LEGAL LANGUAGE

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Unit I

Legal Language: Origin, Nature and Scope

According to PLATO, "Human language is a result of divine gift." Language is a powerful medium of symbols, meanings, communication and expressions. Though, language is a medium of law but awareness regarding language is essential in the field of law. Law is made by means of language and controlled by logic. So, language plays a pivotal role in the lives of lawyers. But question is: what is legal language? Aptly, we can say:

> *Legal language is that language which is being used by the people (lawyers and other legal professionals) engaged in legal profession*.

Law is considered to be a technical subject like any other subject. Like a technical subject, law too has its specific language and terminology to be called its own 'Register' or in words 'dictionary'. Law should have a clear language with minimum ambiguity, but simplifying legal language is a matter of debate because the legal language contains number of technical and specified words and their use cannot be avoided.

The expression "legal language" means not merely a language. The use of adjective 'legal' shows that legal language is a specific language. Administration of law or judgment of court affects the common man. There is a general conception regarding the legal language that a common man cannot understand the legal language as it is a technical subject. Only legal experts are able to understand the technicality of legal language because they possess skill to understand it. Undoubtedly, the legal language differs from ordinary language. The constitutional language is a part of legal language. In fact the constitutional language is the foundation of legal language by which law obtains statutory status.

Legal language is different from everyday language. The differences are most obvious at the semantic level of all the modes of persuasion furnished by the spoken work. There are three kinds –

1. The first depends upon the personal character of the speaker.

2. The second on putting the audience into a certain frame of mind, and

3.The third on the proof or apparent proof provided by the words of the speech itself and this can be achieved by

(a) reasoning logically
(b) understanding human character and goodness in their various forms, and
(c) understanding the liberty of the mind.

The object of every sincere speech after all, is not to arouse the passions or flatter the senses, but to convince the hearers of the truth.

As a lawyer one must have a distinctive vocabulary which uses the words from outside the general language and words which are part of the general language, but which have radically different meaning in legal and general usage.

The significant of language for law lies infect that it is not merely a medium of communication but also a medium of law or furthermore or is not merely only medium, to is the law.

Origin of Legal Language

- Modern legal English having distinct features of terminology, linguistic structure, linguistic conventions, and punctuation.
- Modern legal English based on Standard English.
- English language is a West Germanic Language and its name came from the word 'Angles', one of the Germany tribes, once moved to England. But it was also influenced by Italian, Portuguese and Spanish languages besides Latin and French.

In Britain, the legal language changed with the waves of different conquerors over the following centuries and events:

1. In prehistoric Britain, traditional common law was discussed in the vernacular 'Celtic law'. Laws were handed down by word of mouth until Romans gave it a written shape in their own language that is Latin. The Roman Emperor General Julius Caesar invaded Britain in 55 BC and the history of Britain is said to be started with the Romans. They returned and again captured Britain in 43 AD, which lasted approx. 400 years (till 410 AD).

Thereafter, Roman Britain widely and explicitly followed Roman legal tradition in courts and other legal proceedings.

2. The official language of Roman people was Latin. So its legal language in Britain also became Latin.

3. The influence of Latin can be seen in a number of words in Legal Language, such as ad hoc, de facto, bona fide, inter alia, and ultra vires, which are widely used by legal professional in their legal writings.

4. But the Roman had to depart from Britain due to the Anglo-Saxon German invasion in 410 (approximately) which saw the fall of Roman Empire in Britain.

5. The dominant legal tradition which was Latin in Britain replaced by Anglo-Saxon tradition.

6. The Anglo-Saxon means three powerful Germanic tribes or settlers: Saxons, Angles and Jutes who have been reported in book I of Ecclesiastical History of the English People completed in 731 AD.

7. Due to such historical output, the law of Britain was written and dealt with Germanic vernacular or Anglo-Saxon or Old English, beginning with the Law of Æthelberht.

8. The Anglo-Saxon eventually led to the emergence of ‘common law’ in England. Common law is essentially a combination of commonly accepted traditions, principles, and judicial precedents.

9. The Germanic people ruled over Britain for approximately 616 years until Norman Conquest.

10. The Anglo-Saxon words which we find into law are: guilt, bequeath, murder, oath, rights, steal, swear, theft, ward, witness, writ, moot, etc.

11. When the Germans were ruling the Britain, Scandinavians, (people mainly from Sweden, Norway and Denmark) raided the English coast from the north in 787 AD and eventually settled down there.

12. The Scandinavians have also contributed many legal words to Anglo Saxon Old English: cake, call, fellow, get, give, guess, hit, kid, knife, leg, same, smile, take, them ,they, their, both, want, week, skin, skull, sky, egg, husband, wife, sister, though, till, until, etc.

13. The word 'Law' (a Scandinavian word) itself was derived from word "Lay" (Norse word).

14. Later, they had also to depart from the Britain because of the Norman's invasion of England in 1066. In 1066 AD, William, Duke of Normandy, defeated Prince Harold of Anglo-Saxon in the battle of Hasting, and became the ruler of England. This history is considered to be an important chapter in the history of Great Britain.

15. Norman people came from Normandy, a region in France. From 1066, Latin became the language of formal records and statutes but proceedings started with French as their language was French. (Middle English was a form of English, spoken from the time of Norman Conquest till the end of the 15th century)

16. The Anglo-Norman French became the official language of legal proceedings in England for a period of nearly 300 years till the "Statutes of Pleading Act" came in effect in 1362.

17. The "Statute of Pleading Act" stated that all legal proceedings should be conducted in English (but recorded in Latin). This marked the beginning of formal Legal English.

18. Although French became increasingly degenerated, French continued to be used in some forms into the 17th century,

19. The use of French Law during this period had an enduring influence on the general linguistic register of modern legal English.

20. In legal pleadings, modern legal English words which were derived from the AngloNorman French are property, estate, chattel, lease, executor, and tenant etc.

21. In 1483 AD , First Act of Parliament came in English Language and in 1650, a law was passed by the parliament, announced that all case reports and books of law to be in English Language and earlier legal documents to be translated into English language.

22. Latin and French were replaced by English, when “Proceedings in the Courts of Justice Act” (1730) got published. However, because only learned persons were fluent in Latin, so later it never became the language of legal pleading or debate but legal English including terminologies and maxims (from Latin and French mainly) continued to be the language of legal proceedings and courts till now.

Nature and Scope of Legal Language.

Legal language comes across and influences different segments of the society. In terms of features, they tend to be characterized by minor differences in spelling, pronunciation, and orthography; long and complex sentences, often containing conjoined phrases, and a large and distinct lexicon. The profession has developed distinct traditions on how its language should be interpreted. In terms of style, the language of the law is often archaic, formal, impersonal, and wordy or redundant. And it can be relatively precise, or quite general or vague, depending on the strategic objectives of the drafter. It’s sometimes full of uncertainty and doubtfulness due to difficult foreign words or limited meaning of the words. Legal language consists of rhetoric language and verbosity which makes difference from common human language.

Legal discourse is supposed to be ambiguous and obscure because the language of law is not a General Language but in fact a complicated procedural arrangement of system containing technical words and circumstantial meaning and making it a special discourse. Why can't lawyers write more clearly, concisely, and comprehensibly? We know they can communicate well enough when they want to. So why must so many important legal documents--documents that govern our rights and obligations as citizens, that allow a bank to repossess our house, or that determine who is responsible for damage to a rental car--be in virtually unintelligible legalese? Perhaps the language of lawyers is so convoluted simply because of the conservatism of the profession and its veneration of history and tradition.

Legal language includes some very complex linguistic practices of an ancient profession. Because legal English itself is not monolithic, and is used to attain various goals, our assessment of its usefulness will depend on a large number of considerations. Some of its features are nothing more than time-worn habits that have long outlived any useful communicative function. Other characteristics arguably serve some function, such as signaling that an event is an important proceeding, or enhancing the cohesiveness of lawyers as a group, but should be abandoned because they detract too much from the paramount goal of clear and efficient communication. In yet other cases, lawyers approach language strategically, actually preferring obscurity to clarity; obviously, such usage impedes the overall goals of the legal system and its language. More problematic are features that clearly enhance communication within the profession but mystify outsiders. Here, we may need to weigh how important it is for the lay public to understand the language at issue. In the final analysis, legal language must be judged by how clearly and effectively it communicates the rights and obligations conferred by a constitution, the opinions expressed by a court, the regulations embodied in a statute, or the promises exchanged in a contract. While ordinary people may never understand every detail of such legal documents, our law should be stated as clearly and plainly as it can be. Plain English movement was born as a result. The movement aimed to simplify legal English, prevent it from being the privilege of a small group of people who were either legal experts or legal professionals, and at the same time enable average people to come to grips with the task of comprehending legal texts, which occasionally seemed insurmountable. For many years there has been a campaign for plain English in legal drafting as Plain English Movement. Furthermore in 1999 the government of UK introduces major changes to civil court procedures in the Civil Procedure Rule (CPR). The changes were made on the recommendations of the Lord Chief Justice Woolf. One of the objectives of the CRP was to introduce “plain English” which would be more “user friendly” by simplifying the legal language.

The scope and extent of legal language is very much wide, because the legal language deals with the common man but dealt by its legal experts. Here we can explain its scope in the following way:

Different types of people come within the ambit of the legal language. However, some of the people are compulsorily legal experts and some of the people are not compulsorily legal experts in absence of knowledge of law. In modern society there are two categories of people:

(i) Those who are affected by aw

(ii) Those who deal with law, i. e. legal experts.

- Ordinary citizens: compulsorily not legal expert
- Law-maker (Member of Parliament OR Member of Legislative Assembly): Compulsorily not legal experts
- Judge: Compulsorily legal expert.
- Legal Adviser: Compulsorily legal expert.

Language is one of the most important discoveries. Language is the chief means of communication. So, law and legal system is also an arrangement of communications. Like language, law is a part of super genus. Like communication system of language, there is communication system of law. There are five dimensional communications in the field of law:

1. The first dimension is the law-makers, then judges who implement it and legal advisers re the contributors in the communication of the provisions of the law. Since the law-makers are not compulsorily legal experts, they cannot unfold the technicalities of law. This is to be considered as one sided communication called constitution. The language of constitution is technical, over which law-makers do not have command. The intention of the law-makers is communicated by the draftsman by se of technical language.

2. The second dimension is the interaction which takes place between the judges and the legal advisers. This can be formal or informal. In the court exchange of views do occur between the judges and the advocates. These exchanges of views are not much technical and therefore, its language is compulsorily simple. But, the language of the briefs submitted by the advocates and the judgments delivered by the judges could be more technical.

The third dimension of communication is of informal advice or exchange of views between two or more advocates in their office of the exchange of views among the legal experts. This kind of communication, however mostly technical.

4. The language of the fourth dimension of communication is simple. This type of communication takes place between ordinary citizen and legal adviser. The language of an ordinary client is simple. The adviser uses simple language to the best of his ability because lack of clarity may create misunderstanding

5. The last and fifth dimension of the communication exists among ordinary citizens, which are expressed in contracts, wills, and in information.

