accused person recorded by the Police during interrogation are admissible in a court of law

This is a topic that is dealt with by the Indian Evidence Act, and one would therefore refer to a good commentary on this Act, as for instance, the one by Sarkar. Next, one would have to trace the particular section that deals with confessions of an accused made to the Police during interrogation, being S. 25 in the present case. Once this is done, the procedure given in Example (i) above will have to be followed to arrive at a plethora of cases on this topic.

(xii) To search for case law on whether a case can be filed with respect to defamation of a deceased person

As stated above, defamation is both a tort and a crime. One would thus have to refer to a standard book on the law of torts, like the one by Ratanlal and Dhirajlal, and go to the Chapter dealing with the tort of defamation. Under this Chapter, one would have to look out for a subheading which deals with the question of whether a dead person can be defamed. Next, one would take a standard text

book on the Indian Penal Code, like the one by Ratanlal and Dhirajlal, and find out the section which deals with criminal defamation, namely, S. 499. Once this is done, the procedure outlined in Example (i) above would have to be foilowed to arrive at a list of cases decided on this very point of law.

(xiii) To search for case law on whether a contract signed by a minor can be enforced against him

As a minor's agreement is dealt with by the Indian Contract Act, one would first refer to a standard text book on the said Act, as for instance, the one by Pollock and Mulla. Next, one would go to the appropriate sections, namely, sections 10 and 11 in the present case. Here, one would find a plethora of cases on whether, if a minor, i.e. a person who is under the age of majority, signs an agreement, the same can be enforced against him. Having come to the right spot, one only needs to follow the procedure outlined in Example (i) above, to arrive at a comprehensive list of cases where this point is dealt with by the courts.

(xiv)To search for case law on whether money, which was to be received three years ago, can now be recovered

This point can be found in any statute that lays down the various periods of limitation for various causes of action which, in India, is the Limitation Act. One would therefore refer to a good commentary on this Act, as for instance, the one by Mitra. One would then go to the Contents or the Index, and locate the section that lays down that suits become barred by the law of limitation (i.e. time-barred) if not filed within the specified periods, namely S. 3 of the Act. One would also have to check up the relevant entry (Article) in the Schedule to the Act (Article 23, in the present case) to find out that such a suit would indeed be time-barred after a period of three years. As far as locating the case law on this point is concerned, one would have to follow the same procedure as was described in Example (i) above, to arrive at a list of cases on this point of limitation.

E. ABBREVIATIONS OF LAW REPORTS

Whenever one comes across a case, one can refer to it only if the citation of the case is also given. It is only then that one can go to the relevant law reporter and refer to the judgment in that case on the page number given in the citation. The names of the law reports are, however, generally given in an abbreviated form, and the list given below will help the reader to understand these abbreviations.

ABBREVIATIONS OF IMPORTANT LAW REPORTS, JOURNALS & PERIODICALS

A.C.---- Appeal Cases

A.C.C.------Accident & Compensation Cases

A.C.J.-------Accident Claims Journal

A.I.H.C.---------All India High Court Cases

A.I.R S.C.W.---------All-India Reporter Supreme Court Weekly

A.I.R. (NOC)---------All India Reporter (Notes of Cases)

A.I.R. (NSC)----------All India Reporter (Notes of Supreme Court Cases)

A.I.R.----------All India Reporter

A.I.TC.----------All India Tribunal Cases

A.L.J.----------Allahabad Law Journal

A.S.I.L.----------Annual Survey of Indian Law

A.T.C.----------Administrative Tribunal Cases

A.T.L.T.----------Administrative Tribunals Law Times

A-T.R----------Administrative Tribunal Reporter

All E.R.----------All England Law Reports

All. Cri. L. R.---------All India Criminal Law Reporter

All, L. R. ----------Allahabad Law Reports

All Mah. L. R.---------All Maharashtra Law Reporter

All Serv. Rep.---------All India Services Reports

Arbi. TLR or A.T.R----Arbitration & Trade Mark Law Reporter

B.H.C.R.----------Bombay High Court Reports

Bank OL.R.----------Banking Commercial Law Reporter

Bank. L.J.----------Banking Law Judgment

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Bank. L.R. Bom. C.J. Bom. C.R. Bom. L.R. Bom.H.C.R Bom.RJ. Bom.R.C. C.C.C. C.L.T. C.M.L.J. C.RJ C.PR.

C.W.N.

Cencus (Now, E.C.R)

Civ.App.J. (SC)

Civil.C.C.

Civil.L.J.

Com. Cas.

Com. L.R.

Com. N.R.

Com.L.J.

Co-op.L.J.

Co-op.L.R.

Co-op.T.D.

Co-op.T.J.

Cr. L.J.

Cri. App. Rep.(SC)

Cri.C.J.

Cri.L.C.

Cri.L.J.(N.O.C.)

Cur.C.C.

Cur.C.L.J.

Cur.Cri.J.

Cur.Cri.R.

Cur.L.J.(Tax)

Cur.L.R

Cur.S.N.R.

D.E.C. D.L. D.L.R. D.L.T.

D.M.C.

E.L.J.(L.S.)

Banking Law Reporter

Bombay Civil Journal

Bombay Cases Reporter

Bombay Law Reporter

Bombay High Court Reports

Bombay Printed Judgments

Bombay Rent Cases

Current Civil Cases

Cuttack Law Times

Civil and Military Law Journal

Consumer Protection Journal

Consumer Protection Reporter

Calcutta Weekly Notes

Excise & Customs Reporter

Civil Appeals Judgments (Supreme Court)

Civil Court Cases

Civil Law Journal

Company Cases

Comparative Law Review

Company News and Reporter

Company Law Journal

Co-operative Law Journal

Co-operative Law Reporter

Co-operative Tribunal Decisions

Co-operative Tribunal Journal

Criminal Law Journal

Criminal Appeals Reporter (Supreme Court)

Criminal Court Judgments

Criminal Law Cases

Criminal Law Journal (Notes on Cases)

Current Criminal Cases

Current Civil Law Judgments

Current Criminal Judgments

Current Criminal Reports

Current Law Journal (Taxation)

Current Labour Reports

Current Sales Tax News & Reports

Doabia's Elections Cases

Delhi Lawyer

Daily Law Reporter

Delhi Law Times

Divorce & Matrimonial Cases

Epitomised Legal Judgments (Labour & Service)

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E.L.Rs---------- Election Law Reports

E.S.C.----------Education & Service Cases

Ed.Cas.----------Education Cases

Ex.C.C.----------Excise & Customs Cases

Ex.C.R.---------- Excise & Customs Reporter

Ex.F.R.----------Excise & Food Adulteration Reports

Ex.L.T.----------Excise Law Times

F.A.C.----------Prevention of Food Adulteration Cases

F.A.J.----------Prevention of Food Adulteration Journal

F.C.R.----------Federal Court Reports

F.J.R.---------- Factories Journal Reports

F.L.J.----------Federal Law Journal

Fac.L.R. ----------Factories & Labour Reports

G.O.C.(S.C.)------Gist of Cases (Supreme Court)

Goa L.T.----------Goa Law Times

Guj. L.J.----------Gujarat Law Journal

H.C.R.----------High Court Reporter

H.R.----------Hyde's Reports

Harv. L. Rev.---- Harvard Law Review

Hindu L.R.--------Hindu Law Reporter

I.A.---------- Indian Advocate

I.B. Rev.----------Indian Bar Review

I.C.C. ----------Indian Civil Cases

I.C.R.---------- Industrial Court Reporter

I.J. Leg. Studies -----Indian Journal of Legal Studies

I.J.R.----------Indian Judgment Reporter

I.J.R.---------- Indian Judicial Reports

I.L. Rev. ----------Indian Law Review

I.L.R.---------- Indian Law Reports

I.T.A.T.R.--------- Income-tax Appellate Tribunal Reporter

I.T.C.-------- Income-tax Tribunal Cases

I.T.D.---------- Income-tax Tribunal Decisions

I.T.R.---------- Income-tax Reports

Ind.App.----------Law Reports, Indian Appeals

Ind.Cas ----------Indian Cases

Ind.J. ----------Indian Jurist

Ind.R. ----------Indian Rulings

Ind.Tax Cas.-------Indian Tax Cases

Int.L.R. ----------International Law Reporter

J.B.C.I. ----------Journal of Bar Council of India

J.I.L.I. ----------Journal of Indian Law Institute

J.S.C.T.L.----------Journal of Shipping, Customs & Transport Laws

J.T.----------Judgments Today

K.B.---------- King's Bench Law Reports

L.A.C.C. ----------Land Acquisition & Compensation Cases

L.J.R. ----------Latest Judicial Reports

L.L.J, or Lab.L.J. -----Labour Law Journal

L.Q.R. ----------Law Quarterly Review

L.Q.R. ----------London Queen Reporter

Lab. AC.----------Labour Appeal Cases

Lab.I.C. ----------Labour & Industrial Cases

Lab.L.N.----------Labour Law Notes

Lab.L.R. ----------Labour Law Reporter

Legal Surv.----------Legal Surveyor

M.L.J, or Mad.L.J.-------Madras Law Journal

M.L.R.----------Modern Law Review

Mad.L.J.(Cri)----------Madras Law Journal (Criminal)

Mah. Cri. R.----------Maharashtra Criminal Reporter

Mah. J.D.----------Maharashtra Judicial Decisions

Mah. L.A.----------Maharashtra Local Acts

Mah.L.J.----------Maharashtra Law Journal

Mah.L.R.----------(Brahan) Maharashtra Law Reporter

Marr.L.J.----------Marriage Law Journal

Mat.L.R.---------- Matrimonial Law Reporter

Mer.L.R.-------- Mercantile Law Reporter

Moo.Ind.App.--------Moore's Indian Appeals

Moo.RC.C.---------Moore's Privy Council Cases

Mun.C.C.----------Muncipalities & Corporation Cases

Mun.L.J.----------Municipal Law Journal

O.C.R.----------Orissa Criminal Reports

O.J.D.----------Orissa Judicial Decisions

P.L.R.----------Punjab Law Reporter

R.D.----------Revenue Decisions

R.L.W.---------Rajasthan Law Weekly

Rail Cases------Railway Cases

Re.C.R.----------Rent Control Reports

Rec.Civ.R -------Recent Civil Reports

Rec.Cri.R. --------Recent Criminal Reports

Rec.Rev.R.-------- Recent Revenue Reports

Ren.C.J. ----------Rent Control Journal

Ren.Cas.----------Rent Cases

Rent L.R.-------- Rent Law Reporter

Rev.L.R.----------Revenue Law Reporter

Rev.Rul ----------Revenue Rulings

S.C.A ----------Supreme Court Appeals

S.C.C. ----------Supreme Court Cases

S.C.C.(Cri)-------Supreme Court Cases (Criminal)

S.C.C.(L&S)------ Supreme Court Cases (Labour & Services)

S.C.C.(Tax)-------Supreme Court Cases (Taxation)

S.C.Cr.R.--------- Supreme Court Criminal Rulings

S.C.D. ----------Supreme Court Decisions

S.C.RB.R.C.-------Supreme Court and Full Bench Rent Cases

S.C.J----------Supreme Court Journal

S.C.N.----------Supreme Court Notes

S.C.R.----------Supreme Court Reports

S.C.S.T.J.----------Supreme Court Sales Tax Judgments

S.C.T.----------Services Cases Today

S.C.W.R.----------Supreme Court Weekly Reporter

S.Civ.Dec.--------Selected Civil Decisions

S.L.J.----------Service Law Journal

S.L.W.R.----------Service Law Weekly Reporter

S.P.J.----------Speed Post Judgments

S.T.Aff ----------Sales Tax Affairs

S.T.C.----------Sales Tax Cases

S.T.D.----------Sales Tax Tribunal Decisions

Ser.L.C.----------Services Law Cases

Serv.L.J.----------Service Law Journal

Serv.L.R.-------- Service Law Reporter

Shome L.R.-------Shome's Law Reports

Suth.W.R.--------Sutherland's Weekly Reporter

Suther----------Sutherland's Privy Council Judgments

T.A.C.----------(All India) Transport & Accident Cases

T.L,R. or Tax.L.R.----------Taxation Law Reports

Tax Dec.(SC)---------- Tax Decisions (Supreme Court)

Tax, L.D.----------Tax Law Decisions

Tax, L.Rev----------Tax Law Review

Tax, Ref.----------Tax Referencer

Tax, B.R.----------Tax Bar Reporter

U.C.R.(Bom)---------Unreported Cases Reporter (Bombay)

U.J.(S.C.)----------Unreported Judgments (Supreme Court)

V.K.N.----------Vikraya Kar Nirnaya

W.L.C.----------Western Law Cases

W.L.N.(U.C.)----------Weekly Law Notes (Unreported Cases)

W.L.R.----------Weekly Law Reporter

Weir ----------Weir's Criminal Rulings

Writ L.R.----------Writ Law Reporter

Y.L.J.----------Yale Law Journal

Chapter IV

LEGISLATIVE MATERIAL

In order to understand any legislative enactment, that is, an Act, in its proper perspective, it is necessary to read the entire enactment as a whole and not any isolated, part thereof. This makes each portion of the enactment equally important, as each detail contributes in realising the significance of the other provisions of the Act. For the sake of convenience and good order, every Act is divided into various parts, called sections', sometimes, a section is further divided into sub-sections. A notable exception is the Constitution of India, which is divided into Articles and not sections.

Explanation of the different parts of a statute

Short title

The short title of the Act is the title by which the Act is known. It always appears at the beginning of the Act. The short title includes the name by which the Act may be called, followed by the year in which the Act was passed by the legislature, as for instance, the Indian Contract Act, 1872, or the Special Marriage Act, 1954.

Official Citation

Immediately after the short title appears the official citation of the Act. It is usually placed in brackets. It indicates the serial number of the Act passed by the legislature in that particular calendar year. For instance, the official citation of the Consumer Protection Act is : (Act 68 of 1986). This indicates that this was the sixty-eighth Act passed in the year 1986.

Date of Assent

The date of assent is the date on which the Bill received the assent of the President (in the case of a central Bill), or the assent of the Governor (in the case of a state Bill), as the case may be, and became an Act. This date generally appears after the official citation of the Act.

Long Title

The purpose for which the particular Act was enacted is reflected in the long title of the Act. This generally appears after the date of assent. The object behind the Act is comprehensively stated in this one-lined title. For instance, the long title of the Medical Termination of Pregnancy Act, is 'An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.'

Preamble

The gist of the purpose behind passing a particular enactment can be easily understood by looking at the Preamble of the Act. However all Acts do not have a Preamble. The Preamble follows the long title, and summarises the intention of the legislature behind passing the Act or the need for passing it. A Preamble generally begins with the words

'WHEREAS ..... '. When the meaning of a particular section is not clear, the Preamble can be relied to throw some light on the exact connotation or meaning of the words used in that section. In the words of Story, a Preamble is "a key to open the mind of its makers".

To take just one example, the Preamble to the Indian Contract Act, 1872, runs as under :

"WHEREAS it is expedient to define and amend certain parts of the law relating to contracts"

For a classic illustration of a long Preamble, one may refer to the Preamble to the Constitution of India.

Enacting Formula

The Preamble, if any, is followed by the enacting formula. It is only after the enacting formula that the sections of the Act begin. An example of the enacting formula is "Be it enacted by the Parliament in the Twelfth year of the Republic of India as follows:"

Extent

The extent of the Act is the territorial applicability of the Act, and is contained in Section 1. The extent of a particular Act may be 'the whole of India' or 'the whole of India except the State of Jammu and Kashmir', and so on.

Date of Commencement

The date of commencement is the date on which the Act comes into force. It is pertinent to note that there is a difference between the date of assent and the date of commencement. The date of assent is the date on which the President or Governor gives his assent, whilst the date of commencement is the date on which the Act is brought into operation.

The date of commencement of the Act is also to be found in S. 1, and may take either of these two forms :

(i) Sometimes, the actual date is mentioned in S. 1. Thus, for instance, the Indian Contract Act states as under :

"It shall come into force on the first day of September, 1872."

(ii) Alternately, the Act sometimes does not contain any date of commencement, but empowers the Government to notify the date of its commencement. Interestingly, the Act may be notified in different States on different dates, and different parts of the Act may be notified to come into force on different dates. Thus, the Consumer Protection Act, 1986, provides as under :

"It shall come into force on such date as the Central Government may, by notification, appoint, and different dates may be appointed for different States and for different provisions of this Act."

Sections, sub-sections, clauses, sub-clauses

For the sake of convenience, every Act is divided into small segments. Each segment is numbered separately by section numbers. Very often, a section is further divided into smaller parts known as subsections, and some sections and sub-sections are, at times, divided into clauses and sub-clauses.

If a reference is made to the bare text of the Medical Termination of Pregnancy Act, 1971, reproduced at the end of this Chapter, it will be seen that S. 1 contains three sub-sections, whereas S. 2 contains four clauses. Similarly, S. 3 of the said Act contains four sub-sections, and the fourth sub-section is divided into two clauses, (a) and (b).

After its enactment, an Act may be amended by inserting new sections in it. This has always to be done without disturbing the current numbering of the existing sections. Thus, for instance, when two new sections were to be introduced into the Consumer Protection Act between S. 24 and S. 25 thereof, the new sections were numbered as "Section 24A" and "Section 24B" respectively.

Exceptions, Explanations and Provisos

Often, there is an "Explanation" at the end of a section, to throw light on the exact connotation of some of the words used in that section. Likewise, there may also be an "Exception", which, as its name suggests, carves out an exception to what is stated in the section. Thus, there are two Explanations each to S. 3(2) and S. 5 of the Medical Termination of Pregnancy Act, to which a reference may be made.

Sometimes, one finds both an Exception and an Explanation to the same section, as for instance, in S. 19 of the Indian Contract Act, 1872, which lays down that contracts where the consent is caused by coercion, fraud or misrepresentation, are voidable at the option of the party whose consent is so caused. Thereafter, the following Exception and Explanation appear ;

Exception.— If such consent was caused by misrepresentation or by silence fraudulent within the meaning of section 17, the contract nevertheless is not voidable, if the party whose consent was so caused had the means of discovering the truth by ordinary diligence.

Explanation.— A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Sometimes, a section is followed by a "Proviso", which opens with the words "Provided that ..." The second Proviso, if any, would start with the words, "Provided further that ..."A reference may be made to the Proviso to Section 4 of the Medical Termination of Pregnancy Act, given later in this Chapter.

The Definition or Interpretation Clause

The Definition or Interpretation clause is generally contained in Section 2 (or sometimes, Section 3) of the Act, and it gives the definitions of the various terms used in that enactment. Thus, S. 2 of the Medical Termination of Pregnancy Act, 1971, defines four terms used in the body of the Act.

Illustrations

At times, the legislature gives several "Illustrations" to a particular section to give illustrative examples of the application of that section. Thus, in the Indian Contract Act, 1872, some sections have no illustrations, some have one or two, and some have many more, as for instance, S. 73, which contains eighteen illustrations.

Statement of Objects and Reasons

The object behind passing the Act is sometimes elaborately given in the Statement of Object and Reasons. The circumstances that led to the passing of the Act, or the expected effect of the Act is found under this heading. While the Preamble mentions the same briefly, it is discussed at greater length in the said Statement.

