

under fourteen cannot be convicted of rape. The principle of law is *malitia supplet aetatem*

mandamus - We command

mea judice - In my opinion

mea culpa - By my own fault

melior est conditio possidentis et rei quam actoris The position of the possessor is the better; and that of the defendant is better than that of the plaintiff

mens legis - The spirit of the law

mens rea - Criminal intention or guilty mind

One of the cardinal principles of the English Criminal Law is the *maxim actus non facit reum nisi mens sit rea*. i.e., a person cannot be convicted and punished in a proceeding of criminal nature unless it can be shown that he had a guilty mind! There is a presumption that *mens rea*, an evil intention, or knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals²

mesne - Middle, intermediate

metes and bounds - By measurement and boundaries

mobilia sequuntur personam - Movables follow the person. A person's powers of dealing with his movable estate and its devolution on his death are governed by the law of his domicile

modus - Manner; mode

modus et conventio vincunt legem - Custom and agreement overrule law [see *Achaldas Durgaji Oswal v. Ramvilas Gangabisan Heda* [2003] 2 ILD 817 (SC)]

modus legem dat donationi - Agreement gives law to the gift

modus operandi - Method of operation

modus vivendi - A manner of living; compromise pending settlement of dispute

montrans de droit - Manifestation of right

moratur in lege - He delays in the law

more - In the manner

1. *Chisholm v. Doulton* [1889] 22 QBD 736.

2. *Sherras v. De Rutzen* [1895] 1 QB 918 and also see *Ravula Hariprasada Rao v. State* AIR (38) 1951 SC 204; *State of Maharashtra v. Mayer Hans George* AIR 1965 SC 722.

also to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties¹

nemo debet bis punibi pro uno delicto - No one should be punished twice for one fault

This maxim is embodied in article 20 of the Constitution. It means that a man must not be put twice in peril for the same offence. If a man is indicted again for the same offence in an English court, he can plead, as a complete defence, his former acquittal or conviction, or as it is technically expressed, take the plea of *autrefois acquit* or *autrefois convict*.²

nemo est haeres viventis - No one is the heir of anyone who is alive

nemo ex proprio dolo concequitur actionem - No one obtains a cause of action by his own fraud

nemo judex in causa sua - No one is a judge in his own case

nemo ex suo delicto meliorem suam conditionem facere potest - No one can improve his position by his own wrong doing

nemo moriturus praesumitur mentire - A man will not meet his maker with a lie in his mouth. A dying declaration is admitted as evidence is based on this maxim [P.V. Radhakrishna v. State of Karnataka [2003] 8 ILD 200 (SC)]

nemo plus juris ad alium transfeine potest, quam ipse haberet - The title of an assignee can be no better than that of his assignor.

nemo potest esse simul actur et judex No one can be at once suitor and judge

nemo potest facere per alium quod per se non potest - No one can do through another what he cannot do himself

nemo potest plus juris ad alium transferre quam ipse habet - No one can transfer a greater right to another than he himself has

nemo prohibetur pluribus defensionibus uti - No one is forbidden to use several defences

nemo tenetur ad impossibile - No one is required to do what is impossible

nemo tenetur se ipsum accusare - No one is bound to incriminate himself

1. *Manak Lal v. Dr. Prem Chand* [1957] SCR 575.

2. See *S.A. Venkataraman v. Union of India* [1954] SCR 1150, *State of Bombay v. S.L. Apte* [1961] 3 SCR 107; *Maqbool Hussain v. State of Bombay* [1954] SCR 730, *State of M.P. v. Veereshwar Rao Agnihotry* [1957] SCR 868.

T

tanti - Worth while

tant mieux - So much the better

tanto - So much

tempore - In the time of

terminus a quo - The starting point

terminus ad quem - The limit to which, the finishing point

terra - Land

terra firma - Firm ground

tertius - Third

testamenti factio - Capacity to take any part in making of will or any benefit under a will

testamenti, secundum tabulas - According to the tablets or terms of the will

testamentum - A will

testantibus actis/ta - As the records show

testate - Having made a will

Testatio mentis - It testifies the determination of the mind

testator - One who makes a will

testatum - A clause in a deed or clauses in a deed which witnesseth the operative act to be effectuated by the deed

teste - Witness (so-and-so) The concluding part of writ, giving the date and place of its issue

testes ponderantur, non numerantur - Witnesses are weighed, not numbered

testimonium - A concluding part of a deed which begins with the words 'In witness'

testis nemo in sua causa esse potest - None can be a witness in his own case

testis oculatus unus plus valet quam auriti decem - One eye-witness is worth more than ten ear witnesses

tort - Crooked conduct, a wrong; a civil wrong

tort feasor - One who commits a tort

tortious - Wrongful

totidem verbis - In just so many words

toties quoties - As often as something happens

toto coelo - Diametrically opposite

transit in rem judicatum - It passed into (or becomes) a *res judicata*

trespasser ab initio - Trespass from the beginning

triplicatio - Triplicate

trustee de son tort - One who intermeddles in a trust without authority; and is held liable to account as a trustee.