Ashok K. Kelkar has divided the legal communications in the following five types on the basis of situational contexts:

1. The law-givers/makers to the judges and advocates-- the Constitution and it's preamble.
2. The judges to the counsel/advocates and the counsel/advocates to the judges-judgment, briefs, court – room exchange, preamble-like portion of judgment and briefs.
3. Communication among the judges, advocates and the legal experts.
4. from jury to judges, from legal adviser to client, from client to legal adviser and from parties to the judges.
5. Ordinary citizens- contracts, wills, testaments, buy-laws, notice and information, etc

Unit II

Commonly Used Latin Words

Legal Maxim	Literal Meaning	Interpretation	Judicial Pronouncement	Relevant Paragraph
Ab initio	from beginning	When a court deems anything to be a case of *ab initio*, it indicates that the court's decision applies from the moment an act had taken place or the circumstances for the case in question were in place and not from the time the court actually ruled on the subject	**Shiv Kumar & Ors. v. Union of India** (2019) **Keshavan Madhava Menon v. State of Bombay (1951)** Refer Article 13(1)	*"It has been established that purchasers cannot object to the taking of possession procedures on any grounds. A purchaser who receives notice under Section 4 does not gain any rights in the land since the sale is ab initio void, and he or she has no right to claim land under the Policy."* Held that Article 13(1) of the Indian Constitution did not apply to the case since the crime was committed before the Constitution was enacted, and so the petitioner's 1949 proceedings were unaffected. The Court noted that previous and concluded transactions, as well as rights that were already vested under existing laws, would be unaffected by the Constitution's coming into force, even though the laws would become void under Article 13(1) of the Constitution. The Court had also observed that Article 13(1) did not declare previous legislation that was incompatible with fundamental rights invalid from the very beginning or for all intents and purposes.
Adjourn Sine Die	without day	without assigning a day for a further meeting or hearing	**Emperor v. Md. Ebrahim (1941)**	a case cannot be postponed indefinitely under this clause. A *sine die* adjournment is a prolonged delay. The goal of criminal law is to swiftly bring those who have been accused to justice so that they can be punished if they are proven guilty and released if they are found innocent. The Public Prosecutor, who is the proper person to bring the matter before the court, can be contacted directly if the Government wishes to submit a petition or request to the court for an adjournment.

Alibi	elsewhere	the plea of having been at the time of the commission of an act elsewhere than at the place of commission (*Merriam-Webster Dictionary*) **Section 11**: **When Facts Not Otherwise Relevant Become Relevant**	**Mukesh v. State of N.C.T. of Delhi, AIR 2017 SC 2161** (Accused in Nirbhaya Case) **Munshi Prasad v State of Bihar 2001 (SC)**	**Example of the Plea of Alibi**: If the question is whether A committed a crime at Calcutta on a certain day, the fact that A was in Lahore on that day is relevant. Additionally, the fact that A was at a distance from the place where the crime was committed, making it highly improbable (but not impossible) that he committed the crime, is also relevant. In this case, the accused claimed that he was attending a musical program with his family at a park at the time of the incident. However, the court rejected the plea of alibi, considering the contradictory evidence, such as the dying declaration of the victim, DNA analysis, and fingerprint analysis. The evidence from the authorities of the park also revealed that no permission was granted for any musical program on the date of the incident. The Supreme Court held in this case that the accused's presence at a reasonable distance from the place of occurrence is necessary to prove a defence of plea of alibi, and the distance should be at least 500 meters.
Amicus Curiae	A friend of the court.	An impartial advisor to the court of law.	**Saindranath vs. Pratibha Shikshan Sanstha and Ors.** (10.04.2007 - BOMHC): MANU/ MH/0810/2007 **Rajpal Verma V. Chancellor, Meerut University** 1997 (6) SCC 365	**6.** "We have heard Advocate Mrs. Patil with Mohagaonkar; Mardikar and Jibhkate on behalf of the appellant and Advocate Mr. Gordey for respondent No. 1. Since the issue was of immense importance we requested Mr. R.B. Pendharkar, learned Senior Advocate to act as ***amicus curie*** that readily agreed and rendered valuable assistance in deciding the issue involved in the Reference." …wherin appellant was pleading his case, the Apex Court had invited senior counsel of Apex Court Mr. D.D. Thakur to render assistance in the case and Mr. Thakur accepted the invitation humbly and assisted the court as *amicus cuiriae*

Bona Fide	Good Faith	The Word "Bona Fide" is used in three senses 1. In good faith 2. acting or done in good faith 3. genuine	**Ramesh v. Waalreddy** AIR 1990 SC 1376	Wherin the respondent had obtained order of eviction against the appellant on the basis that his daughter who is a doctor, wanted to open a clinic. His daughter's husband was also a doctor and the daughter used to help/assist her husband. The Apex court has held that necessity of the respondent's daughter can be taken care of by her husband, hence the requirement of the respondent for premises is not *bona fide*- genuine
Bona Vacantia	Ownerless assets	It is a situation in which property is left without any owner. In most cases, such property is held by the government and may be recovered by rightful owners or heirs. Bona vacantia property, which remains unclaimed after a certain period of time, reverts to government ownership. Whereas in a few cases, the government is obliged to serve as custodian for bona vacantia property into perpetuity.	**Narendra Bahadur Tandon Vs. Shankerlal** 1980 AIR 575	observed that if the company had a subsisting interest in the lease on the date of dissolution such interest must necessarily vest in the Government by escheat or as bona vacantia. In India, the law is well settled that the property of an intestate dying without leaving lawful heirs and the property of a dissolved Corporation passes to the Government by escheat or as bona vacantia.
Compos mentis	In control mind	having control/mastery of	**Latoor Singh Versus State Of**	20. In burn cases, usually it is argued that the victim was possibly not capable of making the dying declaration because of

	of sound mind, memory, and understanding	one's mind. The term is used to describe individuals who are of sound mind; those who are mentally competent and capable of managing their own affairs; those who have use of and control over their mental faculties.	**NCT Of Delhi** Lnind 2015 Del 2099	burns or due to sedation given by the doctors, which is, in a way, the preliminary or first treatment to relieve and soothe the pain and anxiety. However, expert medical opinion does allay such suggestions, for they reject that the impact of burn wounds or drugs used to treat burns, affect the higher functions of brain. They accept the proposition that compos mentis is neither affected by burns nor by treatment (refer Gupta BD, Jani CB. Status of compos mentis in relation to dying declaration in burn patients. Journal of Indian Academy of Forensic Medicine (JIAFM) 2004; 25(4): 133 to 136). Thus such arguments should not be accepted, without reference to the factual matrix and the deposition of the witness recalling and asserting that he had recorded the dying declaration.
Defacto	in fact or from the fact	Basically, this expression is opposed to the concept of "de jure" (which means "as defined by law")	The Hindu Minority and Guardianship Act, 1956 **S. 11. De facto guardian not to deal with minor's property.—** After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor. **Kanchi Kamamma**	Where there is a sale of minor's property by the maternal

			v. Appanna,AIR 1973 AP 201: (1973) 2 An WR 74.	grandfather during the minority by the minor's mother, it is void. After attaining majority, the mother as natural guardian of the minor cannot ratify the sale as the maternal grandfather's sale as de facto guardian is void
Donation mortis cause	A gift in anticipation of death. Difference between Deth bed gift and Donatio Mortis Causa In Donaio Mortis Causa:- 1. Movable Property only 2. No extent 3. Fails, if Donor recovers	For this gift to be valid, it must be made by the giver (donor), in anticipation of his death and intended to take effect only upon his death. It must be made to the donee, either for his own use, or upon trust for another person, or for a particular purpose, e.g., the gift of a cheque upon the donor's banker is not good as a donatio mortis causa, because it is a gift which can only be	Commissioner of Gift Tax, Ernakulam vs. Abdul Karim Mohd. (Dead) by L.Rs. (10.07.1991 - SC) : MANU/SC/0417/1991	**7.** "The requirements of a gift in contemplation of death as laid down by Section 191 of the Indian Succession Act are: (i) the gift must be of movable property; (ii) it must be made in contemplation of death; (iii) the donor must be ill and he expects to die shortly of the illness; (iv) possession of the property should be delivered to the donee; and (v) the gift does not take effect if the donor recovers from the illness or the donee predeceases the donor." **8.** "There is nothing new in the requirements provided under Section 191 of the Succession Act. They are similar to the constituent elements of a valid donation mortis causa. ***The essential conditions of a donation mortis causa may be summarised thus: For an effectual donation mortis causa three things must combine: first, the gift or donation must have been made in contemplation, though not necessarily in expectation of death; secondly, there must have been delivery to the donee of the subject matter of the gift; and thirdly the gift must be made under such circumstances as shew that the thing is to revert to the donor in case he should recover.*** This last requirement is sometimes put somewhat differently, and it is said that the gift must be made under circumstances shewing that it is to take effect only if the death of donor follows; it is not necessary to say which way of putting it is

		made effectual by obtaining payment of it in the donor's life time and is revoked by his death. But a deposit in the Post Office Savings Bank can be subject of such a gift.		the better."
En ventre sa mere	In the mother's womb	The Law *French* phrase en ventre sa mere ("in its mother's womb") refers to a fetus in utero. A term descriptive of an unborn child. For some purposes the lawregards an infant en ventre as in being. It may take a legacy; have a guardian ; an estatemay be limited to its use, etc.	Transfer of property Act which clearly state under **section 13** that deals with transfer of property to unborn child **Priyesh Vasudevan vs Shameena on 18 November, 2005 2005 (4) KLT 1003**	The main question of law involved in this Writ Appeal is whether a posthumous child of a teacher in an aided School, who died in harness, is entitled to get appointment under the Compassionate Employment Scheme on his attaining majority. The Compassionate Employment Scheme was originally introduced as per the Government Order dated 21.1.1970. As per G.O.(P)7/95/P&ARD dated 30.3.1995, the Scheme was liberalized. Thereafter, Government Orders were issued on 21.10.1995, 25.3.1996, 10.7.1996, 29.11.1996, 12.2.1997 and 5.1.1998 and changes were brought out in the Scheme. It is stated in the order of the Compassionate Employment Scheme dated 24.5.1999,

			Moore v. Wingfield, (1903) 2 Ch. 411 **Firm huni Lal-Rali Ram v. Altaf-ul-Rahman, AIR 1939 Lah.290**	5. The word 'minor' is not defined in the Scheme. The Kerala Education Act and Rules also do not define 'minor'. Therefore, we have to take the aid of other statutes to find out whether a minor includes "en ventre sa mere (in its mother's womb -- a term descriptive of an unborn child)." Romer L.J., held : "For the purpose of deciding questions of perpetuity arising upon gifts in a will of the kind we find in the will in the present case, there is, in my opinion, an established rule that a child en ventre sa mere at the time of the testator's death, who is subsequently born, must be treated as having been alive at the death of the testator. And I do not think that rule should be departed from merely because, for some reason, it is in the interest of the child to contend that the gift is void as infringing the rule against perpetuity." it was held that although under certain system of law, such as Hindu law, a child en ventre sa mere is by a legal fiction and for certain purposes considered to be born in the sense that he has a right of inheritance in his father's property, such a fiction does not govern the rule laid down by the law of limitation. It was further held that under the law of limitation, minority begins at the date of birth and not at the date of conception.
Ex officio	by virtue or because of an office	*Ex officio* is used to describe a position someone automatically gains because of another job or position he/she already holds	Example: Article 64 of Constitution of India- The Vice-President to be **ex-officio** chairman of the Council of States	

			Ram Sewak Shukla vs. State of U.P., Thru Chief Secretary U.P. Govt. and Others. 2015, Allahabad High Court	7. The Chairperson is to be appointed by the State Government. Subaccton (1) of Section 6 of UTTAR PRADESH WATER SUPPLY AND SEWERAGE ACT 1975 provides for the appointment of a Chair person either *ex officio* or even otherwise. This is clear from the terminology used by which, unless he is appointed *ex officio*, the Chairperson of the Nigam is to hold office for three years. In other words, a term of three years is prescribed for person who is appointed as Chairperson not in an official capacity *ex officio* denotes an appointment which is made by virtue of the fact that a person holds a particular office, Where a person is appointed *ex officio*, a term of three years is not provided for me simple reason that the tenure of the holder would come to an end sooner if he ceases to hold the office as a holder of which he has been appointed as Chairperson of the Nigam. In this regard, the provisions of Section 4(2) which provides for the appointment of members other than the Chairperson and those of Seston 4(1) and Seston 6(1) in regard 10 the Chairperson would have to be contrasted. In the case of members other than a Chairperson, a provision is made for *ex officio* appointments specifically with reference to the holding of a specified office.
Ex post facto	from a thing done afterward done, made, or formulated after the fact Retroactive	*Ex post facto* is Latin for "from a thing done afterward".	Example: Approval for a project that's given ex post facto—after the project already has been begun or completed—may just have been given in order to save face.	