Schedules and Tables

An Act may also contain Schedules or Tables or Specimen Forms, which are placed at the end of the Act. However, these will not be found in all Acts. Thus, for instance, the Special Marriage Act has five Schedules. The First Schedule gives a list of all persons who can be said to fall with degrees of prohibited relationship, whereas the other Schedules contain the prescribed forms of the Notice of intended marriage, Declarations to be made by the bride and the bridegroom, the format of the Certificate of Marriage, and so on.

Marginal Notes

As the name indicates, a marginal note is a brief note appearing in the margin next to every section. These notes give, in short, what the section deals with. Thus, for instance, the marginal note of S. 21 of the Indian Contract Act is : "Effects of mistake as to law". One glance at this marginal note indicates that the body of S. 21 deals with the effects of mistake of law on a contract.

The above ingredients of a statute are discussed below with specific reference to three Acts, namely, the Maternity Benefit Act, the Medical Termination of Pregnancy Act and the Protection of Human Rights Act.

Q. With reference to the Medical Termination of Pregnancy Act, identify —

(a) The Long Title. B.U. Apr. 2000 May 2001

(b) The Short Title. B.U. Apr. 2000 May 2001

(c) The date of assent. B.U. Apr. 2000 May 2001

(d) The section. B.U. Nov. 1999

(e) The subsection. B.U. Nov. 1999

(f) The marginal note. B.U. Apr. 2000 May 2001

(I) THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Given below is the text of the Medical Termination of Pregnancy Act, 1971, upto the end of S. 1 thereof. The entire text of this Act is also given at the end of this Chapter, for ready reference.

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

(Act No. 34 of 1971)

[10th August, 1971]

An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows :—

1. Short title, extent and commencement.—

(1) This Act may be called the Medical Termination of Pregnancy Act, 1971.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

The various parts of the above Act can be explained as follows :

Short title : The Medical Termination of Pregnancy Act, 1971

Long Title : An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

Official Citation : Act No. 34 of 1971 Date of Assent : 10 August 1971

Date of Commencement : The Act does not contain the date of commencement. (However, vide a Notification, the Act was brought into force with effect from 1st April 1972.)

Extent : It extends to the whole of India except the State of Jammu and Kashmir.

Preamble : This Act does not have a Preamble.

Enacting Formula : Be it enacted by Parliament in the Twenty- second Year of the Republic of India as follows :

Q. With reference to the Maternity Benefit Act, identify —

(a) The section, and object of the Act. B.U. Apr. 2004

(b) The long title, short title & date of assent B.U. May 2002 Nov. 2003 Apr. 2004

(c) The subsection. B.U. May 2002 Nov. 2003

(II) THE MATERNITY BENEFIT ACT, 1961

Given below is the text of the Maternity Benefit Act, 1961, up to the end of S. 1 thereof. For a full text of the said Act, a reference may be made to the Bare Act.

THE MATERNITY BENEFIT ACT, 1961

(Act No. 53 of 1961)

[12th December, 1961]

An Act to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Maternity Benefit Act, 1961.

(2) It extends to tlj^^whole of India.

(3) It shall come into force on such date as may be notified in this behalf in the Official Gazette,—

(a) in relation to mines and to any other establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, by the Central Government; and

(b) in relation to other establishments in a State, by the State Government.

The various parts of the Act can be explained as follows :

Short title : The Maternity Benefit Act, 1961

Long Title : An Act to regulate the employment of women in certain establishments, for certain periods before and after childbirth and to provide for maternity benefit and certain other benefits.

Official Citation : Act No.53 of 1961 Date of Assent : 12th December 1961

Date of Commencement: The Act does not contain any specific date of commencement, but provides as under :

It shall come into force on such date as may be notified in this behalf in the Official Gazette,—

(a) in relation to mines and to any other establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, by the Central Government; and

(b) in relation to other establishments in a State, by the State Government.

In view of the above, the Central Government issued a Notification to bring the Act into Force with effect from 1st November, 1968.

Extent: This Act extends to the whole of India.

Preamble : This Act does not have a Preamble.

Enacting Formula : Be it enacted by the Parliament in the Twelfth year of the Republic of India as follows:

Q. With reference to the Protection of Human Rights Act, identify — The long title, short title, date of assent and sub-section. B.U. Apr. 2003

(III) THE PROTECTION OF HUMAN RIGHTS ACT, 1993

Given below is the text of the Protection of Human Rights Act, 1993, upto the end of S. 1 thereof. For a full text of the said Act, a reference may be made to the Bare Act.

THE PROTECTION OF HUMAN RIGHTS ACT, 1993

(Act No. 10 of 1994)

[8th January, 1994]

An Act to provide for the Constitution of a National Human Rights Commission, State Human flights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:—

CHAPTER I : PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India:

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.

(3) It shall be deemed to have come into force on the 28th day of September, 1993.

The various parts of the Act can be explained as under :

Short title : The Protection of Human Rights Act, 1993

Long Title: An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States, Human Rights Courts for better protection of human rights, and for matters connected therewith or incidental thereto.

Official Citation : Act No. 10 of 1994 Date of Assent : 8th January 1994

Date of Commencement : This Act shall be deemed to have come into force on September, 1993

(Note : This date is prior in time to the date of the President's assent.)

Extent : It extends to the whole of India, provided that it shall apply to the State of Jammu and Kashmir, only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.

Preamble : This Act does not have a Preamble.

Enacting Formula : Be it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:

The following is the bare text of the Medical Termination of Pregnancy Act, 1971. As will be very clear, the Act is divided into 8 sections, and most of the sections are further divided into subsections. In fact, except S. 4 and S. 8, all sections are divided into sub-sections. Section 3(4), i.e., sub-section (4) of section 3, has two clauses, (a) and (b). There are two Explanations each to S. 3(2) and S. 5. There is also a Proviso to S. 4 of the Act. The marginal notes are printed in bold next to the section numbers.

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

(Act No. 34 of 1971)

[10th August, 1971]

An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Medical Termination of Pregnancy Act, 1971.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) !t shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "guardian" means a person having the care of the person of a minor or a mentally ill person;

(b) "mentally ill person" means a person who is in need of treatment by reason of any mental disorder other than mental retardation;

(c) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority;

(d) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined

in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act.

3. When pregnancies may be terminated by registered medical practitioners.—(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner, —

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, —

of opinion formed in good faith, that —

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would be suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.— Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

4. Place where pregnancy may be terminated.—

No termination of pregnancy shall be made in accordance with this Act at any place other than —

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee:

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.

5. Sections 3 and 4 when not to apply.—(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code, the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (6) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.—For the purposes of this section, the expression "owner" in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.—For the purposes of this section, so much of the provisions of clause (d) of section 2 as relate to the possession, by a registered medical practitioner, of experience or training in gynecology and obstetrics shall not apply.

6. Power to make rules.—(1) The central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely—

(a) the experience or training, or both, which a registered medical practitioner shall have if he intends to terminate any pregnancy under this Act; and

(b) such other matters as are required to be, or may be, provided by rules made under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Power to make regulations.— (1) The State Government may, by regulations,—

(a) require any such opinion as is referred to in sub-section (2) of section 3 to be certified by a registered medical practitioner or practitioners concerned, in such form and at such time as may be specified in such regulations, and the preservation or disposal of such certificates;

(b) require any registered medical practitioner, who terminates a pregnancy, to give intimation of such termination and such other information relating to the termination as may be specified in such regulations;

(c) prohibit the disclosure, except to such persons and for such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of such regulations.

(2) The intimation given and the information furnished in pursuance of regulations made by virtue of clause (b) of sub-section (1) shall be given or furnished, as the case may be, to the Chief Medical Officer of the State.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of any regulation made under sub-section (1) shall be liable to be punished with fine which may extend to one thousand rupees.

8. Protection of action taken in good faith.—No suit or other legal proceedings shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

Chapter V

JUDICIAL MATERIAL

Precedent

A precedent is a statement of law, found in the decision of a superior court, which is to be followed by all courts inferior to that court. Needless to say, if each Judge was left to himself in deciding cases, without any reference to similar cases decided in the past, the result would be utter chaos and confusion. The law would then be uncertain, and the fate of litigants would hinge on the temperament of the Judge and his mood of the day.

Precedents are thus of the greatest importance in any system of law. As observed by Salmond, a precedent is not merely evidence of law, but a source of the law. According to the declaratory theory of precedent, the greatest proponent whereof was Blackstone, Judges never' make the law; they merely declare what the law is. However, this theory cannot hold good today, as Judges not only administer and interpret the law, but also develop the law, and in this process, they do make new law too.

The origin of the doctrine of stare decisis (i.e., the binding force of precedents) can be traced to the practice of reporting judicial decisions by law reporters, and this doctrine is also recognised by Article 141 of the Indian Constitution, which lays down that the law declared by the Supreme Court of India shall be binding on all courts in India.

Precedents are of two kinds : authoritative and persuasive. An authoritative precedent is one which the Judge has to follow, whether he approves of it or not. It is binding upon the court and excludes

the court's judicial discretion in the matter. Thus, a judgment of the Supreme Court is binding on all the High Courts and on all inferior courts in India. A persuasive precedent, on the other hand, is one which the Judge is not obliged to follow, but which he would take into consideration, and attach such weight as he deems fit. Thus, a decision of the Kerala High Court would have only persuasive efficacy on the Bombay High Court.

Ratio Decidendi & Obiter Dicta

Every judicial decision contains two aspects, one, a concrete decision binding on the parties, and the other, a judicial principle which is the basis of the concrete decision. This judicial principle, which is general in nature, operates as a precedent, and has the force of law. This general principle, applied in a particular decision, is known as the ratio decidendi (or simply, the ratio) of that case.

As pointed out by Salmond, the actual decision of the case is binding upon the parties, and is, of course, of utmost interest to them. But, it is the abstract ratio of the case that lays down a rule or principle of law, and which is of great interest to all lawyers and Judges.

It is thus important to distinguish between what a case decides generally from what it decides between the parties. It is only what is decided generally that constitutes the ratio decidendi or the legal rule for which it is an authority. It is this part or aspect of the judgment that will bind other litigants also in the future.

Obiter dicta, on the other hand, are observations of the court on matters which were not in issue before it. These are statements made by the Judges by the way or unwantedly. In the words of Keeton, they are statements of law made by a Judge in the course of a decision, arising out of the circumstances of the case, but not necessary for the decision in that case. As obiter dicta are statements made by the way, they generally possess persuasive efficacy only.

Three cases, involving matters of public importance, decided by the Supreme Court, will now be discussed, with particular reference to the guidelines laid down by the said Court in each of these cases.

Q. Write a note on : Vishaka v. State of Rajasthan. B.U. Nov. 2000 May 2002 Dec. 2002 Apr. 2003 Apr. 2004 Apr. 2005 Nov. 2005 Apr. 2006 Nov. 2006

Case No. 1

Vishaka & Others versus State of Rajasthan & Others [A.I.R. 1997 S. C. 3011 or 1997 6 SCC 241 or JT 1997 (7) SC 384]

This Writ Petition, which was heard by a Bench of three Judges of the Supreme Court (namely, the then Chief Justice of India, Mr. Justice J. S. Verma, Justice (Mrs.) Sujata V. Manohar and Mr. Justice B. N. Kirpal), was filed as a class action by some social activists and NGOs (Non Governmental

Organisations), with the aim of focusing attention towards growing incidents of sexual harassment and to find suitable methods for realisation of a true concept of "gender equality". It also aimed at preventing sexual harassment of working women in work places by laying down certain guidelines in the matter.

Although the immediate cause for filing this Petition was the gang-rape of a social worker in a village in Rajasthan, the judgment in this case sought to redress the violation of the rights of working women under Articles 14, 15 and 21 of the Constitution of India, which, in the words of the court, had become "a recurring phenomenon". By laying down the necessary directions, the court has endeavoured to ensure "a safe working environment for women".

After hearing all the parties at length, the Court was of the view that there was an immediate need to lay down some guidelines for the protection of the rights of working women to fill the "legislative vacuum" in this regard in India.

The Court observed that the fundamental right to carry on any trade, business or profession (under Art. 19 of the Indian Constitution) depends on the availability of a safe, working environment. Likewise, the right to life guaranteed by the Constitution means a right to live with dignity. Now, the primary responsibility for ensuring such safety and dignity through suitable legislation - and means for its enforcement - is of the legislature and the executive. However, instances of sexual harassment are on the rise, and the resentment towards such incidents is also increasing. The Supreme Court was, therefore, of the opinion that until appropriate law on this aspect is enacted, some guidelines were needed for the protection of such rights. The Court was also of the view that international conventions and norms could be relied upon to give a proper shape to the fundamental rights expressly guaranteed in the Constitution of India, which embodies the basic concept of gender equality in all spheres of human activity.

In the above background, the Supreme Court observed as under :

In the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for this purpose.

Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places, and that the enactment of such legislation would take considerable time, the Supreme Court laid down the following Guidelines, directing that they would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. The Court also called upon the Central and State Governments to consider appropriate legislation to ensure that these Guidelines are also observed by employers in the private sector. It was further clarified that these Guidelines would not prejudice any rights available under the Protection of Human Rights Act, 1993.

Q. What are the guidelines laid down by the Supreme Court for curbing sexual harassment of women in the work-place ? B.U. Nov. 2005

Q. Enumerate the guidelines given by the Supreme Court in the case of a gang rape of a social worker in Rajasthan. B.U. Apr. 2006 Nov. 2006.

Q. Define sexual harassment. B.U. Nov. 2005 Nov. 2006

1. Duty of Employer or other responsible persons in work places and other institutions

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as :

(a) physical contact and advances;

(b) a demand or request for sexual favours;

(c) sexually coloured remarks;

(d) showing pornography;

(e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

3. Preventive steps

All employers or persons in charge of the work place, whether in the public or private sector, should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation, they should take the following steps :

(a) Express prohibition of sexual harassment, as defined above, at the work place should be notified, published and circulated in appropriate ways.

(b) The rules and regulations of Government and Public Sector bodies relating to conduct and discipline should include rules and regulations prohibiting sexual harassment and provide for appropriate penalties against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authorities.

In particular, it should be ensured that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint mechanism

Whether or not such conduct constitutes an offence under law or a breach of Service Rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee

The complaint mechanism, referred to in clause 6 above, should be adequate to provide, where necessary, a Complaints Committee, a Special Counselor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body which is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

8. Workers' initiative

Employees should be allowed to raise issues of sexual harassment at workers' meetings and in any other appropriate forum, and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness

Awareness of the rights of female employees in this regard should be created, in particular, by prominently notifying the guidelines (and appropriate legislation, when enacted on the subject) in a suitable manner.

10. Third party harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and every person in charge should take all necessary and reasonable steps to assist the affected person in terms of support and preventive action.

Q. Write a note on: D. K. Basu versus State of West Bengal. B.U. Apr. 2000, Nov. 2000, Mav 2001, Nov- 2001, Apr 2004, Nov 2005, Apr 2006, Nov. 2006

Case No. 2

D. K. Basu versus State of West Bengal

[AIR 1997 SC 610 or (1997) (1) SCC 416 or 1999 Cri Law J. 743]

This case was decided by Justice Kuldip Singh and Justice (Dr.) A. S. Anand of the Supreme Court on 18th December, 1996. The case dealt with custodial deaths and various forms of custodial torture, and cruel, inhuman and degrading treatment of prisoners and other persons of West Bengal being questioned by the police.

Shri D. K. Basu, the Executive Chairman of Legal Aid Services, wrote a letter to the Chief Justice of India, drawing his attention to certain news reports appearing in The Indian Express and The Telegraph, regarding deaths in police custody and lock-ups. It was submitted that it was imperative to develop "custody jurisprudence", and to formulate guidelines for awarding compensation to the victim, and in case of his death, to his family members. The Court was requested to treat his letter, along with the published news items, as public interest litigation.

Considering the importance of custodial deaths, notice was issued to the State of West Bengal, which filed its counter {i.e., its written submissions or reply). It was stated therein that the police was not hushing up any matter of deaths in lock-ups, and that wherever police personnel were responsible for custodial deaths, action was being taken against them. It was argued that the Writ Petition was thus misconceived, misleading and untenable in law.

While this Petition was pending, another letter was received by the Chief Justice from Shri Ashok Kumar Johri, drawing the attention of the Court to the death of Mahesh Bihari of Aligarh in policy custody. This letter was also treated as a Writ Petition and heard along with Shri Basu's Petition.

The Court expressed its alarm at the frequency of deaths in police custody ("lock-up deaths") reported by newspapers. It, therefore, issued notices to all the State Governments. Notice was issued to the Law Commission of India, requesting it to make suggestions in the matter. The Court also appointed a Senior Advocate, Dr. A. M. Singhvi, to assist the Court as amicus curiae.

Initially, the State Governments took a stand that "everything was well" within their respective States, but ultimately assisted the Supreme Court in examining the various aspects of the issue and made useful suggestions for formulation of guidelines by the Court :

(a) to minimize, if not prevent, custodial violence, i.e. torture in lockups; and

(b) for award of compensation to the victims of custodial violence and to the kith and kin of those who die in custody on account of such torture.

The Law Commission also submitted to the Court, a copy of its 113th Report regarding injuries in police custody and suggested incorporation of a new Section (Section 114-B) in the Indian Evidence Act.

After commenting on the fact that the word "torture" has not been defined by any Indian statute, the Supreme Court remarked that "torture" is, today, synonymous with the darker side of human civilization. It observed that custodial torture is a naked violation of human dignity, which destroys

the individual. It is a calculated assault on human dignity, and whenever human dignity is wounded, civilization takes a step backwards. What is of real concern in such cases is not only the infliction of bodily pain, but also the mental agony which a person undergoes within the four walls of the lock-up or police station.

The Court observed that if the functionaries of the law themselves become law-breakers, it is bound to breed contempt for the law and encourage lawlessness. Every man would tend to become the law unto, himself, and this would lead to anarchism! The police is, no doubt, under a duty to arrest a criminal and interrogate him; but the law does not allow the use of third degree methods to torture the accused while in police custody with a view to solve the crime. "As observed by the Supreme Court, "The end cannot justify the means. No society can permit it."

In India, Article 21 of the Constitution protects life and personal liberty by providing that "no person shall be deprived of his life or personal liberty except according to procedure established by law". The Court observed that the expression "life or personal liberty" includes the right to live with human dignity, and thus, it would also include within itself, a guarantee against torture and assault by the State. Article 22 of the Constitution guarantees protection against arrest and detention in certain cases, laying down the procedural requirements as well as the rights of the person arrested. Detailed provisions are contained in the Criminal Procedure Code regarding powers of arrest and the safeguards which are required to be followed by the police to protect the interests of the arrested person. However, in spite of all these provisions, the morning newspapers carry, almost every day, reports of dehumanizing torture, assault, rape and deaths in police custody, and in the words of the Supreme Court, "Society's cry for justice becomes louder."

