

Chapter – 10

Explanation of Legal Terms

1. **Injuria Siene damano** (बिना क्षति के हानि) :The maxim injuria sine damano means that if a private right is infringed, the plaintiff will have a cause of action even though the Plaintiff has not suffered any actual loss or damages. Thus according to this maxim, what is necessary is the infringement of a legal right and not the proof of actual loss or damages.

2. **Damnum sine Injuria** (बिना हानि के क्षति): This maxim means that no action will lie if there is actual loss or damage but there has been no infringement of legal right. Thus breach of a legal duty or infringement of a legal right is the essential condition for arising of liability in tort.

3. **Motive** (हेतुक): Motive means the reason behind the act or conduct motive is generally irrelevant for the liability. If the defendant commits an infringement of legal right, he will not be excused on the ground that his motive was good. Conversely if his motive is bad but he is not guilty of any wrongful act, he will not be liable.

4. **Malice** (विद्वेष): Malice means evil or bad motive it may also mean to do act wilfully without any excuse or just cause. Malice in common application means ill-will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse.

5. **Volenti-non fit injuria** (स्वेच्छा से खतरा लेना): One of the recognised general defences to liability in tort is that the Plaintiff consented or assented to the doing of an act which caused harm to him, the defendant would not be liable. This is known as volenti non-fit injuria. This is founded on good sense and justice. One who has or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong. The question of an application of this maxim may arise only if it is established that a tort has been committed by defendant.

There may be certain limitations on the maxim, these are—

1. Consent must be voluntary and free.
2. Knowledge does not necessarily imply assent or consent.
3. Consent must not generally be to illegal acts.
4. The maxim does not apply to cases of negligence.

6. **Vis-major or Act of God** (दैवीकृत्य): Vis-major means act or escape caused directly by natural cause without human intervention and is so unexpected that no human foresight or skill could reasonably be expected to anticipate it. It is also recognised as one of the general defence to liability in tort.

7. Remoteness of damages (दूरस्थ क्षति) It is well established that the damage was as the result of the breach of duty, but the plaintiff will not be succeeded if the damage was not too remote. No defendant can be held liable *ad infinitum* for all the consequences of his wrongful conduct. Remoteness of damages is a question of fact. There are two main tests to determine whether damages are remote

- (1) The test of directness and
- (2) The test of reasonable foreseeability.

8. Vicarious liability (प्रतिनिधिक दायित्व) Generally a man is liable for his own wrongful acts. He is not liable for the wrongful act of others. But under certain circumstances a man may be held liable for the wrongful acts of others. This is popularly known vicarious liability.

The Common instances of such relationship are liability of master for torts of his servants, liability of principal for the torts of his agents. This is based upon the principle that is the responsibility must be that of superior and he who acts through others is deemed in law as doing himself.

9. Res Ipsa Loquitur (परिस्थितियों स्वयं बोलती है): The Phrase 'Res Ipsa Loquitur' means the thing itself speak. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot him it happened to establish negligence on the part of the defendant. The hardship is sought to be avoided by applying the principle of 'res ipsa loquitur'.

This maxim applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that it was so caused.

10. Strict liability (कठोर दायित्व) There may be cases wherein the defendant may be held responsible for the harm caused to the plaintiff although the defendant neither intends the consequences nor is guilty of negligence. This knowing as strict liability and this is laid down in the *Rylands vs Fletcher, 1866 LR 1* Justice Black Burn said that "we think that the true rule of law is that the person who for his own purposes brings on his lands and collects and keep there anything likely to do mischief if it escapes, must keep it not him perils and if he does not do so, is *prima facie* answerable for all the damages which is the natural consequences of its escape."

11. Actio Personalities moritur cum persona (व्यक्ति की मृत्यु के साथ उसके बाद का अन्त हो जाता है): The maxim means "Death destroys the right of action" is looked down with disfavour in the modern times. Its application has been greatly restricted by Judicial decisions and Legislative elements. Modern Jurisprudence does not recognise the broad doctrine that a personal right of action perishes with the death of either party.

Legal Language (writing)

12. Malicious Prosecution (विद्वेषपूर्ण अभियोजन): Malicious Prosecution is a tort which consist of instituting certain kind of legal proceedings against another person maliciously and without reasonable and probable causes. There are following essentials for the tort of malicious prosecution.

- (1) The plaintiff was prosecuted by the defendant of a criminal charge.
- (2) The proceedings of complaint of terminated in his favour.
- (3) The prosecution was instituted with a malicious intention.
- (4) The Plaintiff has suffered damage.

13. Nuisance (उपताप): Nuisance is an unlawful interference with a person's use or enjoyment of land or of some right over or in connection with it. In order that nuisance is actionable tort it is essential that there should exist (1) wrongful act (2) damage or loss or inconvenience or annoyance caused to another. The latter alone can give no right of a legal action.

Nuisance may be of two types.

- (1) Public Nuisance.
- (2) Private Nuisance.