			"An ex post facto law is one that declares someone's action to be criminal only after it was committed." This procedure is forbidden by our Constitution. (Art. 20 (1) of Constitution of India) **Ravinder Singh v. State of Himachal Pradesh,** AIR 2010 SC 199.	It is trite law that the sentence imposable on the date of commission of the offence has to determine the sentence imposable on completion of trial. This proposition is clear even on a bare reading of article 20(1). Under article 20(1) what is prohibited is the conviction and sentence in criminal proceedings under ex post facto law;
Factum valet	The fact is worth it	Factum valet means that an act that should not have been done becomes valid when it's done. The maxim "***Quod fieri non debris factum valet*** or the Doctrine of Factum Valet", is a	Pinninti Venkataramana And Anr. vs State on 9 August, 1976	" A marriage under the Hindu law by a minor male is valid even though the marriage was not brought about on his behalf by his natural or lawful guardian. The marriage under the Hindu Law is a sacrament and not a contract. The minority of an individual may operate as a bar to his or her incurring contractual obligations. But it cannot be impediment in the matter of performing a necessary 'samskars' . A minor's marriage without the consent of the guardian can be held to be valid also on the application of the ***doctrine of factum valet***. Consequently the marriage of Hindu minor cannot be held to be invalid for want of proof that his guardian consented to it."

		Latin maxim, which means 'what ought not to be done is valid, when done"		
In loco parentis	in the place of parents	refers to the legal responsibility of a person or organization to take on some of the functions and responsibilities of a parent the doctrine is applied in two separate areas of the law. **First,** it grants educational institutions such as colleges and schools discretion to act in the best interests of their students, although not allowing what would be considered violations of the students' civil liberties. **Second**, this doctrine may allow a non-biological parent to exercise the legal	V.S.Boys Higher Secondary School vs Durairaj on 22 November, 2007	8.The learned counsel for the appellants further submitted that there was no post mortem made to find out the cause of the death of the deceased student and according to him, the principle of **'loco parentis'** is not applicable in India. By the expression a person in **loco parentis**' is meant a person who puts himself in the situation of a lawful father of the child, with reference to the father's office and duty of making provision for the child. Karnal Distillery Co. Ltd. v. Ladi Parshad Jaiswal, AIR 1958 Punj 190, 202. [Indian Contract Act (9 of 1872),S.16]." 15.In the instant case, it is quite clear that the students at the adolescent age were allowed for playing Kabadi, during class hours within the school campus without the guidance of any Physical Education Teacher due to which the son of the respondents died on account of rough handling of his playmates. Hence, I am of the view that the principle of **'loco parentis'** is also applicable apart from the negligence on the part of the school authorities on the facts and circumstances of this case.

		rights and responsibilities of a biological parent if they have held themselves out as the parent		
In rem	against a thing (such as a right, status, or property)	Made against or affecting a thing, and therefore other people generally; imposing a general liability. "it confers a right in rem"	Satrucharla Vijaya Rama Raju vs Nimmaka Jaya Raju & Ors on 27 October, 2005 Indian Contract Act: As per the law of the land, every person entering into a contract has rights	12. With respect to learned senior counsel, these decisions do not show that the judgment in an election petition could be treated as a judgment in **rem**. Obviously, the whole of the constituency concerned is interested in the outcome of an election petition, since it either affects the choice they have already made, or their right to have the freedom of a fresh choice. But since a challenge to an election petition is only a statutory challenge under the Representation of the People Act and since the acceptance of the challenge or the rejection of it in a given case would be based on facts and law available therein, and since an adjudication therein is not one which comes directly within the purview of Section 41 of the Act, the same could not be treated as a judgment in **rem**. In fact, if it were a judgment in **rem**, the ratio of the decision of this Court in C.M. Arumugam Vs. S. Rajgopal and Ors. [(1976) 1 SCC 863] earlier referred to, would not have been rendered, since the adjudication in the earlier election petition would have barred the consideration of the question even if it be based on additional facts. We, therefore, overrule the argument that the judgment in E.P. 13 of 1983, should be held to be a judgment in **rem** binding on the whole world including the election petitioner herein, even though he was not a party to the earlier proceeding.

			in rem. This specific right **(jus in rem)** is given via the freedoms written in Article 19 of the Indian Constitution with its restrictions. **Example:** Mr. X owns a house. This house exclusively belongs to him. He has **right in rem** with respect to the house. So nobody can interfere with his ownership of the house. No one can disturb his right in rem. A sold his car to B. A has the right to receive the sale proceeds. This right to receive the money only belongs to A, so it is a **right in personam.** No other party is involved	

Inter vivos	Among the living or while alive	This phrase is primarily used in property law and refers to various legal actions taken by a given person while still alive, such as giving gifts, creating trusts, or conveying property.	**Transfer of Property Act 1882** S 5. "Transfer of property" defined.—In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, 2 [or to himself] and one or more other living persons; and "to transfer property" is to perform such act. 3 [In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]	

			Dr. Anant Trimbak Sabnis v. Vasant Pratap Pandit [AIR 1980 Bom 69]	"It is true that the bequest becomes effective only after the death of the testator and is liable to be revoked at any time. This by itself however, cannot make it anything but transfer Even the restricted concept of "transfer" **inter vivos** in Section 5 of the T.P. Act contemplated its becoming effective at some future date in a given case. Bequest does result in the passing of the property from the testator to the legatee. It is no doubt different in its nature from the sale, mortgage, lease or gift. It is none-the-less, a transfer in its generic sense."
Intra-vires	within the powers	A Latin term which relates generally to an action taken within an organization's or person's scope of authority as conferred by statute.	Smt. Ujjam Bai vs State Of Uttar Pradesh **1962 AIR 1621**	The two questions which have been referred to this larger Bench are: 1. Is an order of assessment made by an authority, under a taxing statute which is Intra vires, open to challenge as repugnant to Art. 19 (1) (g), on the sole ground that it is based on a misconstruction of a provision of the Act or of a notification issued there under? 2. Can the validity of such an order be questioned in a petition under Art. 32 of the Constitution ? On behalf of the petitioner it has been submitted that whenever it is prima., facie established that there is violation of a fundamental right, the question of its enforcement arises; for example, (a) it may arise when the statute itself is ultra vires and some action is taken under such statute, or (b) it may also arise when some action is taken under an **intra vires** statute, but the action taken is without jurisdiction so that the statute though **intra vires** does not support it; or (c) it may again arise on misconstruction of a statute which is **intra vires**, but the misconstruction is such that the action taken on the misconstrued statute results in the violation of a fundamental right.
Lex Fori	The law courts The Law of the forum	The theory of lex fori was first proposed by the German and French writers, **Kahn] and**		Ogden V Ogden[6] **Facts:** A French man (defendant) married an English woman (plaintiff) in England. However, he did not obtain the consent of his parents before marriage (According to French law, there is a rule which required parental consent to marriage). Hence, by a decree of the French Court, this marriage was annulled, on the ground that the

		Bartin in the 1890s. it is a prevailing theory which has been adopted and implemented by the English Courts as well. Lex fori theory or law of the forum is a way to tackle the problem of characterisation. Law applicable to the Court; in conflict of laws the Court will always apply its own procedural law, though it may apply the law of another country on the merits of the case.		consent of the parent, as required by French law, had not been obtained. The defendant subsequently married a Frenchwoman in France. Later, the plaintiff filed a suit in England for the dissolution of her marriage with the defendant on the ground of his adultery and desertion. The English Court applied the English conflict rule by stating that the place of celebration of marriage is England, after considering the French requirement as a matter of forum. The Court thus found the French law of requiring parental consent as invalid and upheld the validity of marriage. However, a French Court, while deciding on the validity of the same marriage applied the French conflict rule. While defining the necessity of parental consent to marry, the Court declared the marriage as null. **Issues:** The issues in the case were the nullity of marriage, bigamy, irregularity of French law, jurisdiction of the case, conflict of law. In the present case, both England and France had same conflict rules regarding the place of celebration of marriage and party's domicile. Nonetheless, the result was different due to difference in the definition of issue. This challenge of defining and classifying the issue as well as the connecting factor is called as characterization. **Judgement:** The lex loci contractus must prevail. The marriage later contracted by the defendant was bigamous and must be annulled.
Lis pendens	The lawsuit is pending		[s. 52] Transfer of property pending suit relating thereto.— The term **lis pendens**, in English law, literally means	The doctrine of lis pendens has its origins in the common law maxim “pendente lite, nihil innoventur”. It can be traced to 1618 in Sir Francis Bacon’s “Ordinances in Chancery” wherein it was observed: “No decree bindeth any that commeth in *bona fide*, by conveyance from the defendant before the bill exhibited, and is made no party, neither by bill, nor the order; but, where he comes in *pendente lite*, and, while the suit is in full prosecution, and without any color of allowance or privity of the court, there

			pending litigation. It imports that the trial of a suit is barred by the pendency of another suit in which the same matter is directly and sub- stantially in issue. In Indian law, the doctrine of lis pendens is enunciated in Section 10 of the Code of Civil Procedure (Act V of 1908), which provides that "no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title, where such suit is pending in the same	regularly the decree bindeth; but, if there were any intermissions of suit, or the court made acquainted with the conveyance, the court is to give order upon the special matter according to justice." This doctrine came up for consideration before the Court of Chancery in *John Bellamy v. Sabine*[3]. In an oft quoted passage, Lord Justice Turner observed: "The doctrine of ***lis pendens*** is not, as I conceive, founded upon any of the peculiar tenets of a Court of Equity as to implied or constructive notice. It is, as I think, a doctrine common to the Courts both of law and of Equity, and rests, as I apprehend, upon this foundation—that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations *pendente lite* were permitted to prevail. The Plaintiff would be liable in every case to be defeated by the Defendant's alienating before the judgment or decree, and would be driven to commence his proceedings *de novo*, subject again to be defeated by the same course of proceeding."