Q. Enumerate the guidelines given by the Supreme Court to be followed in all cases of arrest & detention. B.U. Apr. 2006 Nov. 2006 Apr. 2007

Eleven guidelines laid down by the Supreme Court)

Before laying down the guidelines as preventive measures in this regard, the Supreme Court made extensive references to The Universal Declaration of Human Rights, The Report of the Royal Commission on Criminal Procedure (in England), the Third Report of the National Police Commission (in India), the International Covenant on Civil and Political Rights and several Indian and foreign cases.

The Court then formulated the following eleven guidelines to be followed in all cases of arrest and detention, until legal provisions are made in that behalf as a preventive measure. The Court further directed that failure to comply with these requirements would render the concerned Officer liable for departmental action and such a person would also be punished for contempt of court.

(l) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall £>e attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made; it shall also be countersigned by the arrestee and shall contain the time-and-date of arrest.

(3) A person who has been arrested or detained, and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him, informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police, where the next friend or relative of the arrestee lives outside the district or town, through the Legal Aid Organisation in the District and the Police Station of the area concerned, telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the Diary at the place of detention regarding the arrest of the person, which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, also be examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination, every 48 hours during his detention in custody, by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A Police Control Room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee should be communicated by the officer causing the arrest, within 12 hours of effecting the arrest, and at the Police Control Room, it should be displayed on a conspicuous notice board.

Grant of compensation to victims of custodial torture

In every case where a man is wronged, he must have a corresponding remedy. Ubi jus ibi remedium. When a fundamental right of a person is infringed by the State, a mere declaration of the invalidity of an action of finding of custodial violence or death would not be a meaningful remedy. In the words of the Court, "To repair the wrong done and give judicial redress for the legal injury is a compulsion of judicial conscience."

In such cases, mere punishment of the wrong-doer cannot give much solace to the victim or his family members. Driving him to file a civil suit for damages would also be a long-drawn and cumbersome judicial process. Therefore, monetary compensation would be a useful, and perhaps,

the only effective remedy "to apply balm to the wounds of the family members of the deceased victim, who may have been the bread-winner of the family."

The Supreme Court, therefore, examined the provisions of the International Covenant on Civil and Political Rights, 1966, as well as the observations in several Indian and English cases. Thereafter, it came to the conclusion that monetary or pecuniary compensation would be the appropriate, effective, and in some cases, the only suitable remedy for the established infringement of a citizen's fundamental right to life by a public servant. The State is vicariously liable for the acts of its servants and after meeting its monetary liability to the victim, it is entitled to be indemnified by the wrong-doer. In such cases, the claim of the citizen is based on the principle of strict liability, and the defence of sovereign immunity is not available to the State. The citizen is thus entitled to compensation from the State.

Lastly, the Court observed that the quantum of compensation would depend on the peculiar facts of each case, and no strait-jacket formula can be evolved for this purpose. However, in assessing such compensation, the emphasis should be on the compensatory, and not the punitive element.

Q. Write a note on: M. C. Mehta v. Union of India. B.U. Apr. 2000 May 2001, Nov. 2001 May 2002 Dec. 2002 Nov. 2003 Apr. 2005

Case No. 3

M. C. Mehta & Another versus Union of India & Others

&

Shriram Foods & Fertilizer Industries & Another versus Union of India & Others

[AIR 1987 Supreme Court 965 or(1986) 2 SCC 176 or (1986) 1 SCR 312]

Mr. M. C. Mehta, an Advocate and a leading consumer activist, filed a public interest litigation, where the Supreme Court had to examine the true scope and ambit of Articles 21 and 32 of the Constitution. The Petitioner called upon the highest court of the land to lay down the principles and norms for determining the liability of large enterprises engaged in the manufacture and sale of hazardous products, the company in the present case being Delhi Cloth Mills Ltd, which runs an enterprise by the name of Shriram Foods and Fertilizers Industries (referred to as "Shriram"). The Court also had to consider whether such large enterprises should be allowed to continue to function in thickly populated areas, and if yes, what measures should be taken to reduce the hazard to its workmen and the community living in the neighborhood, being, in this case, about 2,00,000 persons within a radius of three kilometers. The Court had further to decide the basis on which damages would have to be quantified if dangerous substances escape from such enterprises.

Although the Shriram plant was commissioned in 1949, until the Bhopal tragedy of Union Carbide, neither its management nor the government appeared to have seriously considered the hazardous character of this caustic chlorine plant. It was only pursuant to a Question asked in Parliament that the Delhi Administration appointed an Expert Committee headed by Mr. Manmohan Singh. This Committee (the Manmohan Singh Committee) visited the plant, made an exhaustive inquiry, and

submitted a Report to the Government, containing various detailed recommendations to minimize the hazards and comply with safety and pollution control measures.

Then, on the fateful day, the fourth of December, 1985, a major leakage of oleum gas took place from one of the Shriram units, affecting not only its employees, but also all who lived around the plant. It was also brought to the Court's attention that an Advocate practising in the Tis Hazari Courts in Delhi had died on account of inhalation of this gas. Hardly had the public got over the shock of this disaster, when, two days later, another leakage (although a minor one, this time) took place when the same gas leaked out again from the joints of a pipe of the plant. The immediate response of the Delhi Administration was an Order dated 6th December, 1983, passed by the District Magistrate, Delhi, under S. 133(1) of the Criminal Procedure Code, directing Shriram to stop the manufacture and processing of hazardous and lethal chemicals and gases.

When Writ Petitions were filed in the Supreme Court, two teams of experts one appointed by the Court (the Nilay Choudhary Committee, and the other appointed by the Petitioner (the Agarwa! Committee) were directed to ascertain whether the recommendations of the Manmohan Singh Committee had been carried out or not. Persons who were affected by the gas leak were also allowed to file compensation claims within a given period before the Chief Metropolitan Magistrate. Yet another Committee, the Seturaman Committee, was also appointed :. the Lt. Governor of Delhi, to make an on-the-spot inspection of the : =-t and make its recommendations.

All the Expert Committees were unanimous in their view that, by adopting proper and adequate safety measures, the element of risk to the workers and the public could only be minimized but not totally eliminates. The Committees used varying expressions to describe the inherent dangers or such a plant, like "a worrying state of affairs", "a major hazard facility", and "a perennial source of hazard". The Committees emphasized the danger to the persons living in the vicinity of the plant and observed that there was considerable negligence on the part of the management of Shriram in the maintenance and operation of the plant, as also in the structure and design thereof.

The first question before the Supreme Court was whether the hazardous plant should be directed to be shifted and relocated at 'a safer place, and if so, within what time frame. Instead of seriously considering this important question and giving a clear-cut answer, the Court preferred to make the following observations on the point :

"This is a question which will require serious consideration and a National Policy will have to be evolved by the government for location of toxic or hazardous industries, and a decision will have to be taken in regard to relocation of such industries with a view to eliminating risk to the community likely to arise from the operation of such industries."

The second question, which the Court styled as "the immediate question", was whether the caustic chlorine plant of Shriram should be allowed to be reopened, and if so, subject to what conditions, keeping in mind that the operation of the plant should not involve a serious amount of hazard or risk to the community.

Top lawyers representing the management of the company submitted that it had carried out all the recommendations made in the reports of the Manmohan Singh Committee and Nilay Choudhary Committee, and that, therefore, the possible risk to the workers and the persons living in the v inity

was almost nil. It was urged that Shriram should, therefore, be allowed to reopen its caustic chlorine plant. It was made clear that it did not intend to immediately restart the other plants manufacturing sulphuric acid, oleum and related products. Thus, the Court was concerned primarily with the question of whether the caustic chlorine plant could be allowed to restart immediately, and whether all the recommendations of the said two Committees in respect of that plant were carried out by the management.

A Committee appointed by the Court confirmed that, barring the construction of a shed for filled cylinders (which construction had begun and was to be completed at an early date), all the recommendations of the Manmohan Singh Committee and the Nilay Choudhary Committee had been complied with by the management. A hydraulic test, as well as a mock drill, were also satisfactorily carried out.

Both the Unions of the workmen urged, with equal force, that the said plant be allowed to be restarted, and that a permanent closure of the plant would mean unemployment for more than 4,000 persons.

On the other hand, the Petitioner, Mr. M. C. Mehta, who appeared in person, "vehemently and passionately" urged that the Court should not alloy/ the caustic chlorine plant to be restarted, as there was always an element of hazard or risk to the community at large. He urged that chlorine is a dangerous gas, and even if utmost care is taken, the possibility of its accidental leakage could never be ruled out.

After hearing all the parties at length, and after viewing the picture from the angles of air and water pollution, the Court came to the conclusion, although with considerable hesitation that it would be in the interests of all concerned that Shriram be allowed to restart the caustic chlorine plant, subject to certain stringent conditions (listed below), which were to be "strictly and scrupulously followed by Shriram". It was made very clear that if any one or more of these conditions were violated, the permission to restart the plant would be liable to be withdrawn.

Conditions imposed by the Supreme Court

The Court then laid down the following eleven conditions, which Shriram was obliged to observe, so that the possible risk to the workmen and the community was almost reduced to nil.

(1) An Expert Committee was appointed by the Supreme Court to monitor the operation and maintenance of the plant and equipment. This Expert Committee would inspect the caustic chlorine plant of Shriram at least once in a fortnight and examine whether the recommendations made by Manmohan Singh Committee and Nilay Choudhary Committee are being scrupulously implemented by the management.

(2) One operator would be designated as personally responsible for each safety device or measure and the head of the caustic chlorine division should be made individually responsible for the efficient operation of such safety device or measure.

(3) The Chief Inspector of Factories or any Senior Inspector duly nominated by him, would inspect the caustic chlorine plant, at least once in a week, by paying a surprise visit without any previous intimation, and examine whether the recommendations of Manmohan Singh Committee

and Nilay Choudhary Committee are being complied with by the management and whether the safety devices or instruments installed by the management are operative and are properly functioning.

(4) The Central Board would also depute a senior Inspector to visit the plant at least once in a week, without any prior notice to the management, for the purpose of ascertaining whether the effluent discharged from the plant, as also at the terminal outlet, complies with the necessary standards.

5) The management of Shriram would obtain an undertaking from the chairman and Managing Director of the Delhi Cloth Mills Ltd., which is owner of the various units of Shriram, as also from the officer or officers who are in actual management of the caustic chlorine plant, that in case there is any escape of chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity, they will be personally responsible for payment of compensation for such death or injury.

(6) There would be a Committee of three representatives of Lokahit Congress Union and three representatives of Karamchari Ekta Union, to look after the safety arrangements in the caustic chlorine plant. The function of this Committee would be to ensure that all safety measures are strictly observed.

(7) There would be placed in each department or section of the caustic chlorine plant, as also at the gate of the premises, a detailed chart in English and Hindi stating the effects of chlorine gas on the human body, and informing the workmen and the people as to what immediate treatment should be taken in case they are affected by leakage of chlorine gas.

(8) Every worker in the caustic chlorine plant should be properly trained and instructed, by audio-visual programmes, in regard to the functioning of the specific plant and equipment in which he is working. He should also be educated and informed as to what precautions should be taken, and in case of leakage of chlorine gas, what steps should be taken to control and contain such leakage. Refresher courses should be conducted at least once in 6 weeks with mock trials.

(9) Loudspeakers should be installed all around the factory premises for giving timely warning and adequate instructions to the people residing in the vicinity, in case of leakage of chlorine gas.

(10) The management should maintain proper vigilance with a view to ensuring that workers working in the caustic chlorine plant wear helmets, gas masks or safety belts, and regular medical check-up of the workers should be arranged by the management in order to ensure that the workers are in good health.

(11) The management of Shriram would deposit in the Supreme Court a sum of Rs. 20 lacs, as and by way of security for payment of compensation claims made by or on behalf of the victims of oleum gas. The management of Shriram would also furnish a Bank Guarantee for a sum of Rs. 15 lacs which would be encashed, wholly or in part, in case there is any escape of chlorine gas within a period of three years, resulting in death or injury to any workman or to any person living in the vicinity.

Payment of costs to the Petitioner

Considering that the Petitioner, "though lone and single", had fought "a valiant battle" against a giant enterprise with substantial success, the Supreme Court directed Shriram to pay him a sum of Rs. 10,000, by way of costs, "in token of our appreciation of the work done by him".

Chapter VI

PUNCTUATION

The word "punctuation" comes from the Latin word, "punctum", literally meaning "point". Thus, punctuation is the art of putting points, stops or marks in a sentence, so as to make it more meaningful. Punctuation is thus the stitch that holds the fabric of language in shape. Remove the stitch, and the fabric would fall into unintelligible pieces. The oldest document that has used punctuation is the Mesha Stele, a document written in the ninth century BC, using points between words and horizontal strokes between sections. Punctuation developed dramatically when large numbers of the Christian Bible began to be produced, with a wide range of marks to aid and assist the reader. As remarked by one author, punctuation marks are like the traffic signals of language : they tell us where to slow down, where to take a turn, and where to stop. Remove the traffic signals, and words will bang into each other, much like cars around a junction with no traffic signals or policemen.

Punctuation marks are all powerful, and yet, so seemingly insignificant. Punctuation is to writing what the breath and tone of voice are to speech. No wonder, September 24 is celebrated every year in some countries as the National Punctuation Day !

Thus, punctuation herds certain words together, and keeps others apart. It helps one to read correctly, just as musical notations help the musician to play his instrument correctly. Absence of punctuation or improper punctuation can make a sentence ambiguous, or even change its entire meaning, as will be clear from the following examples :

1. (a) "John, my friend, is ill."

(b) "John, my friend is ill."

2. (a) Mary said, "Elizabeth has stolen my pen."

(b) "Mary," said Elizabeth, "has stolen my pen."

3. (a) A woman, without her man, is nothing,

(b) A woman : without her, man is nothing.

4. (a) "Am I looking at my dinner or my dogs ?"

(b) "Am I looking at my dinner or my dog's ?"

5. And, we have the oft-quoted story of the king who sent off his daughter's lover (whom he detested) to a far-off island, with a sealed note which said, "Spare him not, hang him". The clever princess, who got possession of this note for a few seconds, just had to shift the comma to save her

lover, The note now read : "Spare him, not hang him". A few months later, the two got married and lived happily ever after I

6. Wrong punctuation once ruined Tom's engagement. When away from his girl, he wrote her a letter, which ended as follows : "Now, I must go and get on my lover." The two would not have broken up if only the young man had punctuated his sentence correctly, and said, "Now, I must go and get on, my lover."

Russel Baker once observed that "punctuation puts body language on the printed page". A person can show his bewilderment with a question mark, his whisper with a parenthesis and emphasis with an exclamation mark. Sometimes, punctuation can reveal something about the writer (- and this is interesting for persons who chat on the Internet to unknown persons-). For instance, a person who uses a lot of dashes could be an excitable person who flirts from one idea to another, and often, a novice at writing, who has not mastered the art of using punctuation marks !

Commonly used marks of punctuation

The rules of punctuation vary with language, place and time, and are in a constant state of evolution. The following is an explanation of the use of the common marks of punctuation in the English language. The same is followed by a few exercises on correct ways of punctuation.

The rules considered below do not, of course, apply to tachygraphic (or shorthand) language forms such as those commonly used in online chat and text messaging (SMS).

1. Full stop [.]

The full stop, or period, represents the longest stop. When one speaks, one does so with pauses which come naturally and regularly. The same function is served by the full stop when one writes.

The commonest uses of the full stop are :

(a) To mark the end of an assertive or imperative sentence, as for example, —

1. All that glitters is not gold.

2. Please come home before sunset.

(b) At the end of abbreviations and initials, as for example, —

1. After finishing B.A., he enrolled for the M.A. course.

2. Dr. B. B. Singh will come back at 7 p.m.

2. Question mark [?]

The question mark, also called the note of interrogation, suggests an interrogatory remark or inquiry and is used at the end of a direct question, as for example, —

1. Has the professor gone to the class?

2. Do we have a holiday tomorrow ?

The question mark is, however, not used at the end of an indirect question, e. g. -

1. He asked me when I was going to Paris.

2. She asked him if he would marry her.

3. Exclamation mark [!]

The exclamation mark or the note of exclamation or "the shout mark" as it is sometimes referred to, suggests excitement or emphasis in a sentence. It is used :

(a) At the end of exclamatory sentences, as for instance, —

1. What a beautiful day !

2. What an attractive woman !

(b) After interjections and phrases expressing emotions like joy, sorrow, regret, surprise, etc., as for instance, —

Oh, my God I Alas ! Hurrah I Ah ! Bravo !

4. Comma [,]

The comma is the shortest pause, and is used for the following purposes :

(a) To separate words which belong to the same part of speech, as for instance,—

1. Mumtaz is fair, pretty and attractive.

2. This baby is cute, healthy, active and energetic.

(b) Before and after a noun or phrase in apposition, i.e., one which is added to another noun as an explanation, as for instance —

1. Mrs. Lee, our teacher, has resigned.

2. We visited Rome, the ancient city, last summer.

However, if the noun or phrase in apposition comes at the end of the sentence, only one comma will be required, as in the following examples :

1. Have you seen Taj Mahal, one of the wonders of the modern world ?

2. Let us go see this movie, the funniest one in town.

(c) After a noun which is the name of a person spoken to or addressed.

1. Ralph, fetch the water.

2. Ah Fiona, how good to see you again!

If, however, the noun or the name of the person spoken to comes in the middle of a sentence, two commas will be required, one before and the other after the noun, as for instance, —

1. Come on, girls, run faster.

2. Go home, James, and take some rest.

(d) After a phrase containing a present participle or a past participle, as for instance, —

1. Seeing the lion, the hunter ran away.

2. Shot in the arm, he beat a hasty retreat.

(e) To mark off direct speech from the rest of the sentence, as for instance, —

1. Looking at his mother, he said, "I will miss you."

2. "Go ahead", he said, "I am sure you will succeed."

(f) Before and after certain words and phrases like after all, no doubt, at best, well, however, indeed, of course, e.g., —

1. Hard work, after all, never killed anyone.

2. His mother, of course, is a great cook.

(g) To join two co-ordinate clauses, when the second clause expresses the result or importance of the first, as for instance,—

1. The young girl drank too much at the pub, and hesitated to return home.

2. He lost all his money at the casino, and did not have bus fare to go home.

(h) To start a direct quotation, as for instance, —

1. John said to Mary, "Where will I go now ?"

2. I told my students, "Please be quiet."

(i) To separate two clauses containing adjectives or adverbs in the comparative degree, e.g. —

1. The richer we are, the more intolerant we become.

2. He replied, "The more, the merrier."

(j) To separate pairs of words joined by "and", as for instance, —

1. She is pretty and attractive, sly and deceitful.

2. Pens and pencils, books and magazines, everything on this shelf is sold at a discount.

(k) To separate a noun from the rest of the sentence, as for instance, —

1. That he is a good teacher, is known to all.

2. Why the servant committed this murder, is still not known. (I) When referring to a city, state or country, as for instance, -

1. Nicolle was born in Paris, France.

2. The crime rate in Maharashtra, India, is not very high.

5. Apostrophe [']

The apostrophe is used :

(a) To show omission of a letter or letters, as for instance, —

1. I can't find her, as she's not in the office.

2. I don't care about what people say behind my back.

(b) To form the possessive case of nouns, as for instance, —

1. That is Mary's book.

2. This is a man's job.

(c) When a plural noun ends with "s", the apostrophe is added after "s", as for instance, —

1. This is the girls' hostel.

2. The students' fees have now been increased.

But if a plural noun does not end in "s", one would add "'s", as for instance, —

1. Children's rooms should be neat and clean.

2. Women's looks are important to them.

(c) To write the plural form of letters and figures, as for instance,—

1. You must mind your p's and q's.

2. The last figure in the sum has two 4's and three 5's.

[Note : Apostrophe should not be used (with 's) to convert a singular noun into plural. Thus, the plural of "apple" is "apples", and not "apple's".]