turpis causa - A base or immoral consideration

tutela - Tutelage; guardianship

U

uberrimae fides - Of the utmost good faith; of the fullest confidence

ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest - Where anything is granted, that is also granted without which the thing itself is not able to exist. Applying maxim, the Supreme Court in *State of Karnataka v. Vishwabarathi Housing Co-op. Society* [2003] 113 Comp. Cas. 536, observed :—

“Every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective.”

ubi eadem ratio ibi idem lex et de similibus idem est judicium Where the same reason exists, there the same law prevails, and of things similar, the judgment is similar

ubi jus ibi officium - Where there is a right, there is a duty

ubi jus ibi remedium - Where there is a right, there is a remedy

ubi jus incertum, ibi jus nullum - Where one's right is uncertain, no right exists

ubi remedium, ibi jus - Where there is remedy, there is a right

ubi supra - In the place of above (mentioned)

ubique - Everywhere

ultima voluntas testatoris est perimplenda secundum veram intentionem suam - Effect is to be given to the last will of a testator according to his true intention

inconsistent positions in court, to play fast and loose, to blow hot and cold, to approbate and reprobate, to the detriment of his opponent. A party, therefore, cannot approbate and reprobate and compel the court to accept the case after an open exhibition of inconsistency. *Bhau Ram v. Baij Nath Singh* AIR 1961 SC 1327, it was observed :—

“Upon this principle who takes benefit under an order *hors* the claim on the merits cannot repudiate that part of the order which is detriment to him because the order is to take effect in its entirety.”

Law does not permit a person to accept or reject the same instrument, that is to say, a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage [*Lalsingh Estate Pvt. Ltd. v. CIT* [1995] 216 ITR 644 (Gau.)]

Approval

The word “approval” indicates that when an act which has already been made and is required to be approved. In *High Court of Judicature for Rajasthan v. P.P. Singh* [2003] 4 SCC 239, the Supreme Court observed:

“When an approval is required, an action holds good. Only if it is disapproved it loses its force.”

Approve - Favourable opinion

“Approve” means to have or express a favourable opinion of, to accept as satisfactory. [*State v. Dr. R.C. Anand* [2004] 4 SCC 615]

Arbitrariness and equality sworn enemies

Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies ; one belong to the rule of law in a Republic while the other, to the whim and caprice of an absolute monarch. *Mala fide* exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by article 14 of the Indian Constitution *E. P. Royappa v. State of Tamil Nadu* AIR 1974 SC 555 and *Smt. Maneka Gandhi v. Union of India* AIR 1978 SC 597)

Arbitrariness - Antithesis of rule of law

Arbitrariness is antithesis of rule of law, equity, fairplay and justice [*Laxmi Precision Screws Ltd. v. Ram Bhagat* [2002] 6 SCC 552].

Cartelisation, entering into an agreement to control competition

Cartelisation is entering into an agreement or arrangement or understanding between enterprises and measures to control competition. The Supreme Court in *Union of India v. Hindustan Development Corporation* [1993] 3 SCC 499/AIR 1994 SC 988 observed, "cartel, therefore, is an association of producers who by agreement among themselves attempt to control production, sale and price of the product to obtain a monopoly in any particular industry or commodity."

Casual and non-recurring

'Casual' according to dictionary means 'accidental or irregular'. Non-recurring is one which is not likely to occur again in a year [*Universal Radiators v. CIT* [1993] 68 Taxman 45 (SC)]. The word 'non- recurring' does not mean that the receipt is a single one or which has in fact not been repeated, but only that there is no claim or right in the recipient to expect its recurrence [*Mehboob Productions (P.) Ltd. v. CIT*[1977] 106 ITR 758 (Bom.)]

Casual income

A receipt is casual if it is a production of chance accident or fortuitous; and it is neither calculated nor settled, nor is there any likelihood of its coming at a certain time [*CIT v. J. C. Wahal* [1988] 170 ITR 635 (All.) and *CIT v. Dr. P. N. Beh* [1972] 84 ITR 125 (Delhi)].