			or any other court in British India, having jurisdiction to grant the relief claimed, or in any court beyond the limits of British India, established or continued by the Governor-General in Council, and having like jurisdiction, or before His Majesty in Council." Object of the rule of lis pendens. The object of the rule is to obviate a collision between the courts, and to secure to the parties "a certain and unfluctuating adjudication of their rights, and at the same time, avoid the vexation of unnecessary suits. Essentials of the rule must be a suit previously instituted in the same or any other competent court. the matter in issue in	

			the later suit must be direct- ly and substantially in issue in the prior suit. the two suits must be between the same parties or their representatives. the two suits must be between the same parties or their representatives.	
Locus standi	Legal standing	The term " Locus standi ", "standing to sue" denote the existence of right of an individual or group of individuals to have a Court enter upon adjudication on an issue brought before that Court by proceedings instituted by the individual or the group of persons.	Chairman, Railway Board v. Chandrima Das , reported in (2000) 2 SCC 465	The existence of a legal right, no doubt, is the foundation for a petition under Article 226 and bare interest, may be of minimum nature, may give locus standi to a person to file a writ, but the concept of locus standi has undergone a sea change. There has been a spectacular expansion of the concept of locus standi . The concept of much wider and it takes in its stride any one who is not a very 'busy body'. Public spirited citizens having faith in the rule of law are rendering great social and legal service by exposing cause of public nature. They cannot be ignored or overlooked on the technical or conservative yardstick of the rule of locus standi or in absence of personal loss or injury.
Mens Rea	Real Mind	S. 84, Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. 505, Statements	*Seralli Wali Mohammed* v. *State of Maharashtra*, AIR 1972 SC 2443. *Bilal Ahmed Kaloo* v. *State of Andhra Pradesh*, (1997) 7 Supreme Today 127.	The accused was charged and committed under section 302, I.P.C. for having caused the death of his wife and a female child with a chopper. Rejecting the plea of insanity the Supreme Court observed that the law presumes every person of the age of discretion to be sane unless the contrary is proved. It would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive was proved as to why the accused murdered his wife and child nor the fact that he made no attempt to run away when the door was broken open, could not indicate that he was insane or that he did not have the necessary ***mens rea*** for the commission of the offence; ***Mens rea*** is a necessary postulate for the offence under section 505(2) of the Code; ***Mens rea*** is a necessary ingredient for the offence under section 153A of the Indian Penal Code

		conducing to public mischief.— 153A Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—	*Inder Sain v. State of Punjab*[17], the appellant was convicted for the offence of possessing opium under Section 9, Opium Act, 1878. The Supreme Court held:	"Normally it is true that the plain ordinary grammatical meanings of the words of the enactment afford the best guide. But in cases of this kind, the question is not what the words mean but whether they are sufficient grounds for inferring that parliament intended to exclude the general rule that **mens rea** is an essential element in every offence. The legislature could not have intended to make mere custody without knowledge an offence. A conviction under Section 9(a) would involve some stigma and it is only then proper to presume that the legislature intended that possession must be conscious possession."
Modus operandi	Mode of operation	The manner of doing the business. Mode of operation; the way in which a thing, cause etc. operates; the way in which a person goes to work; a distinct pattern or method of procedure thought to be characteristics of an individual criminal and habitually followed by him. The characteristic way a criminal commits a specific type of crime.		

		Modus operandi (MO) identifies how the crime has been committed.		
Nudum Pactum	Bare Pact			
Onus probandi	Burden of proof			
Pacta Sunt Servanda	Agreements must be followed.	The parties to an agreement must do their best to fulfill their obligations under it.	All Pakistan CNG Association vs. Pakistan State Oil Company Ltd. (17.04.2015 - HIPK): LEX/HIPK/0431/2015	3 "***Pacta Sunt Servanda***" which means that **agreements must be kept** provided that clauses of private contracts are the governing law between parties and they should be upheld as far as possible. Every intendment must be made to uphold the sanctity of the contract."
Res judicata	a thing adjudicated In order to constitute a matter as ***res judicata***, the following conditions must be there: (i)There must be two suits one former suit and the other subsequent suit; (ii)The Court which decided the former suit must be competent to	***Res judicata*** *means* "a thing adjudicated" that is, an issue that is finally settled by judicial decision. The plea of ***res judicata*** is a restraint on the right of a plaintiff to have an adjudication of his claim. The plea must be clearly established, more particularly where the bar sought is on the basis of constructive ***res judicata***. The plaintiff who is sought to be prevented by the bar of constructive ***res judicata*** should have notice about the plea and have an opportunity to put forth his contentions against the	*Daryao Singh v State of UP,* AIR 1961 SC 1457 : (1962) 1 SCR 574 *Lal Chand v Radha Krishna,* AIR 1977 SC 789 : (1977) 2 SCC 88	It is a settled position of law that "a litigant does not have a right to approach the court time and again for the same cause of action by only changing grounds each time. All possible grounds ought to have been raised or challenged at the first instance. The litigant not doing so would not be permitted to **re**-agitate the same cause of action repeatedly by only changing grounds each time. The issue which has been challenged once and which stands decided should not be allowed to reopen and **re**-agitate only on the ground that the petitioner at the first instance could not take or raise certain grounds which he has now done in the subsequent writ petition. If such a system and principle is to be permitted then there will be no end to litigation and the judicial pronouncement passed earlier would have no binding effect and it is precisely for this reason the principle of ***Res Judicata*** was adopted and is applied" CHANDRACHUD, J, observed as follows: Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The principle of ***res judicata*** is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also found on equity, justice and good conscience which require

	try the subsequent suit; (iii)The matter directly and substantially in issue must be the same either actually or constructively in both the suits; (iv)The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the former suit; (v)The parties to the suits or the parties under whom they or any of them claim must be the same in both the suits; (vi)The parties in both the suits must have litigated under the same title. We would make an attempt here to explain all the above conditions.	same The principle of res judicata is founded on three principles which are nonnegotiable in any civilised version of jurisprudence, namely: (1)no man should be vexed twice for the same cause, (*nemo debet his ve ari, se constet curiae quod sit pro un act eademn cause)* (2)it is in the interest of State that there should be an end to a litigation, (*nterest reipublicaent sit finis litium)* (3)a judicial decision must be accepted as correct.	*Alagam Mai v Veerappa*, AIR 1956 Mad 428	that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. *A* and her mother brought a suit against her father's brother for partition and delivery of one-fifth share of the family property to the mother and for a marriage provision for herself. The question of *A*'s marriage expenses was not directly and substantially in issue in the former suit and was raised only incidentally in connection with the partition claim by her mother. The claim for partition was disallowed because the properties were found to be ancestral and since the claim for partition was dismissed, the incidental claim for the marriage expenses of *A* was also dismissed. *A* then brought a suit against her father's brothers for providing the marriage expenses. In this case, it was held that in the former suit the Court did not go into the question of marriage expenses of *A* and therefore, the former suit did not operate as a ***res judicata*** on this point

Latin Maxims

Actio-personalis moritur-cum persona	Action dies with the person.	According to the maxim, actions of tort or contract are destroyed by the death of either the injured or the injuring party. ***Some legal causes of action can no longer be brought after a person dies***, in some cases, defamation. It has also been applied to actions arising out of contracts of a purely personal nature, e.g., promise to marry.	Girja Nandini Devi and Ors. vs. Bijendra Narain Choudhury (11.08.1966 - SC): MANU/SC/0287/1966	**17.** "...But a claim for rendition of account is not a personal claim. It is not extinguished because the party who claims an account, or the party who is called upon to account dies. The maxim ***"actio personalis moritur cum persona" - a personal action dies with the person*** - has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory."
Actus curiae neminem gravabit	Court actions could be heavy.	According to the maxim, if in a case, ***any undeserved or unfair***	Jang Singh vs. Brijlal and Ors. (20.02.1963 - SC): MANU/SC/0006/1963	**6.** "..It is not doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own

		advantage has been gained by a party invoking the jurisdiction of the Court, the same requires to be neutralized. I n other words, no man should suffer because of the fault of the court or delay in the procedure. It is not only within the power, but a duty as well, of Court to correct its own mistakes in order to see that no party is prejudiced by a mistake of the Court.		devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: ***Actus curiae neminem gravabit***."
Actus dei nemini facit injuriam	The act of God causes injury to	Storms, tempests, and the like, are acts of God,	Sahib Transport Service, Sankarankoil vs. K.	**11**."....Should the 'mischance' of the death coming a few hours later, extinguish the heritable right which the statute recognises in the permit? That is what follows from the appellant's contentions before us. But ***Actus Dei Nemini***

	no one.	being inevitable accidents not caused by man. When an event is caused by the effect of nature without any human intervention, it is called 'an act of God.' ***No one is responsible for the inevitable accidents. The act of God prejudices no one.***	Balasubramaniam and Ors. (23.03.1967 - MADHC): MANU/TN/0146/1969	***Facit Injuriam -- the act of God is prejudicial to no one.*** Once we take the view that there is no abatement of the proceeding and the right to secure renewal does not lapse with the death of the permit holder, the objection to the recognition of the successor in possession of the vehicles as the applicant for renewal falls to the ground."
Actus legis nemini est damnosus	the act of the law is hurtful to no one; it shall prejudice no body		An act in law shall prejudice no man. A distinction has often been drawn, in accordance with this maxim, between the act of the law and the act of a party. If a person abuses an authority, given by the law, he becomes a trespasser *ab initio*, as if he had never had that authority, which is not the case where an authority given by a party is abused (*Six Carpenters' Case*, 8 Rep. 146a); and this distinction has been ascribed to the principle that the law wrongs no man.	

Actus non-facit reum nisi mens sit rea	An act does not make a man guilty, unless there be guilty intention.	An act does not make a defendant guilty without a guilty mind. In other words, "The act itself does not constit ute guilt unless done with a guilty intent."	Abdul Sattar Ahmed Pagarkar vs. R.H. Mendsonsa and Ors. (20.02.2003 - BOMHC): MANU/MH/0053/2003	**7**. "Actus non facit reum nisi mens sit rea. The intention behind the acts is to be understood. In respect of the offences which are now in question, so far as the present matter is concerned, all offences need existence of an intention to commit an offence with dishonesty. These has to be dishonest intention of causing wrongful loss to the person aggrieved and wrongful gain to person who is to be the target of the investigation and resultant prosecution."
Novus actus interviniens	Intervening Acts or Events A new act intervening	It is a Latin phrase which means there will be appearance of a new act or event in the causal chain between initial event, in a sequence and the result causing a break in the continuity of the same An essential condition for an act to be novus actus is that such an act must not have been reasonably foreseeable by the defendant. A novus actus may	Remoteness of Damages In Lord Campbell's phrase, damage is said to be too remote when, the damage and the loss are not, sufficiently "concatenated as cause and effect". Damage will be excluded as too remote— (3)When the damage is due to the wrongful act of an independent third party, such as could not naturally be contemplated as likely to spring from the defendant's conduct. The principle underlying the maxim ***novus actus*** *intervenien s* is that there are circumstances when an intervening act of third person breaks the chain of causation between the wrongful act and the damage sustained by the plaintiff. But if what is relied upon as ***novus actus*** *interveniens* is	

		either be an act of the injured person himself, or an act of third party, or an act of God, but it could never be an act of the wrongdoer himself. Thus, if a person dies due to lightning over him after he was injured by the defendant, a Novus actus gets created by the act of god in such a case.	the very kind of thing which is likely to happen, if the want of care which is alleged takes place, the maxim is no defence. Damage is recoverable if, despite intervening independent causes, the person guilty of the original wrongful act ought reasonably to have anticipated such interventions and to have foreseen that, if they occurred, the result would be that his wrongful act would lead to mischief. If the defendant by his conduct directly causes or compels a third person to do an act which produces damage to the plaintiff, such damage is not too remote. Where the ***novus actus*** is caused by an irresponsible actor it does not break the chain of causation. Children generally do not constitute ***novus actus*** where their action is the result of their mischievous propensities. **CHANDRASEKAR AND OTHERS VERSUS KANDASAMY AND OTHERS LNIND 2022 MAD 1909**	*Bloor v. Liverpool Darricking & Co. Ltd.,* (1936) 3 All ER 399 *was a case where the deceased employed as a derricker, volunteered to act temporarily as a shipper on another barge, stumbled" and fell into the hole and sustained minor injuries. He was removed to the hospital and given an anaesthetic under which he collapsed and died. The post-mortem examination revealed that he had a diseased heart. Three learned Judges of the Court of Appeal held that the administration of anaesthecia cannot be deemed to be novus-actus intervaniens such as to break the chain of causation between the accident and the death and consequently the death must be attributed to the injuries sustained in the accident.* the defendant owed a two-horse van which was left