6. Inverted commas [" "]

Inverted commas, or quotation marks, are used to quote the actual words spoken by a person, as for instance, —

1. He whispered to her, "I love you more than anyone else."

2. "If you work hard," said the teacher to his students, "you will do well at the exams."

If, however, there is a reported speech or quotation within the reported speech, the inner reported speech or quotation is put within single inverted commas, as for instance, —

1. Sheila said to her teacher, "My mother says, 'You will fail unless you work hard.'"

2. The watchman said, "My master said, 'There is a ghost in this building.'"

7. Semi colon [;]

It will be seen that, when written, this sign represents a combination of a full stop and a comma. It is a pause that is not a complete ending like a full stop; nor is it a momentary pause like the comma. It is something in-between, and is used :

(a) To break up a sentence into parts, each part being connected to the other, as for instance,

1. Tommy was a mischievous lad who always quarrelled with his friends; in such quarrels, he often beat them up; for such conduct, he was often punished by his teachers.

2. The plane took off in bad weather; such weather was not uncommon in Zurich.

(b) To mark off a series of clauses which are loosely related to each other, as for instance, —

1. A mother loves her child; a child finds solace in its mother.

2. A child is born; he lives for some years; he dies; the cycle goes on.

(c) To mark off coordinate clauses which are linked by a conjunction, as for instance, —

1. When he was small, he was innocent and loving; but when he grew up, he began to cheat and lie.

2. We all hope for better days; but our hope is seldom realised.

8. Colon [:]

The colon represents a pause that is longer than the semi-colon. This punctuation mark has, however, lost its popularity with modern writers. The colon is used :

(a) To introduce a series of names, ideas or examples, as for instance, —

1. The main languages of Maharashtra are: Marathi, Hindi and English.

2. The three desirable qualities of a good lawyer are : honesty, skill and hard work.

(b) To introduce a quotation, as for instance, —

1. Gandhi had said : Non-violence is the best path to freedom.

2. The judge observed : All men are not born equal.

9. Hyphen [-]

The hyphen is used mainly to form compound words like "mother-in-law", "make-believe", "like-minded", "tug-of-war", "merry-go-round", etc.

The hyphen is also used when a word cannot be fitted at the end of a line, and part of it is written on the next line.

The hyphen is also used when writing numbers in words, as for instance, twenty-one or twenty-two.

10. Oblique [/]

The oblique or virgule or slash is used :

(a) To represent some short forms or abbreviations, as for instance,—

1. C/o (care of)

2. A/c (account)

3. b/f (brought forward)

4. c/f (carried forward).

(b) To indicate two or more possibilities in the sentence, as for instance, —

1. When a student appears at an exam, he/she should not cheat.

2. Whenever a child cries, the mother likes to hug him/her.

3. To enter the university, you will need your Identity Card and/or your Driver's License.

11. Capital letters [A, B, C . . .]

The capital or upper case letter is used :

- To start every sentence.
- To start every line of verse written in the traditional style.
- For all proper nouns (e.g. William, Elizabeth)
- For degrees and titles (e.g. LL.B., Sir)
- For names of countries and cities (e.g. India, Paris)
- For names of the months (e.g. May, June)
- For the days of the week (e.g. Monday, Tuesday)
- For names of communities (e.g. Hindus, Muslims)
- For names of festivals (e.g. Diwali, Christmas)
- For historical events (e.g. Second World War, First War of Independence)

- For names of newspapers (e.g. Times of India, Indian Express)
- For names of mountains and rivers (e.g. Mount Everest, Ganges)
- For holy scriptures (e.g. Bible, Gita)
- For words and pronouns pertaining to God or any deity (e.g. God and His eternal mercy, Lord Almighty, the Creator, etc.)

Punctuation Exercises

Punctuate the following passages :

O.1. what is your occupation he began professional pickpocket how long have you been a professional pickpocket twenty four years if acquitted in this case what will your occupation be in the future professional pickpocket but holmes knew his jury well and his client was acquitted on the charge brought against him Ans. "What is your occupation?" he began. "Professional pickpocket." "How long have you been a professional pickpocket?" "Twenty-four years." "If acquitted in this case, what will your occupation be in the future?" "Professional pickpocket." But Holmes knew his jury well and his client was acquitted on the charge brought against him.

O. 2. you say you saw the man being stabbed in the hay field with a fork what kind of fork asked the junior lawyer keen to break down the witness before him well did you ever see a tuning fork or an oyster fork in a hay field asked the witness in reply

Ans. "You say you saw the man stabbed in the hay-field with a fork. What kind of fork?" asked the junior lawyer, keen to break down the witness before him. "Well, did you ever see a tuning fork or an oyster fork in a hay-field?" asked the witness in reply.

Q. 3. following his arrest for his revolutionary views John thelwell the eighteenth century english reformer found himself charged with treason writing to lord erskine then the countrys most celebrated barrister he said laconically i shall plead my own case youll be hanged if you do erskine replied even if I dont ill be hanged was thelwells answer

Ans. Following his arrest for his revolutionary views, John Thelwell, the eighteenth century English reformer, found himself charged with treason. Writing to Lord Erskine, then the country's most celebrated barrister, he said laconically, "I shall plead my own case." "You'll be hanged if you do", Erskine replied. "Even if I don't, I'll be hanged," was Thelwell's answer.

O. 4. my lord said the thief i carried away the bicycle only as a joke how far did you take it queried the judge-ten blocks came the reply you will go to jail said the judge as you carried the joke too far

Ans. "My Lord," said the thief, "I carried away the bicycle only as a joke." "How far did you take it?" queried the judge. "Ten blocks," came the reply, "You will go to jail," said the judge, "as you carried the joke too far."

Q. 5. hoping to break down the witness an old engine driver the young lawyer asked are you sure the cow was on the railway track when your engine ran over it no sir was the reply it was in the rice fields and i chased it with my engine and then ran over it

Ans. Hoping to break down the witness, an old engine driver, the young lawyer asked, "Are you sure the cow was on the railway track when your engine ran over it ?" "No, Sir," was the reply, "It was in the rice fields and I chased it with my engine and then ran over it."

Q. 5. a woman who was found guilty of unlawfully killing her husband with a kitchen knife applied for a widows allowance however the high court where her application ended up ruled that she was not entitled to receive any such allowance in the same way as other widows whose husbands had passed away less intentionally

Ans. A woman, who was found guilty of unlawfully killing her husband with a kitchen knife, applied for a widow's allowance. However, the High Court, where her application ended up, ruled that she was not entitled to receive any such allowance in the same way as o-her widows whose husbands had passed away less intentionally.

Q. 6. the local magistrate had never heard almost as convincing a plea from a truck driver charged with driving without due care and attention my mind was preoccupied by the thought of my grandson with a broken thigh he told them my brother who is seriously ill in another hospital and my wife who is caring for my 88 year old mother in law

Ans. The local magistrate had never heard almost as convincing a plea from a truck driver charged with driving without due care and attention. "My mind was preoccupied by the thought of my grandson with a broken thigh," he told them, "my brother who is seriously ill in another hospital and my wife who is caring for my 88-year old mother-in-law."

O. 7. exercising his right to challenge any one member of the jury an irish defendant in a waterford court objected to one upright member and had him set aside when he was later asked why he picked on that particular juryman the defendant replied well you see its like this hes one of those men who had refused my bribe in an earlier case

Ans. Exercising his right to challenge any one member of the jury, an Irish defendant in a Waterford court objected to one upright member and had him set aside. When he was later asked why he picked on that particular juryman, the defendant replied, "Well, you see, it's like this. He's one of those men who had refused my bribe in an earlier case."

Q. 8. counsel pleading before lord denning that his client had an unblemished reputation apart from one crime a slight case of murder was told by the judge unfortunately I have sentenced to death too many persons who bore the highest character to enable me to give that argument more than its due weight

Ans. Counsel pleading before Lord Denning that his client had an unblemished reputation, apart from one crime, a slight case of murder, was told by the judge, "Unfortunately, I have sentenced to death too many persons who bore the highest character to enable me to give that argument more than its due weight."

Punctuation Questions (From the University of Mumbai)

November 1999

Question : many lawyers fail to attain full growth indeed many of them never glimpse the vision either of what is slightly expected of the legal profession or of them individually for them their responsibility begins and ends with serving their clients

Solution : Many lawyers fail to attain full growth. Indeed, many of them never glimpse the vision, either of what is slightly expected of the legal profession or of them individually. For them, their responsibility begins and ends with serving their clients.

April 2000

Question : this is the opinion at any rate of two authorities so great and so opposed in their views as bishop butler and jeremy bentham sir james Stephen says criminal law stands to the passion of revenge in much the same relation as marriage to the sexual appetite

Solution : This is the opinion, at any rate, of two authorities, so great and so opposed in their views, as Bishop Butler and Jeremy Bentham. Sir James Stephen says, "Criminal law stands to the passion of revenge, in much the same relation as marriage to the sexual appetite."

Nov. 2000

Question : are you putting up at demyaonovs mahrey pctorovich yes at demyaonovs answered the other starting the next time i shall put up there too its really impossible to put up at tipyakovs

Solution : "Are you putting up at Demyaonov's Mahrey Pctorovich?" "Yes, at Demyaonov's," answered the other. "Starting the next time, I shall put up there too. It's really impossible to put up at Tipyakov's."

May 2001

Question : i do not expect to be treated with this kindness said the knight oh but you belong to the noble order of the temple answered the pilgrim

Solution : "I do not expect to be treated with this kindness," said the knight. "Oh! But you belong to the noble order of the temple," answered the pilgrim.

November 2001

Question : has a minister to say no in the house of commons some men are constitutionally capable of saying no but the minister conveys it thus the answer of the question is in the negative that means can you discover it to mean anything except that the speaker is a pompous person Solution : Has a minister to say "No" in the House of Commons? Some men are constitutionally capable of saying "No", but the minister conveys it thus. The answer of the question is in the negative; that means, can you discover it to mean anything except that the speaker is a pompous person ?

May 2002

Question : war is inevitable but then charles the hammer had no choice his frankish troops were not adequately prepared the battle of tours saw one of the most decisive battles fought in the history of mankind it was to save the world from the darkness of saracen rule

Solution : War is inevitable. But then Charles, the Hammer, had no choice. His Frankish troops were not adequately prepared. The battle of Tours saw one of the most decisive battles fought in the history of mankind. It was to save the world from the darkness of Saracen rule.

December 2002

Question : in whose regard are these festivities being organised asked the masked pilgrim to the soldier it is for the welcoming of the unknown soldier who will lead us to victory over our enemies as prophesied replied the soldier

Solution : "In whose regard are these festivities being organised?" asked the masked pilgrim to the soldier. "It is for the welcoming of the Unknown Soldier who will lead us to victory over our enemies, as prophesied," replied the soldier.

April 2003

Question: just all of a sudden i began to cry miss gillespie said what are you crying about i said i don't know everybody is so nice to me she said you should be happy tonight was a triumph for you my mother said well i am going to tell you something lets go home

Solution : Just all of a sudden, I began to cry. Miss Gillespie said, "What are you crying about?" I said, "I don't know. Everybody is so nice to me." She said, "You should be happy. Tonight was a triumph for you." My mother said, "Well, I am going to tell you something. Let's go home."

November 2003

Question : fireman inspector i am afraid i am wanted down at the hospital would you mind it is rather urgent inspector you phoned for the police surgeon fireman yes sir they are trying to get hold of him oh wait a moment I have forgotten something can you take the doctor in

Solution : Fireman : "Inspector, I am afraid I am wanted down at the hospital. Would you mind? It is rather urgent."

Inspector : "You phoned for the police surgeon ?"

Fireman: "Yes sir. They are trying to get hold of him. Oh! Wait a moment. I have forgotten something. Can you take the doctor in ?"

April 2004

Question : many solicitors simply do not like working in a large scale environment and one attraction of private practice may be the intimate failure of the business where all staff and solicitors have personal contact this may mean that some firms make a positive decision not to expand a sole practitioner may enjoy complete autonomy the direct financial fruits of his labour and a feeling that he is entirely in charge the down side is the perhaps overwhelming amount of contact with the business difficulties in taking holidays or covering illnesses an inability to share problems and a lack of opportunity for specialisation

Solution : Many solicitors simply do not like working in a large-scale environment, and one attraction of private practice may be the intimate failure of the business, where all staff and solicitors have

personal contact. This may mean that some firms make a positive decision not to expand. A sole practitioner may enjoy complete autonomy, the direct financial fruits of his labour and a feeling that he is entirely in charge. The down-side is the perhaps overwhelming amount of contact with the business, difficulties in taking holidays or covering illnesses, an inability to share problems and a lack of opportunity for specialisation.

November 2005

Q. 1. none could compare with him they say all felt to be the greatest or most fortunate of men

Sol. None could compare with him. They say, "All felt to be the greatest or most fortunate of men."

Q. 2. what a relief i hope i shall pass for i have just got a letter from my father promising to send me to a law school abroad if i get through this examination

Sol. What a relief ! I hope I shall pass, for I have just got a letter from my father, promising to send me to a law school abroad if I get through this examination.

O. 3. the lawyer asked his client you are going to prefer an appeal arent you

Sol. The lawyer asked his client, "You are going to prefer an appeal, aren't you ?"

Q. 4. oh well its a hobby and it teaches you some geography and sometimes also brings you some money

Sol. Oh, well I It's a hobby and it teaches you some geography, and sometimes also brings you some money.

Q. 5. satish my ward how fine you high brows can talk i develop my intellectual faculties.

Sol. Satish, my ward I How fine you high-brows can talk ! I develop my intellectual faculties.

Q. 6. thats the style i m sure you will succeed and break your so called bad luck once and for all

Sol. That's the style! I am sure you will succeed and break your so-called "bad luck" once and for all.

April 2006

Q. 1. unless he is exceptionally shrewd the counsel exclaimed an english criminal is always better hidden in london than anywhere else

Sol. "Unless he is exceptionally shrewd," the counsel exclaimed, "an English criminal is always better hidden in London than anywhere else I"

Q. 2. you have lost twelve hours here do you wish to try and regain them

Sol. You have lost twelve hours here. Do you wish to try and regain them ?

Q. 3. she clung to his arm and said vehemently no dont go near the water

Sol. She clung to his arm and said vehemently, "No. Don't go near the water."

Q. 4. do you think you heard my masters voice then sir when they were sealed asked jenny

Sol. "Do you think you heard my master's voice then, Sir, when they were sealed ?" asked Jenny.

Q. 5. are you better henry called out peterson

Sol. "Are you better, Henry ?" called out Peterson.

Q. 6. what is the matter asked mrs fogg

Sol. "What is the matter ?" asked Mrs. Fogg.

November 2006

Q. 1. Caroline is incapable of willfully deceiving anyone and all that i can hope is that she is not deceiving herself.

Sol. Caroline is incapable of willfully deceiving anyone, and all that I can hope for is that she is not deceiving herself.

Q. 2. mr rochester i thought you were not fond of children nor am i said he

Sol. "Mr. Rochester, I thouoht you were not fond of children; nor am I", said he.

Q. 3. if jim doesnt kill me she said to hereself before he takes a second look at me I will say i will look like a coney island chorus girl

Sol. "If Jim doesn't kill me", she said to herself, "before he takes a second look at me, I will say I look like a Coney Island chorus girl."

Q. 4. perhaps cried he these may be such monsters as you describe

Sol. "Perhaps," cried he, "these may be such monsters as you describe."

Q. 5. take away that bauble said cromwell pointing out to the mace which lay on the table and when the house was empty he went out with the key in his pocket

Sol. "Take away that bauble", said Cromwell, pointing out to the mace which lay on the table, and when the house was empty, he went out with the key in his pocket.

Q. 6. wretch said the king what harm did i do that you seek to take my Fife with your own hands you killed my father and my two brothers was the reply

Sol. "Wretch !", said the king, "What harm did I do that you seek to take my life with your own hands ?" "You killed my father and my two brothers", was the reply.

April 2007

Q. 1. friends romans countrymen lend me your ears

Sol. "Friends, Romans, Countrymen I Lend me your ears."

Q. 2. he said to us wait and watch

Sol. He said to us, "Wait and watch."

Q. 3. we should live soberly prudently and industriously at all times

Sol. We should live soberly, prudently and industriously at all times.

Q. 4. by night or by day at home or abroad asleep or awake he is a constant source of anxiety to his father

Sol. By night or by day, at home or abroad, asleep or awake, he is a constant source of anxiety to his father.

Q. 5. caesar having defeated the gauls led his army into britain

Sol. Caesar, having defeated the Gauls, led his army into Britain.

Q. 6. a young rajah once said to his vazir how is that i am so often ill i take great care of my self yet i am always sick

Sol. A young Rajah once said to his Vazir, "How is that I am so often ill ? I take great care of myself, yet I am always sick."

Chapter VII

TRANSFORMATION OF SENTENCES (Do as directed)

A. ACTIVE AND PASSIVE VOICE

In sentences in the active voice, the subject performs the action, i.e., it is the doer of the action. So, when the subject is to be given prominence, the active voice is used. In the sentence, "John helps Mary", the form of the verb shows that the subject, John, is doing something.

In the passive voice, the person or thing denoted by the subject is not active, but passive. What is denoted by the subject has something done to it., if the above sentence is expressed in the passive voice, it would read as : Mary is helped by John. Here, the subject, Mary is not doing something, but has something done to her. Thus, the passive voice is used when the thing acted upon is to be made prominent. It is used when the agent (the one who is doing something) need not be named, or given any importance, or is unknown. In cases where it is evident who the doer is, it becomes unnecessary to mention him in the passive voice. Such an omission makes the sentence look neater and more concise, as for instance :

1. The ship is wrecked.

2. My pocket has been picked.

Here, it is understood that the ship is wrecked by a storm (or some other natural calamity) and the pocket has been picked by someone.

When a verb takes both a direct and an indirect object in the active voice, when converting it into the passive voice, either object can be made the subject, while the other is retained (as the retained object), as in the following example :

Active : The manager will give you the tickets.

Passive : The tickets will be given to you by the manager.

O R

You will be given the tickets by the manager.

It may also be noted that only transitive verbs can be used in the passive voice, as an intransitive verb has no object. Thus, the following sentences cannot be changed into the passive voice:

1. George went to the railway station.

2. She reached the theatre at 6 p.m.

Examples

Change the following sentences from Active Voice to Passive Voice :

1. The hen laid golden eggs.

passive : Golden eggs were laid by the hen.

2. The dog chased the cat.

Passive : The cat was chased by the dog.

3. Children were making sand-castles.

Passive : Sand-castles were being made by the children.

4. He will bake the cake.

Passive : The cake will be baked by him.