Casual means something which comes in at uncertain times and something which cannot be relied upon or calculated to produce income or it may be something which is the result of chance or the result of fortuitous circumstances [*CIT v. J. C. Wahal* [1988] 170 ITR 635 (All.)]. A receipt which is foreseen, known, anticipated and provided for by agreement cannot be regarded as casual even it is not likely to recur even or at least for a considerable time [*Asiatic Oxygen Ltd. v. CIT* [1991] 189 ITR 483 (Cal.)]

Cause of action - Breach of contract

For a suit on breach of contract it is the place where the contract was made or the place where it is to be performed, it can be said that a part of the cause of action can be said to have arisen (*B. C. Laminart Pvt. Ltd. v. A. P. Agencies, Salem* AIR 1989 SC 1239) that judgment is also an authority for the proposition that where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therein if the parties to the contract agree to vest jurisdiction in one such court the agreement is valid.

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be established to be so by clear and unambiguous evidence for it is only by means of such evidence that the courts can be assured of its existence and of the fact that it possesses the conditions of antiquity and certainty on which alone its legal title to recognition depends [S.C. *Varshnie v. CWT Commissioner* 1976 Tax LR 261 (Pat.)]

Cypres doctrine

When to give effect to a charitable and religious trust is impossible or impracticable initially or becomes so subsequently, the court will save the trust from falling by invoking the cypres doctrine and utilise the trust property for some other charitable and religious purpose as near as possible to the object of the trust mentioned by the settlor [*Trustees of H.E.H. The Nizam's Pilgrimage Money Trust v. CIT* [2000] 243 ITR 676 (SC)]

D

Damage - Harm to a person

Damage is harm to a person, property or reputation. It means injury.

Damages - Money claimed for loss or injury

Damages is money claimed by, or ordered to be paid to, a person as compensation for loss or injury. It merely remains a claim till adjudication by a court and becomes a 'debt' when the court awards it. A claim for damages becomes a "debt due" not when the loss is quantified by the party complaining of the breach but when a competent court holds an inquiry and concludes that the defendant has committed the breach and then assesses the quantum of loss and awards damages [(*Greenhills Exports (P) Ltd. v. Coffee Board* [2001] 106 Comp. Cas. 391 (Kar.)]

Damages - Pecuniary equivalent to injury

The word "damages" is read broadly to cover any pecuniary injury. Damages are compensation or indemnity for the loss suffered by a person owing to breach of a contract or tort. They are the pecuniary equivalent to the injury which he has sustained by the wrongful act of the contravener and are assessed to compensate the affected person and not to punish the defendant. They have been said to constitute the difference between his pecuniary condition after the infringement and what his condition would have been if the infringement had not occurred (see *Yale Lock Mfg. Co. v. Sargent* 117 US 536). The principle is

consist merely of the physical act of writing an award or signing it or even filing it in the office of the Collector ; it must involve the communication of the said award to the party concerned either actually or constructively.

Knowledge of the award does not mean a mere knowledge of the fact that an award has been made ; the knowledge must relate to the essential contents of the award [*State of Punjab v. Mst. Qaiser Jehan Begum*[1964] 1 SCR 971]

Death penalty - Rarest of rare cases

Death penalty is not imposed except in rarest of rare cases. Some of the mitigating and aggravating circumstances are required to be kept in view while considering the aspect of sentence. The question of sentence is to be decided on well-settled and recognized principles balancing all circumstances in relation to the crime and the criminal. In *Bachan Singh v. State of Punjab* [1980] 2 SCC 684, some of the aggravating circumstances in which the Court may impose penalty of death in its discretion noticed are:—

- (a) if the murder has been committed after previous planning and involves extreme brutality; or
- (b) if the murder involves exception depravity; or
- (c) if the murder is of a member of any of the armed forces of the Union or of a member of police or any of the public servant and was committed- (i) while such member of public servant was on duty; or (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member of public servant, as the case may be, or had ceased to be such member or public servant; or
- (d) if the murder is of a person who had acted in the lawful discharge of his duty under section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a magistrate or a police officer demanding his aid requiring his assistance under section 37 and section 129 of the said code.

Some of the mitigating circumstances, the Court shall take into account in the exercise of its discretion that are noticed in that case are:—

- i. That the offence was committed under the influence of extreme mental or emotional disturbance.
- ii. That age of the accused, if the accused is young or old, he shall not be sentenced to death.
- iii. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.