			Haynes v. Harwood	unattended by his servant on a busy street. A kid threw stones on the horses due to which they bolted on the street carrying the van with them. A police constable while trying to stop them suffered several injuries for which he claimed compensation. Now, the important question that arose, in this case, was whether this act of intervention by the rescuer is novus actus interveniens, which breaks the chain of causation so that the initial negligence of the defendant be considered to be remote cause of the rescuer's injury? Here, it was held that the rescuer's act was not a kind of act that could make the defendant's negligence a remote cause for the plaintiff's injury. The defendant pleaded that his negligence is a remote cause while the child's mischief was the proximate cause for the damage, however, the Court observed that such a mischief on the part of a child was reasonably foreseeable due to which it could not be considered a novus actus interveniens and defendant was held liable.
Respondent superior	that the master must answer	the legal doctrine according to which an employer is responsible for the actions of its employees performed during the course of their employment. doctrine of Respondeat Superior based on the concept of vicarious liability. There are two requirements of the	*Automobiles Transport vs.* Dewalal *and* ors *Smt. Savita Garg vs. The Director, National Heart Institute*	the Rajasthan High Court held that the Automobiles transport company is liable for the acts of the servant done by him/her in the course of employment. The presumption that the vehicle is driven on the master's instruction or by his authorised agent or servant is always there, and it is on the appellant to prove that such presumption is unwarranted and not verified. The argument of the appellant that the driver was not directed to go through a particular way did not evince interest on their lordship because it is farcical at its best as one can't expect. For example, the driver was to wait in case of blockade of a particular direction and not move in the other direction to carry out its work although, in case the road is clear, there may be a different picture altogether. Failure to prove such a requirement would condemn the appellant for liability under the both the principle of vicarious liability and doctrine of *Respondeat Superior*. the Supreme Court held that in the contract of employment, the hospital is the principal who is responsible for the act of the agent, i.e., one of its doctors if it is unable to justify the

		doctrine: 1. A true master-servant and employer-employee relationship must be there so that a master and an employer may be properly charged with the servant's and the employee's act as his own. 2. The tortuous act of a servant and an employee must be one within the scope of his employment	(2004) 8 SCC 56	court and the complainant that there was no negligence or recklessness on their part and that they acted with due care and caution.
Falsus in uno falsus in omnibus	false in one thing, false in everything	it is the legal principle that a witness who testifies falsely about one matter is not credible to testify about any matter	*Mgar Ahir v. The State of Bihar* , AIR 1965 SC 277 *Bava Hajee v. State of Kerala* , AIR 1974 SC 902 *Laxman v. State of Maharashtra* , AIR 1974 SC 308 *Rajinder v. State of*	The maxim *"falsus in uno, falsus in omnibus"* (False in one thing false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the Court to scrutinize the evidence carefully and, in terms of the *felicitious metaphor*, separate the grain from the chaff. But it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. The maxim should not be mechanically applied in India. Mere fact that the evidence of some witnesses was unsafe for convicting one of the accused is no guard for rejecting the whole body of their testimony with regard to other accused No witnesses can be branded as liar *in toto* and his testimony rejected outright even if parts of his statements are demonstrably incorrect or doubtful. The statute Judge can separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon. It is sound commonsense to refuse to apply mechanically, in assessing the worth of necessarily imperfect human testimony, the maxim. *"Falsus in uno Falsus in omnibus".*

			Haryana , AIR 1995 SC 414	The maxim *"falsus in uno, falsus in omnibus"* does not apply to criminal trials and it is the duty of the Court to disengage the truth from falsehood instead of taking an easy course of rejecting the evidence in its entirety solely on the ground that the same is not acceptable in respect of some of the accused
Aecquitas sequitur legem	Equity follows the law.	The maxim means that equity is not a body of jurisprudence acting contrary to law, but rather a supplement to law. Further equity follows the analogies of common law (*Lex aliquando sequitur aequi tatem*: This maxim means law follows equity.)	Equity generally operates by recognizing the legal rule and adding some further rule,remedy or other machinery of its own. Thus in the case of a trust, equity recognizes the legal title of the trustee but compels him to hold it on trust for the beneficiary. The maxim may also be understood in the sense that equitable interests follow the chracteristics of the corresponding legal estates unless this would be inequitable or inconvenient.	
Audi alteram partem	Let the other side be heard as well.	No person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.	Jan Mohd. vs. The State of Rajasthan and Ors. (12.05.1992 - RAJHC): MANU/RH/0014/1993	**30**."...promotion was granted to a particular person by the Chancellor as Principal and that order was executed and it was sought to be set aside by a later order. In those facts, it was held that although, the Chancellor has powers to revise that order but that should be done after affording an opportunity of being heard to the affected person. It was in this context that the provision as such was read down and in reading it down it was held that it includes the principle of audi alteram partem. Here, that is not the case. It is not a case of divesting rights, which revested."
Caveat emptor	Let the purchaser beware.	Used for saying that the person who buys something must take responsibil	Jyoti Swaroop Arora vs. Tulip Infratech Ltd. and Ors. (03.02.2015 - CCI): MANU/CO/0006/2	112. "It was further submitted that the usual practice wherein the **purchasers are made aware of all the applicable rules and regulations**, licenses, building plans etc. is at the stage of due diligence and it is at the purchasers' disposal to apprise themselves with all the details. This implied knowledge is reflected in

		ity for the quality of g oods that he or she is buying.	015	the **principle of** law of contract referred to as the rule of ***caveat emptor***, meaning, **'let the buyer beware'**."
Damnum sine injuria	Damage without legal injury.	***Damage*** in the sense of money, Loss of comfort , service , health etc. ***without in fringement of a legal right*** / injury to legal right. It refers to injury which is being suffered by the plaintiff but there is no violation of any legal right of a person. It is not actionable in law even if the act so did was intentional and was done to cause injury to other but without infringing on the legal right	Pune Chapter of Cost Accountants vs. The Union of India and Ors. (01.04.2011 - BOMHC): MANU/MH/0507/2011 *Gloucester Grammar School* case, (1410) YB 11 Hen IV, fo. 47, pl. 21, 23. *Quinn v. Leathem,* (1901) AC 495, 539: 70 LJPS 6.	**7**."It is required to be noted that simply because the Petitioner might be affected in their income as some students may get themselves enrolled in newly opened chapter, however that itself is not a ground for striking down the decision of the competent body. It can be damnum sine injuria which means damage without legal injury. Apart from the same, the parent body after considering the material on record and need in the area has decided to open new chapter as per the recommendation of an expert professional body, the grievance made by a local chapter opposing such new chapter in the area is not justifiable at all." *Setting up rival school.* Where the defendant, a schoolmaster, set up a rival school next door to the plaintiffs and boys from the plaintiff school flocked to defendants, it was held that no action could be maintained. Competition is no ground of act ion whatever damage it may cause, provided nobodys legal rights are infringed.

		of the person.		
Delegates non-potest delegare	A delegate or deputy c annot appo int another .	The rule that a person to whom a power, trust, or authority is given to act on behalf, or for the benefit of, another, cannot delegate this obligation unless expressly authorized to do so.	The Barium Chemicals Ltd. and Ors. vs. The Company Law Board and Ors. (04.05.1966 - SC) : MANU/SC/0037/ 1966	**34-A.** "As a general rule, whatever a person has power to do himself, he may do by means of an agent. This board rule is limited by the operation of the principle that a delegated authority cannot be re-delegated, delegatus non potest delegare." **36**. "But the maxim "delegatus non potest delegare" must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority."
Interest republicae ut sit finis litium	It is in the interest of the State that there should be an end to litigation.	(It concerns the State that there be an end to law suits). The Section 11 of the Code contains the rule of conclusiveness of the judgment which is based partly on the Roman jurisprudence ' interest *republicae ut finis litium* '	*Popat and Kotecha Property v. State Bank of India Staff Assn.*(2005) 7 SCC 510 *Krishi Utpadan Mandi Samiti Amroha v. Ganga Ram*AIR 1992 All 275 *Rupa Ashok Hurra v. Ashok Hurra*(2002) 4 SCC 388	(It is for the general welfare that a period be put to litigation). The law of limitation is enshrined in the maxim ' *interest reipublicae ut sit finis litium* '. The idea is that every legal remedy must be kept alive for legislatively fixed period of time The maxim means that there should be an end of litigation and interest of the State also requires that there should be an end to the litigation so as to avoid uncertainties and possibilities of the parties being dragged in the Court for indefinite period and to get over this the law of limitation has been enacted extending a valuable right in favour of party against whom within the period of limitation no action is brought before the Court save in exceptional cases where a case for condonation of delay is made out otherwise liberal exercise of the jurisdiction under S. 5 of the (36 of 1963) will lead not only to uncertainties of litigation but also no end to any litigation. In seeking reconsideration of the final judgment of the Apex Court in the matter after having being unsuccessful in review petitions, the Apex Court not applying the maxim held that the Apex Court may reconsider its judgment to prevent abuse of its process and to cure a gross miscarriage of justice, in exercise of its inherent power, only on very strong grounds

Ubi-jus ibi remedium	There is no wrong without a remedy or where there is a legal right there is a remedy.	An action will lie for an injury although no actual damage be sustained.	Anita Kushwaha and Ors. vs. Pushap Sudan and Ors. (19.07.2016 - SC): MANU/SC/0797/2016	**14.** "These principles were over a period of time recognised in the form of Bill of Rights and Constitutions of various countries which acknowledged the Roman maxim **'Ubi Jus Ibi Remedium' i.e**. *every right when it is breached must be provided with a right to a remedy*. Judicial pronouncements have delved and elaborated on the concept of access to justice to include among other aspects the State's obligation to make available to all its citizens the means for a just and peaceful settlement of disputes between them as to their respective legal rights."

UNIT III: Writing of Moot Memorials 8 Hours

Moot Court Competitions are an inherent part of law school life. One of the important parts of this competition is drafting a Moot Court Memorial. A lot of students face difficulty in drafting a memorial. That being said, Drafting a good memorial is essential because it is the first step towards making an impression. Besides, the title of Best Memorial is a coveted one and most teams aspire to win it. Here's your guide to draft a memorial, if you are hesitating or confused:

1. Break up the Issues

It is very important to bifurcate your memorial based on the issues. Read your moot problem thoroughly and dissect the facts based on issues. In some moot court competitions, issues are given. However, in others, teams need to frame their own issues in the moot court memorial. Thus, it becomes very important to identify the issues and break them into sub-issues and further on, depending on the requirement. This flowcharting makes comprehension easier for the teams as well as the judges and gives structure to the arguments.