5. Graham Bell invented the telephone.

Passive : The telephone was invented by Graham Bell.

6. Everyone admires great men.

Passive : Great men are admired by everyone.

7. Richard lost the money.

Passive : The money was lost by Richard.

8. One should keep one's promises.

Passive : Promises should be kept.

9. The chairman is presiding over the meeting.

Passive : The meeting is being presided over by the chairman.

10. The magistrate will punish the guilty.

Passive : The guilty will be punished by the magistrate.

Change the voice from Passive to Active :

1.The museum was inaugurated by the Minister. Active : The Minister inaugurated the museum.

2. This palace was built by King Solomon. Active : King Solomon had built this palace.

3. Roof-tops were blown away by strong winds. Active : Strong winds blew away the roof-tops.

4. The meal will be enjoyed by everyone. Active : Everyone will enjoy the meal.

5. They were refused permission by us. Active : We refused them permission.

6. The front gate was mobbed by his admirers. Active : His admirers mobbed the front gate.

7. He was elected captain. Active ; They elected him captain.

8. Two new houses were built by them. Active : They built two new houses.

9. This poem was written by Keats. Active : Keats wrote this .poem.

10. My shoes have been stolen. Active : Someone has stolen my shoes.

B. QUESTION TAGS

A question tag is used when, in the course of a conversation, a person makes a statement, and asks for a confirmation, as for instance, "It's hot today, isn't it ?" In this sentence, "isn't it ?" is the question tag, which is written in the abbreviated form, and is followed by the question mark. The following simple rules may be kept in mind when adding question tags.

Rule 1

If the statement is positive, the question tag will be in the negative, and vice-versa, as in the following examples :

1. He will certainly help you.

He will certainly help you, won't he ?

2. He did not return the book.

He did not return the book, did he ?

Rule 2

When the sentence is imperative, the question tag will be as under :

1. Bring me some hot coffee.

Bring me some hot coffee, will you ?

2. Send for the boy at once.

Send for the boy at once, will you ?

Rule 3

When the sentence begins with "Let us" or "Let's", the question tag usually takes the form of "shall we ?", as in the following examples :

1. Let us go and eat dinner.

Let us go and eat dinner, shall we ?

2. Let's begin our work at once.

Let's begin our work at once, shall we ?

Add Question Tags to the following sentences :

1. He was shot dead.

He was shot dead, wasn't he?

2. Send for him at once

Send for him at once, will you?

3. You need to come earlier.

You need to come earlier, don't you?

4. Stop that noise.

Stop that noise, will you?

5. You teach English in this school.

You teach English in this school, don't you?

6. They always work hard.

They always work hard, don't they?

7. Rita is very young.

Rita is very young, isn't she?

8. You will come for the party.

You will come for the party, won't you?

9. Jack doesn't love fishing.

Jack doesn't love fishing, does he?

10. It is not raining in Mumbai.

It is not raining in Mumbai, is it?

C. SENTENCES CONTAINING THE ADVERB "too"

The conversion of a sentence by removing the adverb, "too" is easy. Generally speaking, the word "too" is replaced by the word "so", and the later part of the sentence is made negative if it is positive, and vice-versa. However, it is important to remember, that, although the form of the sentence is changed, the meaning of the sentence should remain the same, as will be clear from the following examples :

Rewrite the following sentences removing 'too' :

1. These grapes are too sour to be eaten.

These grapes are so sour that they cannot be eaten.

2. The bridge is too long for us to cross by foot.

The bridge is so long that we cannot cross it by foot.

3. This load is too much for one person to carry.

This load is so much that one person cannot carry it.

4. This arithmetical problem is too difficult for a child to solve. This arithmetical problem is so difficult that no child can solve it.

5. The sound is too loud for us to bear.

The sound is so loud that we cannot bear it.

6. She is too poor to feed her children.

She is so poor that she cannot feed her children.

7. It's too late for me to go home. It's so late that I cannot go home.

8. This news is too good to be true.

This news is so good that it cannot be true.

9. The sick man was too exhausted to speak.

The sick man was so exhausted that he could not speak.

10. This fact is too evident to require proof.

This fact is so evident that it does not require proof.

D. CONVERSION OF AFFIRMATIVE SENTENCES INTO NEGATIVE

The content of an affirmative sentence can always be expressed in a negative sentence, as will be clear from the following examples. It must be remembered that two negatives make a positive (affirmative), and that, in all cases, the meaning of the sentence must remain the same.

Convert the following into negative sentences :

1. William is uneducated.

William is not educated.

2. I am doubtful whether I saw you at the theatre last night.

I am not sure whether I saw you at the theatre last night.

3. Your behaviour towards your parents is bad.

Your behaviour towards your parents is not good.

4. I think that was a foolish bargain.

I think that was not a wise bargain.

5. There was cheating throughout the tournament.

There was no fair play throughout the tournament.

6. The judge disagreed with the lawyer on a vital point.

The judge did not agree with the lawyer on a vital point.

7. Betty's gift remained wrapped for a month.

Betty's gift was not unwrapped for a month.

8. I think she has company tonight.

I think she is not alone tonight.

9. Where there is smoke there is fire.

There is no smoke without a fire.

10. She understood what the teacher taught her in the class.

She did not misunderstand what the teacher taught her in the class.

E. CONVERSION OF NEGATIVE SENTENCES INTO AFFIRMATIVE

When a negative sentence is to be made affirmative or positive, the same formula (as stated above) is to be applied, but in a reverse manner. Needless to say, the meaning of the sentence should be the same in the transformed sentence.

Convert the following into affirmative sentences :

1. He did not succeed in spite of many efforts. He failed in spite of many efforts.

2. Georgy did not like the colour of his shirt. Georgy disliked the colour of his shirt.

3. India is not a poor country. India is a rich country.

4. No student in his class is as tall as he is. He is the tallest student in his class.

5. Until 1947, India had not been divided. Until 1947, India had remained undivided.

6. Ria does not take much sugar in her tea. Ria takes very little sugar in her tea.

7. Whether it will rain today is not certain. Whether it will rain today is uncertain.

8. I will never forget my teacher's advice. I will always remember my teacher's advice.

9. The two brothers are not unlike each other. The two brothers are like each other.

10. He believed that it was not unfair to cheat at examinations. He believed that it was fair to cheat at examinations.

F. CONVERSION OF INTERROGATIVE SENTENCES INTO ASSERTIVE

When an interrogative sentence is transformed into an assertive sentence, the question mark at the end of the original sentence is replaced by a full stop. Here also, the meaning of the sentence must remain the same.

1. Can I ever forget your kindness? I can never forget your kindness.

2. Isn't she exceptionally intelligent for her age? She is exceptionally intelligent for her age.

3. Who is free from sin? Nobody is free from sin.

4. What have I done to incur your wrath? I have done nothing to incur your wrath.

5. When can their glory fade? Their glory can never fade.

6. Shall I ever forget those happy days? I shall never forget those happy days.

7. Who is so base that would betray his country? There is no one so base that would betray his country.

8. Who authorised you to sign these documents? No one authorised you to sign these documents.

9. Can anyone excel Sachin Tendulkar in cricket? No one can excel Sachin Tendulkar in cricket.

10. Is there anything nobler than love? There is nothing nobler than love.

G. CONVERSION OF EXCLAMATORY SENTENCES INTO ASSERTIVE

When an exclamatory sentence is converted into an assertive sentence, the meaning of the sentence should remain the same, and the exclamatory mark of the original sentence should be replaced by a full stop.

Convert the following into assertive sentences :

1. What a nuisance these noisy loudspeakers are! These noisy loudspeakers are a great nuisance.

2. If only I could see him once! I wish I could see him once.

3. A sailor and afraid of storms!

It is strange that a sailor is afraid of storms.

4. To think that his own brother is so jealous of his progress!

It is strange that his own brother is so jealous of his progress.

5. Shame on you for being so cold and indifferent!

You should be ashamed of being so cold and indifferent.

6. Alas! The beloved leader has departed!

It is very sad that the beloved leader has departed.

7. How beautiful is the night! The night is very beautiful.

8. What would I not give to see her happy! I would give anything to see her happy.

9. How awkwardly he drives the car! He drives the car very awkwardly.

10. What a delicious flavour these mangoes have! These mangoes have a very delicious flavour.

H. CHANGING THE DEGREES OF COMPARISON

Adjectives have three degrees of comparison -.positive, comparative and superlative, as reflected in the following table :

Positive	Comparative	Superlative
Tall	taller	tallest
Soft	softer	softest
Great	greater	greatest

As seen from the above, the positive degree only talks of a particular quality of an object. The comparative degree compares one thing or person with another. The superlative degree points out a thing or person with the greatest amount of that particular quality amongst all the things or persons observed. This can be illustrated from the following :

Positive : Hercules was strong.

Comparative : Helen is more beautiful than Elizabeth.

Superlative : Silk is the softest of all fabrics.

The three degrees of comparison of some common words are given below :

Positive	Comparative	Superlative
Bold	bolder	boldest
Young	younger	youngest
Easy	easier	easiest
Beautiful	more beautiful	most beautiful
Careful	more careful	most careful
Good	better	best
Bad	worse	worst
Little	less	least
Far	farther	farthest
In	inner	innermost
Up	upper	uppermost.

When a sentence is changed from one degree to another, the meaning thereof should remain the same. Some examples of transformation of the degrees of comparison are given below.

1. Positive : No poet of India has been so great as Tagore.

Comparative : Tagore has been greater than any other poet of India.

Superlative : Tagore has been the greatest poet of India.

2. Positive : No country of the world is as populated as China.

Comparative : China is more populated than any other country of the world.

Superlative : China is the most populated country in the world.

3. Positive : Very few countries are as secular as India.

Comparative : India is more secular than most other countries.

Superlative : India is one of the most secular countries.

Note : When only two persons or objects are being compared, the idea can be expressed in the positive and comparative degrees, but not in the superlative, as for instance, —

Positive : Bill is not as tall as Joe.

Comparative : Joe is taller than Bill.

Superlative : No superlative, as comparison is between two persons.

I. SIMPLE, COMPOUND AND COMPLEX SENTENCES

Simple sentences

A simple sentence has only one subject and one predicate. In other words, a simple sentence is one which has only one finite verb. In the sentence, "Newton discovered the law of gravity", "Newton" is the subject and "the law of gravity" is the object. The sentence is thus a simple sentence.

Examples of simple sentences :

1. The professor is quite dumb.
2. The teacher punished the boy for disobedience.
3. A stitch in time saves nine.
4. An apple a day keeps the doctor away.
5. Birds of a feather flock together.

Compound sentences

A compound sentence is one which is made up of two or more principal or main clauses. In a compound sentence, two or more simple sentences, each having its own subject and predicate, are joined together by a conjunction like and, but, for, or, also, still, only. Each part of the sentence, called a clause, can stand independently of the other or others, and makes complete sense by itself. Each clause is the principal or main clause and there are no dependent or subordinate clauses. The following is an example of a compound sentence :

The moon was bright and we did not need a torch.

This sentence consists of two clauses, namely:

1. The moon was bright.
2. We did not need a torch.

Each clause has a subject and a predicate, and the two clauses are joined by the conjunction "and". It will also be seen that each clause makes sense, and can stand by itself as a complete sentence.

Examples of compound sentences :

1. She was late, yet she was not punished.

2. She wore her best dress for it was her birthday.

3. You must listen to the teacher or you will be punished.

4. We will all go together, so please do not worry.

5. She is good at dancing and she can sing like a bird.

Complex sentences

A complex sentence has one main or principal clause, and one or more subordinate or dependent clauses, as for instance, the following sentence : They went to sleep when it became dark. This sentence has the following two clauses :

1. They went to sleep.

2. When it became dark.

Here, the first clause is the main clause, and it makes good sense. However, the second clause, which is the subordinate clause, does not make good sense. It is dependent on the main clause, namely, "They went to sleep."

In a complex sentence, the subordinate clause is joined to the main clause with conjunctions such as after, because, though, although, till, before, unless, as, when, where, while, that, since, etc.

Summary

To sum up, —

1. A simple sentence has one subject and one predicate, e.g. — Both the boxers advanced into the ring.

2. A compound sentence has two or more principal or main clauses, e.g. — Both the boxers advanced into the ring and they looked at each other.

3. A complex sentence has one principal clause and one or more subordinate clauses, e.g. —

Both the boxers advanced into the ring when the bell rang. Conversion or transformation of sentences

Keeping the above in mind, it becomes easy to convert a sentence from one of the above forms into another, as will be clear from the following examples.

Change the following from simple to compound sentences :

(1) Simple: The father punished his son for telling a lie.

Compound: The son told a lie and so the father punished him.

(2) Simple: Nitin must practice hard to win the gold medal. Compound: Nitin must practice hard or he will not win the gold medal.

(3) Simple: Notwithstanding her struggle, she could not mobilize the funds. Compound: She struggled hard, yet she could not mobilize the funds.

(4) Simple: To his surprise he found the book where he had left it. Compound: He found the book where he had left it, and this surprised him.

(5) Simple: Owing to her illness, Susan could not attend her brother's wedding.

Compound: Susan was ill and therefore she could not attend her brother's wedding.

(6) Simple: Taking pity on his condition, the landlady allotted him a room.

Compound: : The landlady took pity on his condition and allotted him a room.

(7) Simple: Hearing their father's footsteps, the boys ran away.

Compound: The boys heard their father's footsteps and they ran away.

(8) Simple: Notwithstanding his hard work, he did not succeed.

Compound: He worked hard, yet he did not succeed.

(9) Simple: Owing to his inexperience, he suffered a heavy loss in the business.

Compound: He was inexperienced, so he suffered a heavy loss in the business.

(10) Simple: She must work very hard to win the first prize.

Compound: She must work very hard or she will not win the first prize.

Change the following from simple to complex sentences :

(1) Simple: He owed his success to his teacher.

Complex: It was owing to his teacher that he succeeded.

(2) Simple: He admitted his fault.

Complex: He admitted that he was at fault.

(3) Simple: On being threatened with execution, he confessed his crime.

Complex: He confessed his crime when he was threatened with execution.

(4) Simple: On reaching Cairo she started her excavation work.

Complex: She started her excavation work as soon as she reached Cairo.

(5) Simple: My uncle, the architect of this building, has retired.

Complex: My uncle, who was the architect of this building, has retired.

(6) Simple: I can prove my competence.

Complex: I can prove that I am competent.

(7) Simple: The report of his failure has surprised us all.

Complex: The report that he has failed has surprised us all.

(8) Simple: He is working day and night to improve his prospects in life.

Complex: He is working day and night so that he may improve his prospects in life.

(9) Simple: He bought his uncle's shop.

Complex: He bought the shop that belonged to his uncle.

(10) Simple: He owed his success to his father.

Compound: It was owing to his father that he succeeded.

Change the following from compound to complex sentences :

(1) Compound: Teach him to fish and he will feed himself. Complex: If you teach him to fish, then he will feed himself.

(2) Compound: Admit your fault, or you will face stricter treatment. Complex: Unless you admit your fault, you will face stricter treatment.

(3) Compound: He wishes to become a doctor, therefore he has opted for Science.

Complex: He has opted for Science so that he may become a doctor.

(4) Compound: He saw the principal approaching and ran away. Complex: When he saw the principal approaching, he ran away.

(5) Compound: Only do the right, and you will have no reason to be afraid. Complex: If you only do the right, you will have no reason to be afraid.

(6) Compound: Eat light dinners and you'll need less medicine. Complex: If you eat light dinners, you'll need less medicine.

(7) Compound: He gives a. command and it is immediately carried out. Complex: As soon as he gives a command, it is immediately carried out.

(8) Compound: He saw the danger and paused. Complex: When he saw the danger, he paused.

(9) Compound: He aimed at winning the prize and worked hard. Complex: He worked hard so that he might win the prize.

(10) Compound: I cannot afford to buy many books and so I study in the library. Complex: Since I cannot afford to buy many books, I study in the library.

Change the following from complex to compound sentences :

1. Complex: If you do not sell the jewels, you'll be in debt. Compound: You must sell the jewels, or you'll be in debt.

2. Complex: Although he was tired, he did not quit. Compound: He was tired but he did not quit.

3. Complex: We can prove that there exists a tenth planet. Compound: There exists a tenth planet and we can prove it.

4. Complex: Unless a bridge is built, the towns will not be connected. Compound: A bridge has to be built, else the towns will not be connected.

5. Complex: I will forgive him for deceiving me. Compound: He has deceived me but I will forgive him.

6. Complex: Although she was injured, she kept running. Compound: She was injured, but she kept running.

7. Complex: Why wait for him when he is not going to come? Compound: He is not going to come, and we must not wait for him.

8. Complex: As soon as he heard the news, he broke into tears. Compound: He heard the news and immediately broke into tears.

9. Complex: Everybody knows that man is mortal.

Compound: Man is mortal and this fact is known to everybody.

10. Complex: He was so learned that he seemed to know everything.

Compound: He was very learned; therefore he seemed to know everything.

Change the following from compound to simple sentences :

1. Compound: He finished his meal and went for a walk. Simple: Having finished his meal, he went for a walk.

2. Compound: We must study or we cannot pass. Simple: We must study in order to pass.

3. Compound: She was a weak girl, but a very brave fighter.

Simple: In spite of being a weak girl, she was a very brave fighter.

4. Compound: She must not be overweight, or she will be rejected. Simple: In the event of being overweight, she will be rejected.

5. Compound: We decided not to go any further that day and put up at the nearest hotel.

Simple: Deciding not to go any further that day, we put up at the nearest hotel.

6. Compound: He lost his job and this added to his difficulties. Simple: He lost his job, adding to his difficulties.

7. Compound: You must observe austerity, or you will not become morally strong.

Simple: You must observe austerity to become morally strong.

8. Compound: The young dancer found the audience appreciative, so he kept on dancing.

Simple: Having found the audience appreciative, the young dancer kept on dancing.

9. Compound: He made many tall claims of his patriotism, but he turned out to be a traitor.

Simple: Notwithstanding his tall claims of patriotism, he turned out to be a traitor.

10. Compound: He was honest; therefore I was pleased with him. Simple: I was pleased with him for his honesty.

Change the following from complex to simple sentences :

1. Complex : He mortgaged the house which belonged to her sister Simple: He mortgaged his sister's house.

2. Complex: The poor villagers have nothing that they can eat. Simple: The poor villagers have nothing to eat.

3. Complex: People who live in glass houses must not throw stones at others.

Simple: People living in glass houses must not throw stones at others.

4. Complex: He was very dejected when he got the telegram. Simple: He was very dejected on getting the telegram.

5. Complex: I was unable to comprehend what you were thinking. Simple: I was unable to comprehend your thoughts.

6. Complex: She donated some clothes which belonged to her mother. Simple: She donated some clothes belonging to her mother.

7. Complex: That you are drunk aggravates your offence. Simple: Your drunkenness aggravates your offence.

8. Complex: We came across a palace where a king had lived. Simple: We came across a king's palace.

9. Complex: All that glitters is not gold. Simple: All glittering things are not gold.

10. Complex: He will not pay unless he is compelled.

Simple: He will pay only under compulsion.