14. Judicial Review (न्यायिक पुनर्विलोकन): Judicial review is the power of the court to pronounce upon the Constitutionality of legislative acts which fall within their normal Jurisdiction to enforce and the power to be unconstitutional and hence void. The doctrine of Judicial Review was for the first time propounded by the Supreme Court of America in the historic case of *Marbury vs. Madison*. In India the doctrine of Judicial review is the intergal part of the Constitution and power has been vested in the High Court and Supreme Court to decide about the Constitutionality.

15. Doctrine of severability (पृथक्करणीयता का सिद्धान्त): When a part of the statute is declared unconstitutional then a question arises whether the whole of the statute is to be declared void or only that part which is unconstitutional should be declared as such. To resolve this problem the court has devised the doctrine of severability or separability. This doctrine means that if offending provisions can be separated from that which is Constitutional then only that part which is offending is to be declared as void and not the entire statutes.

16. Doctrine of Eclipse (अधित्याग का सिद्धान्त): The doctrine of Eclipse is based on the principle that a law which violates fundamental right is not nullity or void ab-initio but becomes only unenforceable i.e. remains in moribund condition. It is overshadowed by the fundamental rights and remains dormant but it is not dead.

17. Ex post facto laws (कार्योत्तर विधियों): An ex post facto law is a law which impose penalties retrospectively i.e. on acts already done and

increases the penalty for such acts. Article 20 (1) of Indian Constitution prohibits the legislature to make retrospective criminal laws. It says that no person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence. This means that if an act is not an offence at the date of its commission it cannot be an offence at the date subsequent to its commission.

18. Double Jeopardy (दोहरा दण्ड): Article 20 (2) of Constitution say that no person shall be prosecuted and punished for the same offence more than once. This clause embodies the common law rule of *nemo debet bis vexari* which means that no man should be put twice in peril for the same offence. If he is prosecuted again for the same offence for which he has already been prosecuted he can take complete defence of his former conviction.

19. Locus standi (सुने जाने का अधिकार): The traditional rule is that the right to move the Supreme Court and High Court is only available to those whose fundamental right are infringed. That traditional rule called *locus standi*. But in recent this traditional rule has now been considerably relaxed by the Supreme Court in its recent rulings. The Court now permit public interest litigation and social interest litigation at the instance of public spirited citizens for the enforcement of Constitutional and other legal rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the court for relief.

20. Doctrine of pith and substance (तत्व एवं सार का सिद्धान्त): The doctrine of pith and substance is applied when the legislative competence of a legislature with regard to particular enactment is charged with reference to the entries in the various lists i.e. a law dealing with a subject to one list is also touching on the subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment - the true character and nature of the legislation.

21. Doctrine of colourable legislation (छद्म विधान का सिद्धान्त): In a federal Constitution the Legislative powers of both the Centre and federating units are to be exercised within certain specific limitations, e.g., legislative entries or fundamental right. In the exercise of these powers, questions do arise as to whether the Legislature in a particular enactment has or has not transgressed the limit of its Constitutional powers.

Transgression of Constitutional limits by a Legislature may be overt or covert. When it is overt, i.e., patent manifest or direct the law is bad for non-compliance with the Constitutional requirements. In short, such legislation is *ultra vires*. On the other hand, when such transgression is covert i.e., disguised or indirect the law is called fraud on the Constitution. The fraud being that the Legislature pretends to act within the limits of its power, the transgression being veiled by what appears on a proper examination, to be a mere pretence or disguise. It is for this latter class of

transgression that the expression 'colourable legislation' has been applied in judicial pronouncements.

22. Doctrine of Pleasure (प्रसाद का सिद्धान्त): In England the normal rule is that a civil servant of the Crown hold his office during the pleasure of the Crown. This means that his services can be terminated at any time by the Crown without assigning any reason. Even if there is a contract of employment between the Crown, the Crown is not bound by it. In India Article 310 of Constitution incorporates the common law doctrine of pleasure.

23. Rule of law (विधि का शासन): According to Dicey, Rule of law means-

- (1) Supremacy of law.
- (2) Equality before law.
- (3) Predominance of legal spirit.

The Rule of law is viable and dynamic concept and like many other such concept, is not capable of any exact definition. This however does not mean that there is no agreement on the basic values which it represents. The term 'rule of law' used in contradiction to rule of man and a rule according to law. Therefore Rule of law means that the law rules, using the word law in the sense of 'Jus' and 'Lex' both.

24. Doctrine of Ultra Vires (अधिकारातीत का सिद्धान्त): Ultra Vires means beyond powers, when a subordinate legislation goes beyond the scope of authority conferred on the delegate to enact, it is known as ultra vires. It is fundamental principle of law that a public authority cannot act outside the powers and if the authority act. Such act becomes ultra vires and accordingly void.

25. Nemo debet esse iudex in propria causa or No man shall be a judge in his own case or Doctrine of Bias (कोई व्यक्ति स्वयं के मामले में न्यायाधीश नहीं हो सकता है या पक्षपात का सिद्धान्त): This is the first principle of Natural Justice that means the deciding authority must be impartial and without bias. Bias means anything which tends or may be regarded to tending to cause such a person to decide a case otherwise than an evidence must be held to be biased. Bias is of three types (1) Pecuniary bias (2) Personal bias and (3) Bias as to subject matter.