2. Follow IRAC

IRAC stands for Issue, Rule, and Argument Conclusion. IRAC is an acronym for the order in which a moot court memorial must be drafted.

Issue: The first step to drafting the memorial would be stating the primary issue. Try and keeps the issues short and concise conveying the legal proposition involved aptly.

Rule: The next step would be stating the rule. This has two parts to it: firstly, it includes the statutory provisions which cover the given proposition; and secondly, stating the judicial precedents and the law established therein.

Argument: Next is putting forth your arguments. This is one of the most crucial aspects of drafting. Here, you are expected to apply the law to the facts of the case to prove your contentions. Be sure to keep in mind that this part should have substantial content while keeping it crisp.

Conclusion: Last would be the concluding remarks to briefly summarize your arguments and affirm your stand.

3. Avoid too many Maxims

Don't use too many maxims in your moot court memorial. Keep it simple and avoid using verbose language. Remember that using too many maxims does not make your memorial look fancy. (Read: Qualities of a Good Researcher) It is your extent of arguments and research put forth that makes your memorial attractive. So, don't focus on using too many maxims and instead work on your research. Keep in mind that your drafting should be such that it can easily convey your point.

4. Be consistent throughout the Memorial

Be consistent throughout your memorial. Use all your arguments in your memorial and try including all its aspects. Do not leave any aspect which is given in the moot proposition. Be uniform across your

memorial. Don't cut copy paste from articles and blogs available on the internet. There are moot court competitions that do a plagiarism check of your moot court memorials as well. Properly cite all your authorities and avoid using different formats or drafting style across issues.

5. Use Simple Language

Do not use complicated terms while drafting your moot court memorial. Keep your sentences small and structure them well. Keep the language of the memorial simple as it will facilitate easy comprehension. The idea behind a good draft is to convey your arguments and back it up with appropriate authorities in a simple manner. Be sure to avoid redundant phrases. Avoid copying exact sentences from case-laws and rather summarize in your own words. Long sentences and complex phrases make it difficult for a reader to understand the arguments which is highly undesirable.

6. Check for Spelling and Grammatical Errors

Even a well-drafted memorial can lose out because of small typographical errors. A spelling mistake or a grammatical error gives a bad impression. Microsoft word has inbuilt features to check a document for any grammatical or spelling errors and it is advisable to run a check on the entire document once a draft is ready.

Moot Court Memorial

There is a technique in every art that has to be learnt by its practitioners. The same is true for the Art of Advocacy. Any law student can become a competent advocate by learning the principles of the art of advocacy by practice and patience. The experience of research is profitable; the experience of Oral Presentation of complex legal argument is valuable training. The experience of being put to the inquiry by a sharp presiding Judge will stand you in great stead for additionally frightening experiences later in your profession.

Law students have delighted in the experience of mooting and picked up extraordinarily from it. So it is indiscreet to play Judas on a test. This article contains information about the practice and procedure of moot courts which a law student must know in order to participate effectively and successfully in moot court competitions.

1. **Introduction**

A moot is an oral argument on some contentious point of law. It is designed to simulate, as closely as possible, the conditions of actual litigation. It helps in training students in the practical aspect of law; it does not only help in imbibing them with the procedure of a court but also in improving their mannerism, presentation and oratory skills.

Like in an actual court, students act as advocates and argue upon an imaginary or a decided/undecided case, or it could also be on some specific legal issue, civil or criminal (or a petition). They are judged by a person having knowledge of the law, it is not necessary that the person should be a sitting or a retired judge of any court. According to Stephen's Commentaries on the laws of England, every court must have at least three constituent parts, the actor (who complaints), the reus (defendant) and judex (a judicial power which will adjudge the case).

2. Initial Study

First and foremost, a student should go through the moot proposition, thoroughly. It defines the boundary within which one has to argue and lays out the whole case in detail; the more one reads it, the more one finds out.

Having gone through the proposition will itself make a student come up with issues relevant to the case, it is important to note here that the proposition itself shall have points supporting and against the case of both, plaintiff/complainant and defendant/accused.

You can start this study, with the study of documents after putting them in chronological order. It is advisable to come up with 3-5 facts in an issue over which a side's arguments are summed up. This acts as a blueprint to the memorial/file presented before the court. An excess of facts in issue would be an unnecessary addition and one might not be able to express their arguments completely and clearly in the limited time one ought to get. Only important facts should find their place in the file, unimportant ones could either be ignored or be used as subheadings, within the main issue.

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Having the required facts in issue and a theme, students should next lookup for appropriate laws that could be used in support of their arguments. You must have a thorough knowledge of the Law of Evidence, Code of Civil Procedure and the Code of Civil Procedure. They are the branches of law which lay down the normative framework relating to the use of facts and procedure for arriving at legal conclusions.

3. Research

This process should take up most of the time for preparation and is the execution of research planning. Considering the moot proposition and facts in issue, one has to find out the appropriate laws to be applied.

Researching involves the study of the following:

A. Moot Proposition

Certain facts, laws and acts are mentioned in the proposition which can be used in the arguments. The information so provided could be of use to either party to the case. But now while searching the facts you will distinguish the facts which support you and which go against you. It is useful to have in mind two questions from the outset;

What has to be proved?

How is your case to be proved and that of yours opponent disproved?

Thus, after going through the case many times, you will ultimately isolate the facts which support you and you should counter those which go against you. After collecting all the facts for your case, it is necessary to draw inferences from the primary facts and to formulate a hypothesis which will enable you to gain a true understanding of the case.

B. Bare Acts

The students shall come across many acts that could be used in their favour or against the other party. The bare acts provide an easy access to the provisions of law and their thorough study will help in discovering more sections/laws that will strengthen the case.

C. Commentaries

Bare acts alone may not be able to articulate the law and provide for further information that could be used in the moot court. One should go through a few books, not many, to get a fair idea of the law and also gather certain leading or important cases that can be cited to bolster the case. The commentaries in turn, also provide for further books that could be cited and used in the case.

D. Legal Research Portal

With easy access to the internet, there is hardly any need to go through hard copies of legal publications. Accessing online legal research portals, such as Westlaw, SCC online, Manupatra, etc. will help in finding out related cases to the case mentioned in the commentaries, or different case.

These portals are not just records of cases and case laws, but they also provide access to legal notes, research papers, various acts, and other law-related material. Most of them contain case laws, both, Indian and foreign.

Case laws mentioned in well-off portals also provide whether it has been overruled or is res judicata. Hence, it becomes easy to choose important ones from a myriad of cases.

E. Citation

In the preparation of the brief, you must know that the expertise of a good lawyer depends upon his skill in putting precedents to his good use and also countering those which are unfavorable. It is generally advised to use Bluebook format (19th edition) for citation. This is a formal requirement and the format to cite cases is usually provided in the rulebook for the moot court. Different books/publications use different citations but the required and a uniform format has to be used in the memorial.

F. Advocates Act, 1961

It is necessary to go through this act as it provides for the conduct of legal practitioners. It provides as to how one should behave before a judge and in a court and hence, forms an important part of the oral submission.

5.. Memorial

The object of a pleading is to facilitate a trial so that the points of the issue might be clarified and also the decision given thereon; it also determines that what relief a party is entitled to on the basis of law and fact. Thus, after gathering the required information, it has to be arranged in a certain format, either provided in the rules or the standard that is usually adopted. The memorial is the written submission while arguing orally in the moot court forms the oral submission.

It has to be made for both the side by a single team, i.e., for plaintiff/appellant and defendant/respondent. The rules for its making should be strictly followed as it is to be submitted to the moot court judges and to the adverse team. The teams can bring one themselves, for reference. They can also carry hard copies of judgments, bare acts, sections, various laws and other material that is to be brought to judges' notice or to act as evidence of the source. The word limit, alignment, spacing and other details are mentioned in the rulebook for the moot court, and the file should be arranged accordingly:

1. Cover page

It must contain the name of the forum before which the proceedings are taking place, the name of the case, the title of the memorial, team code and other such required text. For the appellant/petitioner/plaintiff, the cover page is blue, while for the defendant/respondent, it is red. At no point, on the cover page or in the memorial should students mention their name or the name of their institution.

2. Table of Contents

It defines the structure of the file. It acts as an index to the file, with a corresponding page number mentioned next to the chapters. Since argument advanced forms the largest chapter; sub-headings can also be mentioned under the table of contents for easy access to the file

3. List of Abbreviations

While making the memorial, a student will come across many abbreviations which should be mentioned in this chapter. It helps in reducing the word count and helps in avoiding the frequent mentioning of unnecessary lengthy texts. There should be uniformity in using abbreviations, i.e., a word's abbreviation should be the same throughout the memorial.

4. Index of Authorities

Every piece of information that has been used to support the arguments should be cited in this chapter. The cases, case laws, books, parliamentary debates and whatever has been mentioned should be cited according to the appropriate citation format. It acts as a reference, in case, the judges inquire about a particular fact. Here, too the corresponding page numbers can be mentioned in front of the citation.

5. Statement of Jurisdiction

It is important to choose the right jurisdiction under which the case has been presented before the court and it is the most asked question by the judges. If the court does not have the jurisdiction to take up the case, there shall be no acceptance of it. It just forms a paragraph stating which jurisdiction has the counsel invoked to bring the case to the court's notice.

6. Statement of Facts

It is a summary of the moot proposition. It should be brief and not more than two pages long. The relevant facts out of all the facts mentioned in the proposition find their place here. One must not assume the existence of facts and only use the facts provided. The parties could also, only mention those facts which support their cases.

7. Statement of Issues

This is an introductory chapter on the issues that shall be argued upon. They are single sentences asking questions. It should start with 'whether' and be concise in telling what issue is going to be dealt with. It could also contain sub-headings, in case they have been used in the arguments advanced.

8. Summary of Arguments

It is a brief summary of the arguments advanced. It helps in providing the gist of the arguments.

9. Arguments Advanced

This is the most important part of the memorial and will reflect the amount of research one has conducted. It is not necessary to include everything one finds related to the case, though, one has to cite all the legal books, case laws, commentaries, etc. It should concentrate on the theme, be cogent, clear and express the intention of the counsel.

The issues at hand could have further subheadings to justify the information and make it readable. If there are two speakers on the team, issues have to be divided amongst them. One can also keep ready bare acts, commentaries, judgments as separate hard copies with the researcher to bring to the judge's notice, whenever required. One can also employ principles of natural justice to strengthen the arguments but one should never assume any fact not provided in the proposition.

The cases so cited should be as such that they have been decided by a court superior to the one before which the case is brought to. Even foreign case laws can find mention in this chapter if they are appropriate to the case.

10. Prayer

This is the last part of the memorial and contains the reliefs demanded by the counsel. It should contain space for the counsel's signature.

More than one relief can be claimed; it should be clear and justify the case and the arguments.

VI. Oral Submission

Oral submission is when the teams actually argue in front of the judges. The arguments are the same as those that have been written in the memorial. Students should conduct themselves properly, as per the advocates' act and at no point should answer back or be rude to the judges. The tone of the argument should be formal and persuasive and the presentation should be confident and convincing.

VII. Conclusion

The whole memorial has its base in research. If the research is done well, there shall be no problem in the making of the memorial. Oral submissions can be practiced to improve speech; the speaker should be well versed with the memorial and should reply respectfully and wittingly if an adverse question is put up.