QUESTIONS FROM BOMBAY UNIVERSITY EXAMINATIONS

(WITH ANSWERS)

Do as directed : November 1999

1. It is kind of you to visit us. (Change into exclamatory form) How kind of you to visit us !

2. I have seen him yesterday. (Correct if necessary) I had seen him yesterday.

3. Besides being pretty, she is clever. (Change into compound sentence) She is pretty and she is clever.

4. The germ is too small to be seen with the naked eye. (Rewrite with "so .... that") The germ is so small that it cannot be seen with the naked eye.

April 2000

1. She was too poor to educate her son. (Convert into complex sentence) Since she was poor, she could not educate her son.

2. Give the order. (Change the voice) Let the order be given.

3 He is not illiterate. (Change into affirmative sentence) He is literate.

4 No sooner had the thief run out of jail than the guard fired at him. (Rewrite using "as soon as")

As soon as the thief ran out of jail, the guard fired at him.

November 2000

1.No other man was so strong as Hercules. (Change into comparative degree) Hercules was stronger than any other man.

2. Stop talking. (Change into interrogative sentence) Will you stop talking ?

3. The thief heard a shout. He ran away. (Change into simple sentence) Hearing a shout, the thief ran away.

4. He admitted that he was guilty. (Change into simple sentence) He admitted his guilt.

May 2001

1. Stop talking. (Change into interrogative sentence) Will you stop talking ?

2. The people elected him Mayor. (Change the voice) He was elected Mayor by the people.

3. Besides being pretty, she is clever. She is pretty and she is clever.

4. He is not illiterate. (Change into affirmative) He is literate.

November 2001

1. No other person was as skillful with the bow as Robin Hood. (Change the degree of comparison)

Comparative : Robin Hood was more skillful with the bow than any other person. Superlative : Robin Hood was the most skillful person with the bow.

2. What a superb match ! (Change from exclamatory to assertive) It was indeed a superb match.

3. The people saw the thief. They began to run after him. (Change into simple sentence)

Seeing the thief, the people began to run after him.

4. Take the book. (Change into passive voice) Let the book be taken.

May 2002

1. She was too poor to educate her son. (Change into complex sentence) She was so poor that she could not educate her son.

2. He is not literate. (Change into affirmative sentence) He is illiterate.

3. He said that he is not guilty. (Correct if necessary) He said that he was not guilty.

4. No other man was as strong as Hercules. (Change into comparative degree) Hercules was stronger than any other man.

December 2002

1. She was too poor to educate her son. (Change into a complex sentence) She was so poor that she could not educate her son.

2. He is not literate. (Change into affirmative sentence) He is illiterate.

3. The people elected him Mayor. (Change the voice) He was elected Mayor by the people.

April 2003

1. Our army had been defeated. (Change the voice) They had defeated our army.

2. What might be done, if men were wise I (Transform into assertive) So much could be done if men were wise.

3. God will not forget the cry of the humble. (Make it affirmative) God will remember the cry of the humble. '

4. To everyone's surprise, the project completely failed. (Make it a compound sentence) The project completely failed and everyone was surprised.

November 2003

1. I was playing cricket. (Change the voice) Cricket was being played by me.

2. It is very stupid of me to forget your name. (Transform into exclamatory sentence) How stupid of me to forget your name !

3. Brutus was not without love for Caesar. (Make it affirmative) Brutus had love for Caesar.

4. Besides robbing the poor child, he also murdered her. (Make it a compound sentence)

He robbed the poor child and he murdered her.

April 2004

1. They were repairing the bridge. (Change the voice) The bridge was being repaired by them.

2. Rama is not as foolish as you think. (Transform into affirmative) Rama is wiser than you think.

3. Alexander, who was the King of Macedon, tried to become a world conqueror. (Change into simple sentence)

Alexander, the King of Macedon, tried to become a world emperor.

4. Darjeeling is the most beautiful place I have seen. (Change the degree of comparison)

Positive : No place I have seen is as beautiful as Darjeeling. Comparative : Darjeeling is more beautiful than any other place I have seen.

November 2005

1. Rana Pratap was one of the greatest kings. (Change the degree of comparison without changing the meaning and without making the sentence negative.) Positive : Few kings were as great as Rana Pratap.

Comparative : Rana Pratap was greater than most other kings.

2. My captors were taking me to prison. (Change into passive voice.) I was being taken to prison by my captors.

3. Is my meaning understood ? (Change into active voice) Do you understnat my meaning ?

4. Everybody believes in his honesty. (Change into negative.) Nobody disbelieves his honesty.

5. Tell me your meaning. (Change into a complex sentence) / request you to tell me your meaning.

6. Darjeeling is the most beautiful place I have seen. (Change -the degree of comparison.)

Positive : None of the places I have seen is as beautiful as Darjeeling. Comparative : Of the places I have seen, none is more beautiful than Darjeeling.

April 2006

1. The soldiers said, "Curse on the traitor I" (Change the voice.) It was said by the soldiers, "Let the traitor be cursed I"

2. "Hurrah !" We have won the match," shouted the cricket team. (Make the sentence assertive.)

The cricket team exclaimed joyfully that they had won the match.

3. Joe asked Atul whether there were enough prisons in India. (Make the sentence interrogative.)

Joe asked Atul, "Are there enough prisons in India ?"

4. Ramma confessed that she had been very impatient. (Make the sentence negative.) Ramma did not deny that she had been very impatient.

5. A man of wisdom is respected by all. (Change into a complex sentence.) A man of wisdom is one who respected by all.

6. In spite of riches, he is unhappy. (Change into a compound sentence.) He is rich, yet he is unhappy.

7. The audience loudly cheered the Mayor's speech. (Change into passive voice.) The Mayor's speech was loudly cheered by the audience.

November 2006

1. The news is too good to be true. (Make it negative.) The news is to good that it cannot be true.

2. Helen of Troy was more beautiful than any other woman. (Change the degree of comparison.)

Positive : No woman was as beautiful as Helen of Troy. Superlative : Helen of Troy was the most beautiful woman.

3. My pocket has been picked. (Change the voice.) Someone has picked my pocket.

4. Were we brought into the world simply to make money ? (Change into an assertive sentence.)

We were not brought into the world simply to make money.

5. The men endured all the horrors of the campaign and not one of them complained at all. (Change into a simple sentence.)

All the horrors of the campaign were endured by the men without even one of them complaining.

6. But for his own confession, the crime could scarcely have been brought home to him. (Make it a complex sentence.)

If he had not confessed to the crime, it could scarcely have been brought home to him.

April 2007

1. They made him the king. (Change the vioce.) He was crowned king by them.

2. His services cannot be forgotten. (Change into affirmative.) His services will always be remembered.

3. Akbar was the wisest of the Mughul emperors. (Change into negative.) No Mughal emperor was wiser than Akbar.

4. Some grains are at least as nutritious as rice. (Change the degree of comparison.) Comparative : Some grains are not less nutritious than rice.

Superlative : Rice is not the most nutritious grain.

5. He must work very hard to make up the lost time. (Change into a compound sentence.)

He must work very hard or he will not make up the lost time.

6. "What a lame excuse I" (Change into an assertive sentence.) This is a very lame excuse.

Chapter VIII

DIRECT AND INDIRECT SPEECH

There are two ways of reporting what another person has said. First, one may repeat the exact words used by the speaker, as for instance, Sunny said, "I am back from school." Here, the exact words of the speaker are used within inverted commas, and the words which are quoted begin with a capital letter. This way of reporting a speech is called Direct Speech.

Secondly, one may report what the speaker said without repeating his exact words. Thus, the same sentence can be framed as : Sunny said that he was back from school. Here, the reported words are not put within inverted commas, but are introduced by the conjunction "that'. Certain changes are also made in the person of the pronoun and in the tense of the verb. This way of reporting a speech is called Indirect or Reported Speech. The verb "said" in these sentences is called the reporting verb.

CONVERSION FROM DIRECT INTO INDIRECT SPEECH

There are a few simple rules for converting a speech from the direct to the indirect form. These rules mainly refer to a change in tense of the verb and change of pronouns and possessive adjectives, and are briefly discussed below.

Changes in Verb Tenses

(1) If the reporting verb is in the present or the future tense, the tense of the verb in the indirect speech will not change.

Direct: She says, "Rima is a lucky girl." Indirect: She says that Rima is a lucky girl.

(2) If the reporting verb is in the past tense, the following changes in the tenses of the verb in the indirect speech are to be made :

(a) A simple present tense in the direct speech becomes a simple past. Direct: He said, "Sam is my best friend."

Indirect: He said that Sam was his best friend.

(b) A present continuous tense will be changed to a past continuous tense. Direct: He said, "My brother is having lunch."

Indirect: He said that his brother was having lunch.

(c) A present perfect tense becomes past perfect. Direct: He said, "I have toured the entire world." Indirect: He said that he had toured the entire world.

(d) The simple past tense is often changed to the past perfect. Direct: She said, "The cat spilled the milk."

Indirect: She said that the cat had spilled the milk.

(3) In the future tense, words like 'will', and in many cases, the word 'shall' 'will' are changed to 'would'.

Direct: He said, "Tony will find the lost dog." Indirect: He said that Tony would find the lost dog.

Direct: Lizzy said to her mother, "I shall come home only after sunset." Indirect: Lizzy told her mother that she would come home only after sunset.

Changes in Pronouns and Possessive Adjectives

Pronouns and possessive adjectives in the first and the second person in direct speech are changed into the third person in indirect speech. Direct: He said, "I am angry." Indirect: He said that he was angry.

Direct: He said, "My shoes are lost." Indirect: He said that his shoes were lost.

Words expressing nearness in time and place are generally changed into words expressing distance.

Direct: He said, "I am busy now." Indirect: He said that he was busy then.

The following is a list of commonly used words which change when sentences are converted from the direct into indirect speech :

Direct

this

these

that

thus

can

here

now

hither

today

tonight

last night

tomorrow

yesterday

following week

just

ago

hence

the next day

Indirect

that

those

so

so

could

there

then

thither

that day

that night

the previous night or the night before

the next day

the previous day or the day before

next week

then

before

thence

the following day

Examples

1) "Please wrap the book in a piece of paper", he said. Ans: He requested him to wrap the book in a piece of paper.

2) Raju said, "I am very sorry for what I did". Ans: Raju said that he was very sorry for what he did.

3) "Mother, I promise I will never smoke again", said Jack. Ans:. jack promised his mother that he would never smoke again.

4) Mira said to Raj, "I am not feeling well." Ans: Mira told Raj that she was not feeling well.

5) "The hills are so beautiful", said Tina.

Ans: Tina exclaimed that the hills were very beautiful.

6) The teacher said, " The sun rises in the east." Ans: The teacher said that the sun rises in the east.

7) Dennis asked his neighbour, "Can I pluck some flowers from your tree?" Ans: Dennis asked his neighbour if he could pluck some flowers from the neighbour's tree.

8) Priya said, " Sheela had been playing for half an hour." Ans: Priya said that Sheela had been playing for half an hour.

9) My father said to me, " The First World War began in 1914." Ans: My father told me that the First World War began in 1914.

10) The librarian said to me, " Which book do you want?" Ans: The librarian asked me which book I wanted.

Conversion of dialogues into indirect speech

Just as sentences can be converted into indirect speech, dialogues can also be so converted.

While converting dialogues into indirect speech, all incomplete sentences should be completed before reporting them directly. Whenever possible, different reporting verbs should be used to introduce each speech. Depending on the context, instead of using the word "said" every time, other words like "advised", "requested", "pleaded", "warned", "suggested", "threatened", "ordered", "proposed", "directed", "begged" or "urged" may be used, as for instance :

Direct : The stranger said to me, "Please help me." Indirect : The stranger requested, me to help him. Direct : The teacher told the students, "Work hard." Indirect : The teacher advised the students to work hard.

Examples

1.

DIRECT

Mother: What have you got there, Raju?

Raju: A dog, mother.

Mother: How much did you pay for it?

Raju: All the money I had.

Mother: What! Did you give all your money for this little creature? Raju: Yes, and I think I have made a good bargain.

INDIRECT

The mother asked Raju what he had got. Raju replied that he had got a dog. The mother inquired how much he had paid for it. Raju replied that he had paid all the money he had. The mother was surprised at this. She asked him again if he had given all his money for that little creature. Raju answered in the affirmative and added that he thought he had made a good bargain.

2.DIRECT

"You say", said the judge, "that the bag you lost contained one hundred and ten pounds." "Yes, Your Honor", replied the miser. "Then, as this contains only one hundred pounds it cannot be yours."

INDIRECT

The judge reminded the miser that he had said that the bag he had lost contained one hundred and ten pounds. The miser respectfully confirmed having said so. At this, the judge remarked that since that bag contained only one hundred pounds, it could not be his.

DIRECT

"What presents shall I bring you when I come here?", said the king to his three daughters. The eldest one said, "Please bring me a fine silk gown." "I want a pretty necklace," said the second. "And what should Beauty like?" said the kind father. "I should like a red rose", said Beauty.

INDIRECT

The king asked his three daughters what presents he should bring them when he came there. The eldest one requested him to bring her a fine silk gown. The second said that she wanted a pretty necklace. Then the kind father asked Beauty what she would like. Beauty replied that she would like a red rose.

4.

DIRECT

Major: Where is the meeting to be held?

Commander: It is being held here.

Major: Here, Commander?

Commander: I think that is what I said, Major.

Major: But why?

Commander: Because it is much too cold tonight for me to go out.

INDIRECT

The Major wanted to know where the meeting was to be held. The Commander replied that it was being held there. The Major was reluctant to believe him but the Commander confirmed what he had told him earlier. On being asked the reason for holding the meeting there, the Commander explained that it was much too cold that night for him to go out.

5.

DIRECT

"I can extend no other mercy to you", said the Raja, "except permitting you to choose what kind of death you wish to die. Decide immediately, for the sentence must be carried out." "I admire your kindness, noble prince," said the jester, "I choose to die of old age."

INDIRECT

The Raja told the jester that he could extend no other mercy to him except permitting him to choose what kind of death he wished to die. Then he called upon him to decide immediately, for the sentence had to be carried out. The jester said that he admired the kindness of the noble prince and that he chose to die of old age.

QUESTIONS FROM BOMBAY UNIVERSITY EXAMINATIONS (WITH ANSWERS)

Convert from Direct into Indirect Speech :

November 1999

Russell: You swear by that writing on the fourth of March, less than two years ago?

Pigott: Yes.

Russell: You do not know what that referred to?

Pigott: I do not really.

Answer

Russell asked Pigott whether he swore by the writing on the fourth of March, less than two years ago. Pigott replied in the affirmative. Russell then asked whether he knew what that referred to. Pigott answered that he really did not know.

April 2000

Russell: What do you say to that?

Pigott: That it appears to me clearly that I had not the letters in my mind.

Russell: Then if it appears to you clearly that you had not the letters in your mind, what had you in your mind?

Pigott: It must have been something far more serious.

Answer

Russell asked Pigott what he had to say to that. Pigott replied that it appeared to him clearly that he did not have the letters in his mind. Russell asked that if it appeared to him clearly that he did not have the letters in his mind, then what did he have in mind. Pigott replied that it must have been something far more serious.

November 2000

Pigott: I have nothing to say except that I do not recollect anything about it absolutely.

Russell: What was the coming blow?

Pigott: I suppose the coming publication.

Russell: How was it to be effectively met ?

Answer

Pigott said that he had nothing to say except that he did not recollect anything about it absolutely. Russell enquired about the coming blow, and Pigott answered that he supposed it was the coming publication. Russell then wanted to know how it was to be effectively met.

May 2001

Alexander: Oh Porus ! Your armies cannot stop me from conquering India.

Porus: Victory over me is not the end of all battles.

Alexander: Tell me how you would like to be treated?

Porus: As one king treats the other.

Answer

Alexander told Porus that his armies could not stop him from conquering India. Porus said that victory over him was not the end of all battles. When Alexander asked Porus how he would like to be treated, Porus replied that he would like to be treated as one king would treat the other.

November 2001

John: Make sure that news of this is conveyed to the general public.

Mark: I will surely do that.

John: It is very urgent.

Mark: I agree.

Answer

John told Mark to make sure that news of that was conveyed to the general public. Mark assured that he would do so. John said that it was very urgent and Mark agreed.

May 2002

Charles: Our defence is too strong.

Eunice: It shall not be broken by infidels.

Charles: Tomorrow shall see the death of the enemy dream.

Eunice: We shall be the saviours of France.

Answer

Charles said that their defence was very strong. Eunice added that it would not be broken by infidels. Charles said that the next day would see the death of the enemy dream. Eunice remarked they would be the saviours of France.

December 2002

Chandragupt: Is it the fate of India that it will remain disunited?

Kautilya: No, O Destined one! The country will be one.

Chandragupt: Who will unite these diverse tribes and communities?

Kautilya: You will, Chandragupt, under the banner of the Mauryas.

Answer

Chandragupt asked Kautilya whether it was the fate of India to remain disunited. Kautilya replied in the negative, saying that the country would be one. Chandragupt asked as to who would unite those diverse tribes and communities. Kautilya answered that it would be Chandragupt, and that he would do it under the banner of the Mauryas.

April 2003

Grant: I have got to get this man to the Inspector. Go and find him, will you?

Walker: I am sorry, but Inspector gave me orders not to leave from here. I have got to guard this screen.

Grant: Well, where is he, do you know?

Walker: He is somewhere around at the back.

Answer

Grant said that he had to get that man to the Inspector. He asked whether he would go and find him. Walker apologized, saying that the Inspector had given him orders not to leave the place as he had to guard that screen. Grant asked Walker whether he knew where the Inspector was. Walker answered that he was somewhere around at the back.

November 2003

Godfrey: My dear, if ever you put me in the Divorce Court, I am quite sure you would arrive too late to give your evidence. Sybil: I am afraid, you are right.

Answer

Godfrey told Sybil that he was quite sure that if ever she put him in the Divorce Court, she would arrive too late to give her evidence. Sybil replied that he was right.

April 2004

Mr. Neild: At the corner you saw a man and a woman, you say?

Norman Mercer: Yes

Mr. Neild: What was the woman's position?

Norman Mercer: She stood with her back against the wall facing me. I could see her full face as I came up Deansgate.

Mr. Neild: Where was the man?

Answer

Mr. Neild asked Norman Mercer to confirm that he saw a man and a woman at the corner. Norman Mercer answered in positive. Mr. Neild asked him what was the woman's position. Norman Mercer replied that she stood with her back against the wall facing him and that he could see her full face as he came up Deansgate. Mr. Neild then asked him where the man was.

November 2005

1. "Where do you live ?" asked the manager of the hotel. (Change into indirect.) The manager of the hotel asked him where he lived.

2. He said, "Be quiet and listen to my words." (Change into indirect.) He told them to be quiet and to listen to his words.

3. The speaker said that it gave him great pleasure to be there that evening. (Change into direct.)

The speaker said, It gives me great pleasure to be here this evening."

April 2006

1. The lecturer said to the class, "I shall prove now that the earth moves around the sun." (Change into indirect.)

The lecturer told the class that he would then prove that the earth moved around the sun.

2. "How cold the tea is !" said Saiva, "May I warm it up ?" (Change into indirect.) Saiva exclaimed that the tea was cold and asked if he might warm it up.