26. Audi Alteram Partem (दूसरे पक्ष को भी सुनो): The second fundamental principle of Natural Justice is Audi Alteram Partem which means no man should be condemned unheard or both the sides must be heard before passing any order. This is the first principle of civilised jurisprudence and is accepted by law of man and God. In short before an order is passed against any person reasonable opportunity being heard must be given to him. This maxim includes two elements.

- (1) Notice and
- (2) Hearing.

27. Actus reus (अपराधिक कार्य): The term 'actus' means a physical result of human conduct. When criminal policy regards such a deed sufficiently penalty for its commission, so actus reus means such conduct which the law prohibits.

Although the term actus reus is convenient, it is in one respect misleading. The adjective reus does not imply that the act or other conduct must be obviously wicked or harmful in itself, apart from the intent that accompanies it. There may be an actus reus without any external consequence harmful to society.

Another point on the term actus reus is that when a crime requires mens rea, an actus cannot be legally reus (in the same sense of involving criminal responsibility) unless there is mens rea. Therefore, it may appear self contradictory to say: "There is an actus reus, but no mens rea." The solution of this difficulty is to define actus reus in a technical sense as meaning conduct that would be criminal provided that any necessary mens rea were present. In other words, the actus reus is the conduct that is forbidden by the rule of criminal law, on the assumption that any necessary mens rea is found to exist. When we get a criminal Code it may be expected to refer to the external elements of the offence rather than to the actus reus.

28. Mens Rea (अपराधिक मन): In Criminal law there are two essential elements necessary to constitute a crime namely (1) the physical elements which is known as 'actus reus'; and (2) The mental element, commonly known as 'Mens Rea'

The meaning of mens rea can only be ascertained by reference to the particular definition of a particular crime. What is an evil intent for one kind of offence may not be an evil intent for another crime.

29. Ignorantio facit excusat: Ignorantio Juris non-excusat (तथ्य की भूल क्षम्य है विधि की भूल क्षम्य नहीं है) It is well known latin maxim. It is literally translated as follows: "Ignorance of the facts excuses but the ignorance of law does not excuse." It means, in other words that as mistake of fact is a good defence but a mistake of law is not. Ignorance of law is indeed no excuse for defence. If it were so, it would be difficult to administer the law. A man may not know the law at his own peril. Law takes no notice of such ignorance. all legislation is published in a prescribed manner and, when so published it does not require to be proved that every citizen in the land knows it. There is an absolute duty upon all persons to know the law of the land and to obey it. The consequences for a breach of the law would be the same whether one knew it or one did not. There is no escape from the law in not knowing it.

30. Nemo dat quod Non habet (कोई व्यक्ति अपने हक के अलावा कुछ भी अन्तिरित नहीं कर सकता है) The law relating to the transfer of title revolves on the famous ancient maxim, nemo dat quod non-habet, which means that a person cannot confer a better title than he himself has. Thus a

person who is not the owner of the property, cannot make a third person owner of the property

31. **Res Judicata** (प्राज्ञन्याय): Res means thing and Judicata means already decided. The rules as enunciated in section 11 of Civil Procedure Code runs as follows. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Res Judicata applicable where previous decision has been given in a civil suit through a plea of res judicata is raised in a subsequent civil suit. The object of the res judicata is to protect the same person from being harassed again and again in various proceedings upon same question.

32. **Judicial Separation** (न्यायिक पृथक्करण): Judicial separation is the state of relation between husband and wife when they are under no obligation to live together or to perform marital obligations for each other. It is temporary suspension of marital rights between the spouse as a result of decree passed by the court on any one of ground mentioned in the section of 10 of Hindu Marriage Act, 1955.

33. **Pendente lite** (वाद कालीन व्यय): Maintenance during the pendency of the litigation is known as "maintenance pendente lite" or interim maintenance. Section 24 of the Act provides for maintenance pendente lite and also for the expenses of the proceedings.

The interim maintenance must be paid monthly till the pendency of the litigation, but the necessary expenses of the proceedings must be ordered to be paid in lump sum. Where on an application to a party the court orders the opposite party to pay an ascertained amount to the applicant, and the opposite party refuses to make payment of the said amount, the court may stay the further proceeding, if he or she happens to be the petitioner, or may strike out the defence if he or she happens to be the respondent.

34. **Donatio Mortis Causa** (मृत्युकालीन दान): A Donatio Mortis Causa means a gift made in contemplation of death. It is recognised by personal laws. It may be orally or written form.

35. **Pre-emption** (हकशुदा): pre-emption is a right under this right owner of an immovable property is entitled to purchase an adjacent property which has been sold to some one else. According to Mulla- The right of siffa (pre-emption) is a right which the owner of an immovable property possesses to acquire by purchase another immovable property which has been sold to another person.

The basis of the right Pre-emption is the peaceful enjoyment of an immovable property by its owner.