A moot court, indeed, prepares a student for litigation and is of a cooperative, as well as, of a competitive nature. Though, fake but it gets as close as it could to an actual courtroom. This practical-oriented activity also helps in deciding whether one should aim for being an advocate. What is said for every case can be said for every moot court, 'each is unique.'

For sample memorial see the below link:

https://www.academia.edu/29521469/moot_court_memorial_2

UNIT IV : Paragraph & Precise Writing of Legal Texts

What a is a Precis?

Précis writing is an art. It is a summary form of a passage or paragraph or text. It provides accurate but summarized version of passage. In view of rapidly increasing litigations in various courts, now the courts find paucity of time to hear long arguments and long pleadings. The courts prefer short but accurate arguments and pleadings on the subject matter which is to be adjudicated. That's why the art of precis writing has become an essential part of study of law.

What a Précis is Not?

While keeping the above in mind, you need to keep in mind what a precis is not. The following are some of things that should 'not' be a part of or a reflection of the precis:

- simply a summary of a passage.
- simply an abstract of a passage.
- an outline of a passage.
- a mere selection of a few important sentences from a passage.
- a collection of disconnected facts and statements.

The rules of precise writing are nearly the same as the rule of unseen passages.

Following are some Rules:-

- Read the passage to understand its broad meaning.
- Read again to understand main points and underline them.
- Read a third time to be sure about the correctness of main points and to confirm headings and also main points.
- Precis must be written in third person.
- While writing a precis keep in mind the following points-
- It should be one-third of original passage.
- Don't include any ideas of your own.
- Exclude examples and comparisons etc.
- Sentences should be meaningfully connected.

- Use active voice instead of passive voice.
- Give suitable title to your precis.
- Revise your precis to ensure that it is correct and relevant.

Writing a Precis of a given passage.

Sample Passage:

There is an enemy beneath our feet - an enemy more deadly for his complete impartiality. He recognizes no national boundaries, no political parties. Everyone in the world is threatened by him. The enemy is the earth itself. When an earthquake strikes, the world trembles. The power of a quake is greater than anything man himself can produce. But today scientists are directing a great deal of their effort into finding some way of combating earthquakes, and it is possible that at some time in the near future mankind will have discovered a means of protecting itself from earthquakes. An earthquake strikes without warning. When it does, its power is immense. If it strikes a modern city, the damage it causes is as great as if it has struck a primitive village. Gas mains burst, explosions are caused and fires are started. Underground railways are wrecked. Buildings collapse, bridges fall, dams burst, and gaping crevices appear in busy streets. If the quake strikes at sea, huge tidal waves sweep inland. If it strikes in mountain regions, avalanches roar down into the valley. Consider the terrifying statistics from the past 1755: Lisbon, capital of Portugal - the city destroyed entirely and 450 killed. 1970: Peru: 50,000 killed. In 1968 an earthquake struck Alaska. As this is a relatively under populated part, only a few people were killed. But it is likely that this was one of the most powerful quakes ever to have hit the world. Geologists estimate that during the tremors, the whole of the state moved over 80 feet farther west into the Pacific Ocean. Imagine the power of something that can move an entire subcontinent! This is the problem that the scientists face. They are dealing with forces so immense that man cannot hope to resist them. All that can be done is to try to pinpoint just where the earthquake will strike and work from there. At least some precautionary measures can then be taken to save lives and some of the property. (330 Words)'

Based on the above paragraph, we-arrive at the following theme sentences for the four paragraphs:

- Earthquake - the deadly enemy of mankind.
- Damage caused by an earthquake in general.
- Damage caused by an earthquake-in particular,
- **What can the scientists do?**

The above four theme sentences can be developed into the following outline:

- Earthquake - the deadly enemy of mankind.
- Earthquake strikes all without a distinction of national boundary or political affiliation.
- The power of a quake is greater than that of a man-made weapon of destruction.
- Scientists are trying to find out means to combat earthquakes; they will find some way to protect themselves from earthquakes.
- Damage caused by an earthquake in general:
- Strikes without warning.
- Modern city when struck reduced to a primitive village.
- Damage caused by an earthquake in particular.
- Quake strikes plains, seas and mountains causing all round destruction.
- In 1755, Lisbon destroyed, 450 killed.
- In 1970, Peru struck, 50,000 killed.
- In 1968, Alaska hit, subcontinent moved 80 feet into the Pacific Ocean.
- Scientists cannot resist the powerful earthquake.
- They can predict the place of origin of the quake so that precaution can be taken to save man & property.

Based on the above outline, we can make the following rough draft:

- **Earthquake- The Great Destroyer**

Earthquake is the deadly enemy of mankind. Earthquake strikes all without a distinction of nationality or political affiliation. The power of a quake is greater than that of any man-made weapon of destruction. An earthquake strikes mankind without a warning. A modern city when struck is reduced to a rubble. A quake strikes plains, seas and mountains causing all round destruction. The quake struck Lisbon in 1755 killing 450; Peru in 1970 killing 50,000; Alaska in 1968 moving it 80 feet into the Pacific Ocean. Scientists are trying to find out means to combat earthquakes and they are able to predict at least where the earthquake will hit so that precaution can be taken to save man and property from destruction. As the number of words in the rough draft is more than required we shall have to reduce it further without reducing the ideas.

The final draft would look as follows:

Earthquake - The Great Destroyer

Earthquake is the mankind's deadly enemy. Earthquake strikes all without a distinction of nationality or political affiliation. The power of a quake is greater than that of any man-made weapon of destruction. An earthquake strikes mankind without a warning. A modern city when struck is reduced -to a nibble. A quake strikes plains, seas and mountains causing all round destruction. The quake struck Lisbon in 1755 killing 450; Peru in 1970 killing 50,000; Alaska in 1968 moving it 80 feet into the Pacific Ocean. Scientists are trying to find out means to combat earthquakes, to predict the origin of the quake so that precaution can be taken to save man and property from destruction.(115 words)

Example 2

Passage: If today I have a quarrel with another man, I do not get beaten merely because I am physically weaker and he can knock me down. I go to law, and the law will decide as fairly as it can between two of us. Thus in disputes between man and man right have taken the place of might. Moreover, the law protects me from robbery and violence. Nobody may come and break into my house, steal my goods, or run off with my children. Of course, there are burglars, but they are very rare and the law punishes them when-ever it catches them. It is difficult for us to realize how much this safety means. Without safety those higher activities of mankind which make up civilization could not go on. The inventor could not invent, the scientist finds out or the artist make beautiful things. Hence order and safety, although they are not themselves civilization, are things without which civilization would be impossible. They are as necessary to our civilization as the air we breathe is to us; and we have grown so used to them that we do not notice them any more than we notice the air.

Precis

Title: Importance of Order and Safety.

Now the strong cannot bully the weak. Law is there to decide disputes. Modern civilization has given man order and safety. This has enabled the artists and the scientists to work peacefully and without any hindrance. Order and safety are not themselves civilization. Yet, they serve the cause of civilization. Without them, civilization is impossible. They are a part of our life, such that we do not even notice them.

Compare:: Words in the Original passage = 200 Words, Words in the Precis = 69

Unit IV Translate Hindi to English & English to Hindi

Examples Hindi to English Translation:

प्रस्तावना (भारत का संविधान उद्देशिका)

हम, भारत के लोग, भारत को एक **[संप्रभु समाजवादी धर्मनिरपेक्ष लोकतांत्रिक गणराज्य]** बनाने और उसके सभी नागरिकों को

सामाजिक, आर्थिक और राजनीतिक **न्याय;**

विचार, अभिव्यक्ति, विश्वास, धर्म और उपासना की **स्वतंत्रता;**

प्रतिष्ठा और अवसर की **समता** प्राप्त करने के लिए; और उन सब में

व्यक्ति की गरिमा और 2 [राष्ट्र की एकता और अखंडता] को सुनिश्चित करने वाली **बंधुता** बढ़ाने के लिए लिए;

ढृढ़संकल्प होकर **अपनी इस संविधान सभा में** आज तारीख 26 नवम्बर, 1949 ई0 को **एतद्द्वारा इस संविधान को अंगीकृत, अधिनियमित और आत्मसात करते हैं**

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a 1 [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the 2 [unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION

Examples Hindi to English Translation:

Meaning of Phrase "Notwithstanding anything contained in this Act"- Satya Narayan Sharma vs State Of Rajasthan on 25 September, 2001

The phrase "Notwithstanding anything contained in this Act" would only mean that the provisions of the section would have an overriding effect over anything contrary contained in the Act. However, it does not mean that the provisions of the section would have an overriding effect over anything contrary contained in any other law other than the Act in which section is contained.

वाक्यांश का अर्थ "इस अधिनियम में कुछ भी शामिल होने के बावजूद" - सत्य नारायण शर्मा बनाम राजस्थान राज्य 25 सितंबर, 2001

वाक्यांश "इस अधिनियम में निहित किसी भी चीज़ के बावजूद" का अर्थ केवल यह होगा कि धारा के प्रावधानों का अधिनियम में निहित किसी भी चीज़ के विपरीत प्रभाव होगा। हालांकि, इसका मतलब यह नहीं है कि धारा के प्रावधानों का उस अधिनियम के अलावा किसी अन्य कानून में निहित किसी भी चीज के विपरीत प्रभाव पड़ेगा, जिसमें धारा निहित है।

UNIT V Literature & Law

Play **"Justice"** By John Galsworthy

Justice, a drama written by John Galsworthy aimed to bring reforms in the British system of Justice. The play is not just about bringing reforms in solitary confinement but about the judicial process and the broader relationship of punishment to crime.

The four-act play revolves around the protagonist William Falder, a young solicitor's clerk, who embezzled money from his firm to rescue the woman he loves from her unhappy marriage. He is handed over to the police after he confesses his forgery. The judge, in the trial then sentences him a three years penal servitude. He has been put in solitary confinement and finds himself to be a victim of the terrible system. The authorities admit that he is mentally and physically in bad shape but do nothing to help him.

He was supposed to register himself with the police authorities but he failed to do so and commits suicide as he thought that he would be put in prison again. The socio-revolutionary significance of Justice consists the portrayal of the inhuman system that exists between the crime and punishment awarded for the same.

Galsworthy believed that solitary confinement is a long slow dragging misery, whose worst moments are necessarily and utterly hidden from ones eyes. Galsworthy knew that he would get a widespread support from the people as his drama had deeply touched the people. His drama showed people the reality of a prison life. He helped people realize that celibacy and a monotonous diet were a severe punishment in itself and when combined with solitude and absolute silence made it more miserable. He believed that a person could be reformed with kindness and there was no need for solitude or silence.

Justice impacted and moved a lot of people including Winston Churchill and he was greatly influenced by the solitary confinement scene in the drama. Churchill had major legislative changes in mind and considered Galsworthy the most respected of all the people that influenced him. Churchill's intention as Home Secretary was to carry out a sweeping revision of penal policy along three main lines of advance: the improvement of prison conditions; the exclusion of petty offenders from gaol; and the reform of sentencing policy.

Galsworthy was a firm believer that encouraging mental and moral development through expanded educational facilities was the most effective way to reform a criminal. He suggested many ways such as copybooks being allowed in the Berlin prison and allowing more communication with family and friends outside to bring about reforms in the prisoners. He also suggested that prisoners' aid societies should be linked up into prisoner's labour exchange so that the prisoners could be employed and wouldn't have to turn to crimes again.