November 2006

1. He said, "Alas I am undone." (Change into indirect.) He sighed that he was undone.

2. "Bring me a drink of milk", said the Swami to the villagers. (Change into indirect.) The Swami told the villagers to bring him a drink of milk.

3. The magistrate asked the prisoner what he was doing with his hand in the gentleman's pocket. (Change into direct.)

"What were you doing with your hand in the gentleman's pocket ?" the magistrate asked the prisoner.

April 2007

1. The stranger inquired where I lived. (Change into direct.) The stranger asked me, "Where do you live V

2. Ram said, "I am very busy now." (Change into indirect.) Ram said that he was very busy then.

3. David said, "The man came at six." (Change into indirect.) David said that the man had come at six.

Chapter IX

COMPREHENSION

An exercise on comprehension is meant to test the reader's ability to understand and comprehend the contents of a passage and answer the questions that follow. This art can be developed only by diligent and repeated practice. The following points may be borne in mind when answering questions based on a given passage :

- The passage should first be read fairly quickly to get a general idea about the theme of the passage.
- The passage should then be read again, a little slowly and carefully .this time, so as to grasp the details.
- Next, the questions should be read carefully.

- One must then go back to the relevant portion of the passage which contains the answer to the particular question, and a precise answer should be formulated using complete sentences. As far as possible, on should not bodily lift the language of the passage when framing the answer.

- When answering the question, one must not deviate from the passage and its main theme. Likewise, one must not express personal views and opinions.

- If the question requires a suitable title to be given to the passage, the reader must use his ingenuity and think of a title which reflects the main theme of the passage.

Examples of exercises in comprehension

1. The Olympic motto, "Citius, Altius, Fortius", meaning "Faster, Higher, Stronger", is a tribute to human endeavour. It expresses faith in the ability of humans to constantly better themselves. Sport often brings out the best in us : team-spirit, determination, self-confidence and most important, sportsmanship.

Competition pushes a human being to the summit of his capacity. But, it is worthwhile to remember that pride, glory and victory go side by side with shame, disappointment and failure. Physical prowess is not everything. The true sportsman is humble in victory and graceful in defeat. Questions

1. What does the Olympic motto express ?

2. Why is sport valuable ?

3. What are the qualities of a true sportsman ?

4. Suggest a suitable title for the passage. Answers

1. The Olympic motto expresses faith in human effort, the ability to surpass oneself and ever strive for higher standards.

2. Sport is valuable because it brings out the best in us. It inspires us with determination and self-worth. It fosters team spirit and, above all, it inculcates sportsmanship.

3. A true sportsman has both physical and spiritual strength. He is modest about his achievements and he is gracious even in defeat.

4. Sports and sportsmanship.

2. "Give us this day our daily soap opera I" is the loud cry of the TV addict. Television cuts across class barriers. It finds willing worshippers in the slum-dwellers and aristocrats, in children, teenagers, the middle-aged and the old, in housewives, professionals and business tycoons.

Certainly, television has revolutionized our lives. At the flick of a button, we have news, comedy, sports, movies, education and music. It brings the world into our living room. We can travel to exotic places, watch far-away events and discover the mysteries of the universe, all in the comfort of the arm-chair.

But, TV also makes us lazy, and often mindless. There is a true story of the boy who spent all his waking hours glued to the "idiot-box" (an apt description for this invention). One day, his mother said to him, "Rohan, just look at that beautiful sunset!" The son promptly asked, "Which channel, Mom ?" Questions

1. What is meant by "television cuts across class barriers ?

2. How has TV changed our lives ?

3. What does the episode in the final paragraph indicate ?

4. Suggest a suitable title for the passage.

Answers

1. "Television cuts across class barriers" means that all classes of people from varying financial backgrounds, different age-groups and different vocations, are admirers of television.

2. Television has made the world a smaller place. We can be entertained and educated through the medium of television. We can also visit distant places without getting out of the living room.

3. The episode in the final paragraph illustrates the dangers of television addiction. Too much TV can make the thinking process numb and make us slaves of our minds.

4. Idolizing the "Idiot-box".

3. Ours is the age of ecological awareness. There are laws to protect the environment and loopholes to protect the defaulters. Of course, it does not matter that legislation devours reams of paper, and consequently, a multitude of trees. Responsible citizens are seen filing Public Interest Litigation against greedy and irresponsible builders. Yet, how many of them are ready to leave their towers of comfortable concrete for the simplicity of a thatched hut ? International environmental seminars are held at which snacks and drinks are served in convenient but non-biodegradable plastic plates and glasses.

The efforts made so far are worthy, but not always convincing. When a mother hears her child screaming, she screams out even louder : "Speak softly !" Let us admit, we are losing touch with the very things we are trying to save.

Here, in our bustling city, we can only try to get closer to Nature. We might take time off to clean up a littered beach or plant a couple of trees. This may work better than agitations and "morchas".

Questions

1. Name two measures adopted by modern man to save the environment.

2. Does the author have faith in these measures ?

3. What, in the author's opinion, is more worthwhile ?

4. Suggest a suitable title for the passage.

Answers

1. Environmental legislation and seminars on protection of the environment are two measures adopted by modern man to save the environment.

2. No, the author does not seem to have much faith in these measures, because the author believes that implementation is more important than anything else. Men do not always practise what they preach. Conceptually, the measures may be worthy, but they are not easy to realise.

3. The author believes that it is more worthwhile to do one's bit by actually living close to nature and occupying oneself in environment-friendly activities like cleaning a beach or planting trees, which yield tangible results.

4. Re-thinking eco-friendliness.

QUESTIONS FROM BOMBAY UNIVERSITY EXAMINATIONS (WITH ANSWERS)

November 1999

It has been thought that the purpose of punishment is to reform the criminal; it is also to deter the criminal and others from committing similar crimes; and that is retribution. Few would now maintain that the first of those purposes was the only one. If it were, every prisoner should be released as soon as it appears clear that he will never repeat his offence. Of course, it would be hard to reconcile the punishment of death with this doctrine. Questions

(1) What is the purpose of punishment?

(2) What would be the effect if reformation is the only purpose of punishment?

(3) Can you reconcile death sentence with reformation?

(4) Is reformation the only object of punishment?

Answers

(1) The purpose of punishment is to reform the criminal so that he is deterred from committing the crime again. Punishment also deters others from committing similar crimes. Many-a-times, punishment is also retributive, i.e. the State punishes the criminal in order to give justice to the family members of the victim.

(2) If reformation is the only purpose of punishment, every prisoner should be released whenever it is apparent that he will not commit that crime again.

(3) No, the sentence of death is hard to reconcile with reformation. This is obvious because, once the person is executed, there is absolutely no possibility of reforming him. The death sentence adopts a preventive and deterrent approach, and it cannot be reformative.

(4) No, reformation is not the only object of punishment. The other objective of punishment is retribution. Retribution means that the State avenges the wrong-doer on behalf of the victim.

May 2000

These are days of great debate concerning whether the law schools are doing their part in preparing their students for the profession. Chiefly, the debate rages around whether the law schools should teach not merely the "What" and "Why", but also the "How" of the law. I must not engage in that debate, but I do venture to say that law schools generally are not doing what they should be doing to prepare their students for the third function of the lawyer—improving his profession, the courts and the law. Questions

(1) What is the great debate?

(2) What does the debate rage around?

(3) According to the author, are the law schools doing what they should be doing?

(4) What is the third function of the lawyer?

Answers

1. The great debate is whether law schools are fulfilling their duties in preparing their students for the profession.

2. The debate chiefly rages around whether the law schools should teach their students, only the 'what' and 'why', or also the 'how' of the law.

3. According to the author, the law schools are not doing what they ought to be doing. The author believes that law schools must prepare their students for improving the profession, the courts and the law.

4. The third function of the lawyer is to improve his profession, the courts and the law. This function is inbuilt in the 'How' of the law, which, according to the author, is currently neglected by law schools.

November 2000 (Repeated in April 2004)

The sentence is the basic unit of expression. We cannot so much as resolve to telephone a customer without forecasting it to ourselves in some sentence form Sentence length in business messages demands considerations in order that best results may be secured. As a general rule, sentences should be short, because short sentences are more quickly and easily understood than long sentences. A sentence not containing more than 15 words is called a short sentence.

Questions

(1) What is a short sentence?

(2) Why should a sentence be short?

(3) Why does the length of the sentence in business messages demand attention?

(4) What is the basic unit of expression?

Answers

(1) A short sentence is one which does not contain more than fifteen words.

(2) A sentence should be short because it can be more easily and quickly understood, as compared to long sentences.

(3) The length of the sentence in business messages demands attention, so that best results can be obtained. The shorter the sentence, the better it is understood. Thus, short sentences enable better results in business communication.

(4) A sentence is the basic unit of expression. In fact, even when we think of telephoning a customer, we do so only by the proper forecast of the message to ourselves in the form of a sentence.

May 2001

War is a crime against humanity. It can be said that, with war and man-made calamities, more people have died in this century than all the earlier centuries combined. It does not take a country much time to decide on war but the peace which follows is difficult to maintain. Destruction of people and property in immeasurable terms occur when war is waged.

Questions

(1) Against what is war a crime?

(2) What occurs when war is waged?

(3) What is the situation of war in this century compared with earlier centuries?

(4) What is easy to decide, war or peace?

Answers

1. War is a crime against humanity. It is the killing of one man by another, which is against the most fundamental principle of humanity.

2. When war is waged, numerous lives are lost, and a great deal of property is destroyed or rendered useless.

3. In this century, more people have died as a result of war and man-made calamities than in all the earlier centuries combined.

4. War is easy to decide. For a country, it does riot take much time to decide on war, but the peace that follows the war is not easy to maintain.

November 2001

No one can be a truly competent lawyer unless he is a cultivated man. If I were you, I would forget all about any technical preparation for the law. The best way to prepare for the law is to come to the

study of law as a well read person. Through this alone can one acquire the capacity to use the English language on paper and in speech and with the habit of clear thinking which only a true liberal education can give.

Questions

1. How can one be a truly competent lawyer?

2. What is the best way to prepare for the law?

3. How can one acquire the capacity to use the English language?

4. Why would the author forget all about technical preparation for the law?

Answers

1. One can be a truly competent lawyer only by being a cultivated man.

2. The best way to prepare for the law is to be well-read. One has to have vast reserves of knowledge of different types, which can be acquired only through extensive reading.

3. The capacity to use the English language effectively comes through extensive reading. It is only through reading that one can develop the skills in spoken as well as written English. Through reading, one gains the necessary command over the language, and can use it liberally in his practice as a lawyer.

4. The author conveys to the reader, that one should forget all about technical preparation for the law. According to him, the best preparation would be good reading which would, among other things, help in strengthening the command over the English language, for effective writing and speaking.

May 2002

Battles fought throughout history had various formations. The Greeks had the phalanx which was a tightly packed line advancing in battle. The Romans had the legions in squares which was a very mobile fighting unit. The Parthians had the Parthian shot in which retreating cavalry would suddenly surround the enemy and let loose a volley of arrows. But the king of all was the Nazi Blitztreig which was a sudden and decisive attack in the modern sense involving air power and land power in superb co-ordination.

Questions

(1) What is the Phalanx?

(2) What is known as the Parthian shot?

(3) What is meant by the Blitztreig?

(4) How did the Roman legions fight?

Answers

1. The Phalanx was a method of attacking in the battle. This method was formulated by the Greeks. The basic principle of this formation was a tightly packed line, advancing in the battle.

2. The Parthian shot was a strategy in which the retreating cavalry would suddenly encompass the enemy and shoot arrows at them.

3 The Blitztreig was the most superior of all battle formations. It was a Nazi method, characterised by a sudden and decisive attack, coordinated by the army and the air forces.

4, The Roman legions had their own method of formations in the battlefield. They fought in squares and they were extremely mobile.

December 2002

Man has prospered very much in the mode and style in which he is living and surviving. At the dawn of civilization, man used to dwell in caves, and then during the agricultural age, houses built of mud and thatched hay built near rivers. As civilization prospered, the houses began to made out of wood and stone. Huge structures began to be built in this fashion. In the present world, the structures and building units are-made of concrete and steel with modern technical gizmos and equipment.

Questions

(1) What type of units did man dwell in the dawn of civilization?

(2) What was the difference as civilization prospered?

(3) How is the present scenario?

(4) Give an apt title to the above passage.

Answers

(1) At the dawn of civilization, man used to dwell in caves. Later, in the agricultural age, he built houses of mud and thatched hay near the rivers.

(2) As civilization prospered, the houses were made out of wood and stone and even huge structures were being made.

(3) In the present scenario, concrete and steel are being used with technical gizmos and equipment to construct very huge structures.

(4) "From scrap to sky-scrapers."

April 2003

The individual has it in him or her to rise above the caprices of fate. Whether it is just pride or some other basic quality which stands by him, I do not know. But he can, if he so wills, stand four square to all the winds of heaven and hell. And by doing so, he influences and turns that very fate. If you

feel depressed at any time, then the next day you are sure to get over this—it is just a passing mood. Depression usually comes from uncertainty and doubt—what to do, what not to do? That is the difficult question to answer, especially in an affirmative way. The negative, what not to do, is easier to answer. Inspite of the difficulty, however, it is better to engage oneself in some activity of mind, however unimportant. It might appear, for thus we maintain a certain poise of mind. Not to do anything and just to brood—'the brooding sense of Tragedy felt to be as such national as personal'—is not helpful at all and weakens our capacity for any effective work. It is just like being one of the unemployed who deteriorate so rapidly.

Questions

(1) What according to the author, can an individual influence and turn?

(2) According to the author, how can one overcome depression?

(3) How can 'poise of mind' be maintained?

(4) What is the author's purpose in this passage?

Answers

(1) According to the author, if an individual wills, he can influence and turn his own fate. An individual has the capacity to rise above the caprices of fate, and a strong willingness can help him do so.

(2) According to the author, one can overcome depression by engaging oneself in some activity of mind, no matter how unimportant. Depression in just a passing mood, according to the author, and a little concentration on some activity can help to overcome it.

(3) 'Poise of mind' can be maintained by engaging the mind in some activity—-important or unimportant. Depression usually comes through doubt as to what to do, or what not to do. In such a case, the best way to maintain the poise of mind is through some mental activity.

(4) The author's purpose in this passage is to help people to assert the power of the human will and to overcome depression. The author feels that depression is just a passing mood and can be dispelled by engaging oneself in some mental activity, even if such activity is not an important one.

November 2003

The great Acharyas have said that, having discovered a great goal, surrender yourself to that goal and act towards it, drawing your inspiration from that goal whereby you will get a column of energy. Do not allow this energy to be dissipated in the futile memories of the past regrets or failures, nor in the imagined sorrow of the future, nor in the excitement of the present. And thus bring that entire energy focused into activity. That is the highest creative action in the world outside. Thereby, the individual who is till now considered most inefficient finds his way to the highest achievement and success. This is said very easily in a second. But in order to train our mind to this attitude, it needs considerable training because we have already trained the mind wrongly to such an extent that we have become perfect in imperfections. Not knowing the art of action, we have been master artists in doing the wrong. Questions

(1) According to this passage, what is the Acharyas' advice in order to get new column of energy?

(2) What according to the author is the highest creative action in the world outside?

(3) "In order to train our mind, it needs considerable training." Explain with respect to the passage.

Answers

(1) According to this passage, in order to get a new column of energy, the Acharyas' advice is that one should discover a great goal. After such discovery, one should surrender oneself to that goal act towards its fulfillment and draw inspiration from such goal. This would help one to get a new column of energy.

(2) When an individual gets a column of energy from the inspiration from the goal, he should not allow such energy to be dissipated or distracted or diluted in the futile memories of the past regrets or failures, nor in the imagined sorrow of the future, nor in the excitement of the present. Only then can the entire focused energy be brought into activity. This, according to the author, is the highest creative action in the world outside.

(3) Drawing inspiration from one's goal creates energy. This energy needs to be focused, without regretting the past, or fearing the future or getting excited over the present. But the mind would require considerable training to tune in to this attitude, because we have trained our minds wrongly to a great extent, and made ourselves perfect in imperfections and a lot of this needs to be undone. Hence, the author concludes that 'in order to train our mind, it needs considerable training.'

April 2004

Same passage and questions as in November 2000

November 2005

When a person thinks deeply of sense objects, he feels an attachment for them. Attachment gives rise to desire and non-fulfillment of desire breeds anger. Anger leads to delusion, which results in loss of balance. The loss of balance causes loss of discrimination and from the ruin of discrimination, everything is lost and the person plunges in grief. The man of self-control, on the other hand, moves among sense objects, with his senses duly under restraint and free from attachment and aversion and attains serenity of mind. When serenity is attained, there comes an end to all sorrows. The person who lives completely free from all desires, without longing and devoid of the sense of "I" "mine" attains undisturbed peace of mind. Questions

(1) What is the root cause of grief ?

(2) How do sorrows come to an end ?

(3) When does a man attain serenity of mind ?

(4) Give a suitable title to the above passage.

Answers

(1) Attachment to sense objects is the root cause of grief for it gives rise to desires which may not be fulfilled.

(2) Sorrows come to an end when self-control and detachment lead to serenity of mind.

(3) When a person cultivates detachment in relation to sense objects and frees himself from desires as well as dislikes and no longer harbours an ego, he attains serenity of mind.

(4) "The key to liberation" or "How to attain peace of mind".

April 2006

The manufacturing industry boasts about the fact that it provides its work force with competency enhancement training Thin ensures that they become competent to take up different roles In the organization Training programs have been put in place to address competency development at various levels. It may be argued that training provided by the firm may be very functional in nature and may not be comprehensive enough to ensure overall grooming. This issue can be tackled by outsourcing those aspects of training that the company is not equipped to provide internally. The one important resource that can build and transform any organization is its human resource. And this makes it essential to groom one's workforce in order to ensure that maximum productivity is ganerated. In a fiercely competitive market, one can actually score above others if one's workforce is well equipped and trained appropriately to meet the industry requirements. That is a lesson never to forget.

Questions

(1) According to the author, what is the remedy in case a company is not equipped to provide competency enhancement training ? Why ?

(2) What can build and transform any organization ? How is it achieved ?

(3) What are the advantages of competency enhancement training for the workforce of any organization ?

(4) What is it that the author wants us never to forget ?

Answers

(1) The author believes that outsourcing is a means of providing competency enhancement training since a company may not be equipped to handle a comprehensive competency enhanced program in all fields.

(2) Human resources can build and transform any organization. This is achieved by grooming and training the workforce to facilitate maximum productivity.

(3) Competency enhancement training ensures that individual members of a workforce are able to play different roles and contributed to the efficiency of an organization by their versatile

capabilities. Training helps to equip the workforce to meet the challenges of competitive markets and ultimately translates into better productivity both for the organization and the industry.

(4) The author wants us never to forget that a well trained workforce makes a company competent to serve the needs of the industry and gives the company and edge over others in a competitive market.

November 2006

Strangely enough, the people who really helped civilization to go forward are often never mentioned at all in history books, we do not know who made the first boat or calculated the length of the year, but we know all about our killers and destroyers. We erect their statues simply because they fought bravely. But even animal fight, and so do savages. To fight is not be civilized. Moreover, there are other ways of settling quarrels among men and nations.