Churchill in 1910 announced certain reforms for reducing the numbers of people sent to prison. He proposed a wider application of the recently passed Probation of Offenders Act, more time-to-pay for debtors and fined offenders, and more help for discharged prisoners to keep them from re-offending. Juveniles would not be committed to prison except for serious offences. Lastly he announced a reduction in solitary confinement from three months to one month.

This was just one milestone achieved and there were many more yet to be achieved. Later through a public letter Galsworthy suggested the end in his efforts towards bringing reforms and the reason for this is unknown.

Justice might have not led to abolishing separate confinement but is a partial success. Without the drama reaching politicians, middle classes or the judges; the decision for reducing the solitary confinement to one month couldn't have been made.

It is shocking to see the relevance and impact of Galsworthy's Justice is the fact that to this day his drama remains one of the best known examples of such system of justice.

2. The Trial of Bhagat Singh

Backdrop

Bhagat Singh is one of India's greatest freedom fighters. The youth of India were inspired by Bhagat Singh's call to arms and enthused by the defiance of the army wing of the Hindustan Socialist Republican Association to which he Sukhdev and Rajguru, belonged. His call, Inquilab Zindabad! became the war-cry of the fight for freedom. Bhagat Singh was executed by the British after a sham trial for his involvement in the Lahore Conspiracy Case at the age of twenty-three on 23 March, 1931.

On April 8, 1929, Bhagat Singh and B.K. Dutt threw a bomb in the Central Legislative Assembly "to make the deaf hear" as their leaflet described the reason for their act. As intended, nobody was hurt by the explosion as Bhagat Singh had aimed the bomb carefully, to land away from the seated members, on the floor. The bomb, deliberately of low intensity, was thrown to protest the repressive Public Safety Bill and Trades Dispute Bill and the arrest of 31 labour leaders in March 1929. Then a shower of leaflets came fluttering down from the gallery like a shower of leaves and the members of the Assembly heard the sound of, 'Inquilab Zindabad!' and 'Long live Proletariat!' rent the air.

Bhagat Singh and B.K.Dutt let themselves be arrested, even when they could have escaped, to use their court appearances as a forum for revolutionary propaganda to advocate the revolutionaries' point of view and, in the process, rekindle patriotic sentiments in the hearts of the people. Bhagat Singh surrendered his automatic pistol, the same one he had used to pump bullets into Saunder's body, knowing fully well that the pistol would be the highest proof of his involvement in the Saunders' case.

The authorities believed that in Bhagat Singh they had caught a big fish and that he was the mastermind behind all revolutionary activity in India. The government was, however, intrigued by the two revolutionaries giving themselves up so easily. The British did not want to take any chances, so even the summons to the two revolutionaries was delivered to them in jail.

Trial

The style and format of the writing in the handbills struck British intelligence as suspiciously familiar. The format and style in these handbills was similar to the style and format of the handwritten posters that announced the murder of Saunders and which had been plastered on the city's walls. The British began to suspect that Bhagat Singh was one of Saunder's killers. He was singled out as the author of the text on the leaflets as well as on the posters. Bhagat Singh was charged with attempt to murder under section 307 of the Indian Penal Code. Asaf Ali, a member of the Congress Party was his lawyer.

The Trial started on 7 May, 1929. The Crown was represented by the public prosecutor Rai Bahadur Suryanarayan and the trial magistrate was a British Judge, P.B Pool. The manner in which the prosecution presented its case left Bhagat Singh in no doubt that the British were out to nail him. The prosecution's star witness was Sergeant Terry who said that a pistol had been found on Bhagat Singh's person when he was arrested in the Assembly. This was not factually correct because Bhagat Singh had himself surrendered the pistol while asking the police to arrest him. Even the eleven witnesses who said that they had seen the two throwing the bombs seemed to have been tutored.

Some of the questions asked in court were:

Judge: 'Were you present in the Assembly on the 8th of April, 1929?"

Bhagat Singh: 'As far as this case is concerned, I feel no necessity to make a statement at this stage. When I do, I will make the statement."

Judge: 'When you arrived in the court, you shouted, "Long Live Revolution!". What do you mean by it?'

As if it had already made up its mind, the court framed charges under Section 307 of the Indian Penal Code and Section 3 of the Exposive Substances Act. Bhagat Singh and Dutt were accused of throwing bombs 'to kill or cause injuries to the King Majesty's subjects'. The magistrate committed both of the revolutionaries' to the sessions court, which was presided over by Judge Leonard Middleton. The trial started in the first week of June, 1929. Here also, Bhagat Singh and Dutt were irked by the allegation that they had fired shots from a gun. It was apparent that the government was not limiting the case to the bombs thrown in the Assembly. It was introducing extraneous elements to ferret out more information about the revolutionary party and its agenda.

However, Judge Leonard Middleton too swallowed the prosecution story. He accepted as proof of the verbal testimony that the two had thrown the bombs into the Assembly Chamber and even said that Bhagat Singh fired from his pistol while scattering the leaflets there. The court held that both Bhagat Singh and Dutt were guilty under Section 3 of the Explosive Substances Act, 1988 and were sentenced to life imprisonment. Judge Middleton rules that he had no doubt that the defendant's acts were 'deliberate' and rejected the plea that the bombs were deliberately low-intensity bombs since the impact of the explosion had shattered the wood of one and a half inch thickness in the Assembly.

The two were persuaded to file an appeal which was rejected and they were sent for fourteen years. The judge was in a hurry to close the case and claimed that the police had gathered 'substantial evidence' against Bhagat Singh and that he was charged with involvement in the killings of Saunders and Head Constable Chanan Singh and that the authorities had collected nearly 600 witnesses to establish their charges against him which included his colleagues, Jai Gopal and Hans Raj Vohra turning government approvers.

Bhagat Singh was sent to Mianwali Jail and Dutt to Borstal Jail in Lahore and were put on the same train though in different compartments on 12th March, 1930 but after requesting the officer on duty to allow them to sit together for some distance of the journey, Bhagat Singh conveyed to Dutt that he should go on a hunger strike on 15th June and that he would do the same in Mianwali Jail. When the Government realized that this fast had riveted the attention of the people throughout the country, it decided to hurry up the trial, which came to known as the Lahore Conspiracy Case. This trial started in Borstal Jial, Lahore, on 10 July, 1929. Rai Sahib Pandit Sri Kishen, a first class magistrate, was the judge for this trial. He earned the title of Rai Sahib for loyal service to the British. Bhagat Singh and twenty-seven others were charged with murder, conspiracy and wagering war against the King.

The revolutionaries' strategy was to boycott the proceedings. They showed no interest in the trial and adopted an attitude of total indifference. They did not have any faith in the court and realized that the

court had already made up its mind. A handcuffed Bhagat Singh was still on hunger strike and had to be brought to the court in a stretcher and his weight had fallen by 14 pounds, from 133 to 119. The Jail Committee requested him to give up their hunger strike and finally it was his father who had his way and it was on the 116th day of his fast, on October 5, 1929 that he gave up his strike surpassing the 97 day world record for hunger strikes which set by an Irish revolutionary.

Bhagat Singh started refocusing on his trial. The crown was represented by the government advocate C.H.Carden-Noad and was assisted by Kalandar Ali Khan, Gopal Lal, and Bakshi Dina Nath who was the prosecuting inspector. The accused were defended by 8 different lawyers. The court recorded an order prohibiting slogans in the courtroom. The government advocate filed orders by the government sanctioning the prosecution under the Explosive Substances Act and Sections 121, 121 A, 122 and 123 of the Penal Code relating to sedition.

When Jai Gopal turned approver, Verma, the youngest of the accused, hurled a slipper at him. After this incident, the accused were subjected to untold slavery. The case built by the prosecution was that a revolutionary conspiracy had been hatched as far as back as September, 1928, two years before the murder of Saunders. The government alleged that various revolutionary parties had joined together to forge one organization in 1928 itself to operate in the north and the north-east of India, from Lahore to Calcutta.

The case proceeded at a snails pace and hence the government got so exasperated that it approached the Lahore High Court for directions to the magistrate. A division bench of the Lahore High Court dismissed the application of Carden-Noad. Through March, 1930, the proceedings were relatively smooth. The magistrate could not make any headway without the cooperation of the undertrials. On1 May, 1930, the viceroy, Lord Irwin, promulgated an Ordinance to set up a tribunal to try this case. The Ordinance, LCC Ordinance No.3 of 1930, was to put an end to the proceedings pending in the magistrate's court. The case was transferred to a tribunal of three high court judges without any right to appeal, except to the Privy Council.

The case opened on 5 May 1930 in the stately Poonch House. Rajguru challenged the very constitution of the tribunal and said that it was illegal ultra vires. According to him, the Viceroy did not have the power to cut short the normal legal procedure. The Government of India Act, 1915, authorized the Viceroy to promulgate an Ordinance to set up a tribunal but only when the situation demanded whereas now there was no breakdown in the law and order situation. The tribunal however, ruled that the petition was 'premature'. Carden-Noad, the government advocate elaborated on the charges which included dacoities, robbing money from banks and the collection of arms and ammunition. The evidence of G.T. Hamilton

Harding, senior superintendent of police, took the court by surprise as he said that he had filed the FIR against the accused under the instructions of the chief secretary to the government of Punjab and he did not know the facts of the case. Then one of the accused J.N Sanyal said that they were not the accused but the defenders of India's honour and dignity.

There were five approvers in total put of which Jai Gopal, Hans Raj Vohra and P.N.Ghosh had been associated with the HRSA for a long time. It was on their stories that the prosecution relied. The tribunal depended on Section 9 (1) of the Ordinance and on 10th July 1930, issued an order, and copies of the framed charges were served on the fifteen accused in jail, together with copies of an order intimating them that their pleas would be taken on the charges the following day. This trial was a long and protracted one, beginning on 5 May, 1930, and ending on 10 September, 1930. It was a one-sided affair which threw all rules and regulations out of the window. Finally the tribunal framed charges against fifteen out of the eighteen accused. The case against B.K.Dutt was withdrawn as he had already been sentenced to transportation for life in the Assembly Bomb Case.

On 7 October 1930, about three weeks before the expiry of its term, the tribunal delivered its judgement, sentencing Bhagat Singh, Sukhdev and Rajguru to death by hanging. Others were sentenced to transportation for life and rigorous imprisonment. This judgement was a 300-page one which went into the details of the evidence and said that Bhagat Singh's participation in the Saunders' murder was the most serious and important fact proved against him and it was fully established by evidence. The warrants for the three were marked with a black border.

The undertrials of the Chittagong Armoury Raid Case sent an appeal to Gandhiji to intervene. A defence committee was constituted in Punjab to file an appeal to the Privy Council against the sentence. Bhagat Singh did not favour the appeal but his only satisfaction was that the appeal would draw the attention of people in England to the existence of the HSRA. In the case of Bhagat Singh v. The King Emperor, the points raised by the appellant was that the ordinance promulgated to constitute a special tribunal for the trial was invalid. The government argued that Section 72 of the Government of India Act, 1915 gave the governor-general unlimited powers to set up a tribunal. Judge Viscount Dunedin who read the judgment dismissed the appeal. Thus from the lower court to the tribunal to the Privy Council, it was a preordained judgement in flagrant violation of all tends of natural justice and a fair and free trial.

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