So, really, the civilized people have been those who have brought peace and happiness to mankind. They have been truly great, since instead of inflcting pain and hardship upon humanity, they have healed their wounds. Instead of killing, they have saved human lives. They are really civilized and deserve our admiration and respect.

Questions :

(1) Why do civilized people deserve our admiration and respect ?

(2) Who, according to the author, are the people names are never seen in history looks ?

(3) To fight is not to be civilized." What does the author mean by these words ?

(4) Who are civilized people according to the author ?

Answers

(1) Civilized people deserve our admiration and respect because they have served humanity by bringing peace and happiness to mankind.

(2) The author believes that those who really helped civilization to forge ahead such as the one who fashioned the first boat or who devised a way to calculate the length of the year are never mentioned in history books.

(3) Fighting leads to killing and destruction. Savages and animals fight in order to determine supremacy. Thus, fighting is not the hallmark of civilization but of barbarism and brute force. This is what the author means by the words, "To fight is not to be civilized."

(4) According to the author, civilized people are those who have mankind happy and peaceful, those who have healed wounds and saved lives.

Aprii 2007

Stress is almost unavoidable in today's hectic world with managing a job and a house and most people get overstressed and fall ill. However, stress is not just limited to working women or people

with corporate jobs. But the important things to remember is that stress can be beaten. Few things create as much stress as bills and expenditures. Try to focus on sorting out your finances. Financial security can solve a lot of your stress problems. Take breaks at work, set yourself a reminder to get up, stretch, bounce around on your tip-toes and wriggle your wrists and wriggle your ear. A study claims that by doing this, you move a layer of tissue that separates your cerebellum from the other parts of your brain. It can help relieve stress. You own it to yourself and everyone around you to make the time. Don't try to do too much. Pick two or three important high priority things each day. Get them out of the way early and you'll feel more peaceful than if you either did nothing or tried to do too much. You must get enough sleep. Stress is not just a psychological phenomenon. It can cause serious illness; so just keep the above in mind and enjoy a stress-free life.

Questions :

(1) What is the concluding advice given by the author in the passage ?

(2) According to the author, when would one feel more peaceful ?

(3) According to the author, what are the different ways so beat stress ?

(4) What, according to the author, is unavoidable ? Who are the targets for the same ?

Answers :

(1) The author's concluding advice is to try and get sufficient sleep in order to de-stress since stress, far from being merely a psychological phenomenon, can cause serious physical illness.

(2) According to the author, one should pick two or three priority tasks each day and accomplish them rather than do nothing or attempt to do everything. The satisfaction of doing a few top priority tasks would make one feel at peace with oneself.

(3) The author states that getting one's finances in order can reduce stress since financial security is a key factor in stress management. Stress may also be beaten by a few judicious and timely breaks from work. Physical activities such as stretching, bouncing on tip-toe, wriggling the wrists or ears actually moves a layer of tissue which separates the cerebellum from the other parts of the brain. This considerably reduces stress.

(4) Stress is unavoidable in our hectic modern lifestyle. Almost everyone is a victim of stress. It is not restricted to multi-taskers or working women or people with high profile corporate jobs.

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Appendix

MEANINGS OF COMMONLY USED LEGAL TERMS

Ab extra----- From outside; from without

Abandonment----- The act of giving up a legal right

Abate---------- To put an end to; to nullify; to diminish or take away

Abatement---------- A reduction, allowance or rebate

Abator---------- One who abates or terminates a nuisance by his own act

Abet---------- To aid in the commission of an offence

Ab initio-------- From the very beginning

Abrogate---------- To repeal, cancel or annul

Absconding---------- The failure of a person to surrender to the custody of a court in order to avoid legal proceedings

Absence------- In court procedure, it means the non-appearance of a party to a litigation or a person summoned to attend as a witness

Absolute------- Complete and unconditional; having no restriction, exception or qualification

Absolute liability---- Legal liability incurred independently of intention or negligence

Absolve------- To free from liability or guilt

Accession---------- Succeeding to the throne; the formal agreement of a country to an international treaty

Accident record book--------- A record kept by the police of details of the accidents which have been investigated

Accomplice ----- One who is a party to the crime

Acknowledgment ---------- The admission that a debt is due or a claim exists

Acquiescence ------ Implied consent

Acquittal------ Discharge from prosecution upon a verdict of not guilty; a decision by a court that a defendant accused of a crime is innocent

Ad hoc---------- For the particular end or cause at hand without consideration of wider application

Ad idem---------- Of the same mind (Two parties are said to be ad idem when they agree to the same thing in the same sense)

Ad interim ---------- In the meanwhile; temporary

Ad litem------ For the lawsuit; for the proceedings, e.g. guardian ad litem, curator ad litem, etc.

Administrative law------ The law relating to organization, powers and duties of administrative authorities

Admonition-------- A reprimand from a judge to a defendant who has been discharged from the further prosecution of an offence

Ad rem ------ To the point

Affinity ------- Relationship by marriage

Agency ------- The relationship between an agent and his principal

Alibi------ Elsewhere; a defence where an accused alleges that at the time when the offence with which he is charged was committed, he was elsewhere

Alien ------ A person who, under the law of a particular state, is not a citizen of that state

Alimony----- The allowance ordered by the court, to be made to a wife from her husband's estate, for her support in a pending, or as an outcome of a matrimonial suit.

Allegiance------- The duty of obedience owed to a head of state in return for his protection

Ambulatory------ In case of a will, taking effect, not from when it was made, but from the death of the testator

A mensa et thoro -------- From board and bed

Animus--------- Intention

Animus cancellandi ----- The intention of canceling

Animus dedicandi --------- The intention of dedicating

Animus deserendi -------- The intention of deserting (a spouse)

Animus manendi ------- The intention of remaining

Animus revertendi -------- The intention of returning

Animus revocandi -------- The intention of revoking, as in the case of a will

Animus testandi ------ The intention of making a will

Antecedents------ An accused or convicted person's previous criminal record or bad character

Ante-nuptial ----- Before marriage

Antigraphy ------ A copy or counterpart of a deed

Arrest -------- The apprehension of a person suspected of criminal activities

Assignment----- The transfer of a chose in action by one person (the assignor) to another (the assignee)

Attest----- To witness any act or event, as for instance, the signature or execution of a document like a will

Attorney-------- A person who is appointed by another and has authority to act on behalf of another

Attorney-at-law------ Solicitor

Aver------ To allege, in pleading

Bailiff------- An officer of the court employed to serve writs and make arrests and executions

Banns--------The public announcement in a church of an intended marriage

Benevolent purposes------- Purposes that are for the public good

Bequeath------- To give property by will

Bigamy---- The act of marrying a second time when the former husband or wife is living and not divorced

Bona fide ------- In good faith; honestly; without any fraud or colluision

Breach------ The invasion of a right or the violation of a duty

Burden of Proof ------- The duty or onus of proving a disputed assertion or charge

Capital punishment ------- Punishment of death

Case -------- A court action; a legal dispute

Case law------- The body of law set out in judicial decisions as distinct from statute law

Cause of action ------- The facts that entitle a person to sue

Cestui que trust ------- A beneficiary under a trust

Cf.-------- Latin for "confer"; used to mean "compare" or "consult". Used by authors to refer to other academic material, e.g. "Cf. Salmond on Jurisprudence."

Cheque ------- A bill of exchange drawn on a banker and payable on demand

Claim------ A demand for a remedy or assertion of a right, especially the right to take a particular case to court

Code ------- A complete written formulation of a body of law

Codicil------ An instrument executed by a testator for adding to, altering, explaining or confirming a will previously made by him

Confiscation------- The seizure and appropriation of property by the State as a punishment for breach of law

Contempt of court------ Failure to comply with the order of a superior court, or an act of resistance, disobedience or insult to the court or the judge

Contingent------- That which depends on the happening of an event

Contra bonos mores----- Against good morals

Conveyancing----- The procedures involved in validly creating, extinguishing and transferring ownership or interests in land

Copyright--------- The exclusive legal right to reproduce, publish and sell a matter of literary, musical or artistic work

Corpus--- The capital of a fund, as distinguished from its income

Damage------ Loss or harm

Damages------ A sum of money awarded by a court as compensation for a tort or a breach of contract

Damnum absque injuria -------- Loss without legal injury

Damnum sine injuria-------- Loss without legal injury

De die in diem ------- From day to day

De facto---------"In fact", "in practice". Used in contract to "de jure", meaning "by law"

De jure ------"By law". Used in contrast to "de facto9 (meaning "in fact")

De novo---------From the beginning; new; again

Decree nisi------ A ruling of a court which does not have any force until a particular condition is satisfied. When that condition is satisfied, it becomes a "decree absolute", i.e. a binding decree.

Dependant-------- A person who relies on someone else for maintenance or financial support

Deponent------ A person who makes an affidavit; a witness; one who gives testimony in the court

Depose -------- To make a deposition or statement on oath

Dilapidation ------- A state of disrepair

Disclaimer ----- The refusal or renunciation of a right, claim or property

Dishonour------- In commercial law, a failure to honour a cheque or a bill of exchange

Divest------ To take away an estate or interest which has already been vested

Doctrine of incorporation---- The doctrine that states that the rules of international law automatically form part of municipal law

Doli capax------- Legal capacity to commit a crime

Doli incapax ------- Legal incapacity to commit a crime

Donatio mortis causa--------- An immediate gift of property made by a donor who expects to die in the near future

Dower-------- In Mahomedan law, dower (mahr) is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage

Durante absentia --------- During absence

Durante vita -------- During life

Embezzlement----- The dishonest appropriation by an employee of any money or property given to him on behalf of his employer

Encroachment--------- The act of extending one's own rights at the expense of others, particularly by taking in adjoining land to make it appear part of one's own land

Endowment ------- The provision of a fixed income for the support of a charity

Enfranchise------- To give a person or class of people the right to vote at elections

Entrapment--------- Deliberately trapping a person into committing a crime in order to secure his conviction

Estoppel------ The rule of evidence or doctrine of law which precludes a person from denying the truth of some statement formerly made by him, or the existence of facts which he has by words or conduct led others to believe in

Et seq-------- in Abbreviation of the Latin phrase et sequnts" or "et sequential" It identifies a page citation which continues on the page that follow

Exchequer------The department within government that receives and controls the national revenue

Ex facie --------- On the face of it

Ex gratia--------"By favour" something done voluntarily or free of cost or out of kindness or grace

Ex officio ---------- By virtue of holding an office

Ex parte--------- On the part of one side only, e.g. an order passed without hearing the opposite party

Ex post facto --------- By a subsequent act; retrospectively

Ex proprio motu--------- Of its own motion; describing acts that a court may perform on its own initiative and without any application by the parties (Also referred to as suo motu)

Extra-judicial--------- Outside judicial procedure

Factum-------- A fact or statement of facts

Flagrante delicto -------- In the commission of an offence

Forbearance------ A deliberate failure to exercise a legal right e.g. to sue for a debt

Forfeiture-------- Loss of property or a right as a result of an offence or of the breach of an undertaking

Forum rei------- The court of the country in which the subject of a dispute is situated

Gaming (gambling)-------- Playing a game in order to win money or anything else of value, when winning depends on luck

Genocide---------- Conduct aimed at the destruction of a national, ethnic, racial or religious group

Ghet --------- A Jewish religious divorce

Goodwill----- The advantage arising from the reputation and trade connections of a business

Gratis ---------- Free; favour

Guardian---------- A person having the right and duty of protecting the person, property or rights of one who is not of full capacity or otherwise incapable of managing his own affairs

Harbouring -------- Hiding a criminal or suspected criminal

Hearing--------- The trial of a case before a court

Hearsay evidence------- Evidence of the statements of a person other than the witness testifying

Holograph ---------- A deed or a will written entirely by the person himself

Homicide------ The killing of a human being by another human being

Homosexual conduct ---------- Sexual behaviour between persons of the same sex

Hostile witness--------- A witness who willfully refuses to testify truthfully on behalf of the party who called him

Hotchpot (Hotchpotch)-------- A blending of properties for the purpose of securing an equal division; a mixture or medley

Ibid (or Id)-------- Latin term meaning "the same place" (as when an author wants the reader to refer to something already mentioned earlier.)

Illegitimacy--------The status of a child born out of wedlock

Immigration------ The act of entering a country other than one's native country with the intention of living there permanently

Impersonation -------- Pretending to be another person

In camera-------- The hearing of a case at a place where members of the public are not allowed to be present

Inchoate------ Begun but not completed; not perfected; incomplete

Incitement---------- Persuading or attempting to persuade someone else to commit a crime

In curia------- In open court

In custodia legis---------- In the custody of the law

Indictment---------- A formal document accusing one or more persons of committing a specified indictable offence or offences

In extensor------- At full length

In futuro-------- In the future

In gross ---------- Absolute

Injuria------- A legal wrong

In limine-------- At the threshold; e.g. when a defendant pleads that the suit against him be dismissed in limine

In loco parentis ---------- In place of a parent

In personam---------- Any act, proceeding or right available against or with reference to a specific person or persons

In pari delicto---------- When both parties are equally at fault

In pari material--------- In an analogous case

In perpetum---------- Forever; in perpetuity

In pleno------ In full

Inquest------Inquiry

In re ------- In the matter of; e.g. "In Re Smith's Estate"

In rem--------- Any act, proceeding or right available against the world at large

Intangible property --------- Property that has no physical existence

Intellectual property-------- Intangible property that includes patents, trade marks and copyrights .

Inter partes-------- Between the parties

Inter se---------- Between (or amongst) themselves

In terrorem--------- A condition which is intended to frighten or intimidate

Intestacy --------- Dying intestate, that is, without making a will

In toto---------- Totally; entirely; wholly

Intra vires ---------- Within the power of

Inter alia ---------- Amongst other things

Inter partes---------- Between the parties

Inter se--------- Between themselves

Inter vivos --------- During life; between living persons

Ipso facto ---------By the very fact

Irrevocable--------- Incapable of being revoked

Jactitation of marriage---------- A false assertion that one is married to someone to whom one is not in fact married

Judgement creditor--------- The person in whose favour a court has passed judgement against a debtor

Judgment debtor--------- One against whom judgment is given for a sum of money

Judicial immunity--------- Exemption of a judge from personal actions for damages arising from the exercise of his judicial office

Juridical---------- Relating to judicial proceeding or the law

Jurisprudence---------- The science or theory of law

Juristic person---------- An entity, such as a corporation, that is recognised as having a legal personality

Juror---------- A member of a jury

Jury---------- A body of sworn men summoned to decide questions of fact in a judicial proceeding

Jus-------- Law or right

Jus civile------- Municipal law

Jus natural---------- Natural law

Jus sanguinis ---------- Law relating to blood

Jus tertii---------- The right of a third person

Laches---------- Unreasonable delay in asserting or enforcing a right

Leading question---------- Question asked to a witness in a manner that suggests the answer sought by the questioner

Legacy---------- A gift of property by will

Legatum ---------- A legacy; any gift from a deceased person

Legatee ---------- One to whom a legacy is bequeathed under a will or codicil

Lex causa ---------- The law chosen by a court to arrive at its judgement

Lex domicili ---------- The law of the place of a person's domicile

Lex fori---------- The law of the forum; the law of the place where the court is situated

Lex loci contractus---------- The law of the place where the contract is made

Lex situs--------- The law of the place where the property is situated

Libel---------- Defamation by means of writing, print or some permanent form

Lis alibi pendens ---------- A dispute which is pending in another court

Lis pendens --------- A pending suit

Locus standi ---------- The right to be heard in court or other proceeding

Mala fides ---------- Bad faith

Mandate--------- An authority given by one person to another to take some course of action

Market overt---------- Open market

Mens rea ---------- Guilty mind

Mirror image rule-------The rule in the law of contracts, which lays down that an offer must be accepted without any modification

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Moral turpitude

Nonage

Nonfeasance

Novation Nudum pactum Obiter dictum

Onus probandi

Overt

Pact

Pari delicto Pari pasu Parol Parole

Pendente lite Per incuriam

Perjury

Per quod Per se Per stirpes Post-nuptial Preamble

Precedent

Prima facie Privity

Probate

Pro bono

'orma

z¥o rata

Anything done contrary to justice, honesty, modesty or good morals or which is unethical

The period during which someone is under the age of

majority s

The neglect or failure to do some act which ought to be done

The substitution of a new obligation for an old one A naked pact; an agreement without consideration A saying by the way; an incidental opinion, remark or observation by the judge The burden of proof Open

A promise or contract Equally guilty

Proportionately; with equal force; fairly; without partiality Verbal or oral; not in writing

An authority granted to a prison inmate to be out of prison during his term of imprisonment Litigation which is pending

"Through want of care". A judgment per incurium is a judgment given without reference to a statutory provision or an earlier judgment which is relevant

The offence of giving false evidence or evidence that one does not believe to be true(even if it is in fact the truth)

"Whereby"

By itself; taken alone By stock or branches After marriage

The part at the beginning of a statute that sets out its purposes and effects

A judgement or decision of a court, normally recorded in a law report, used as an authority in subsequent cases On the face of it

The relationship in which a person stands to a transactions in which he is a party, or to some other party with whom he is connected (e.g. privity of contract)

A certificate granted by the court to the effect that the will of a certain person has been proved and registered in the court

"For the public good". A term often used to describe professional work voluntarily undertaken without payment as a public service As a matter of form In proportion

LEGAL LANGUAGE

Pro tan to Quantum meruit Quash Quia timet

Quid pro quo

Ratio decidendi

Remission Repugnant Res judicata Res null is Revocation Scienter Sine qua non Slander Stare decisis Sub judice Subpoena

Subrogation

Sue

Suggestio falsi Suppresio veri Supra Testate Testator Testatrix Testimony Tortfeasor Uberrimae fidei Ultra vires Vis major Viva voce Void

Voidable

Witness

To that extent; for so much

As much as he has earned; as much as he has deserved

To discharge or set aside

Preventive action, as when an injunction is granted ever before the wrongful act is committed

Compensation; consideration; giving of one thing of value

for another thing; a favour for a favour

Principle or reason (or rationale) underlying a decision

apart from the special peculiarities of the case

Pardon of an offence

Contrary to; inconsistent with

A thing which has been adjudicated upon

A thing which has no owner

The reversal of a thing

Knowledge

An indispensable and essential condition or ingredient Defamation by means of spoken words or gestures Prior decisions of the court (precedents) must be followed A matter which is pending in a court of law before a court A writ issued in an action or suit requiring the person to whom it is directed to be present at a specified place and time and for a specified purpose

Substitution of one person for another so that the person substituted succeeds to the rights of the other To bring an action, suit or other civil proceeding against a person

A false representation

An intentional suppression of the truth

Latin for "above" (For example, "Refer to X versus Y, supra."

Having made a will

A man who makes a will

A woman who makes a will

The evidence of a witness given in court

One who commits a tort

Of the fullest confidence; of utmost good faith

Beyond the power; beyond the scope of authority

Act of God; irresistible force

Orally

Of no legal effect; a nullity

That which can be avoided by the person entitled to avoid it

A person who on oath or solemn affirmation gives evidence in any cause or matter before a court