THE TAMIL NADU
Dr. AMBEDKAR LAW UNIVERSITY
(State University Established by Act No. 43 of 1997)
M.G.R. Main Road, Perungudi, Chennai - 600 096.

ENGLISH – II

FIRST YEAR – SECOND SEMESTER

STUDY MATERIAL

By
Dr. K. S. SARWANI
Head i/c.
Department of Inter-Disciplinary Studies
School of Excellence in Law [SOEL]
The Tamil Nadu Dr. Ambedkar Law University
Chennai - 600096.

PREFACE

This course material is meant for the students pursuing I year, 2nd semester B A LL B (Hons) degree course in the School of Excellence in Law (SOEL), The Tamil Nadu Dr Ambedkar Law University (TNDALU) It covers the syllabus prescribed for English II, which concentrates mainly on legal language and bettering the language skills

In the course material, for Units I and II of this course, lessons have been prescribed from Law and Language edited by R P Bhatnagar and ?Learning the Law by Glanville Williams, Due Process of Law by Lord Denning, and from Nicomachean Ethics by Aristotle Each unit has five essays/lessons A standard methodology has been followed for Units I and II, wherein for each lesson/essay, the complete essay has been given followed by information about the author and finally the analysis of the lesson Unit III deals with the acquisition of language namely English, and the pitfalls in learning the second language Apart from that to enhance language skills figures of speech have also been included The Language Riddle by David Annoussamy has been taken as the main source for Unit III Unit IV deals with logic which includes a detailed explanation about proposition, terms, distribution of terms, syllogism and fallacies This will help to better the reasoning skills of law students Unit V has a list of around hundred legal terms, which study is intended to widen the legal vocabulary of the law students For each legal term an explanation has been given along with a sentence using the legal term Apart from the books mentioned above, information has also been taken from various web sources

I hope that this material is useful to the students I wish to acknowledge the support and encouragement of our Hon'ble Vice-Chancellor Prof Dr P Vanangamudi , who initiated the publication of course materials for all the subjects I would like to thank Prof Dr S Narayana Perumal Director, U G , Courses, SOEL, for constantly encouraging us to complete the course material I thank profusely the Guest Faculties of the Law University, Dr K Senthilvel , Ms E Amutha , and Mr M Saravanan, whose contribution helped immensely in the completion of this work I also acknowledge the contribution of Mr M S Kannadhasan, II – year B A., B L (Hons) student, at every stage of this work

Dr. K. S. SARWANI
Head i/c.
Department of Inter-Disciplinary Studies
School of Excellence in Law [SOEL]
The T.N. Dr. Ambedkar Law University
Chennai-600096.

INDEX

ACADEMIC YEAR 2015-16

SUBJECT: ENGLISH – II

SUBJECT CODE:

PROSE SECTION

Unit – I (35 marks)

1 Moots and Mock Trials – Glanville Williams

2 The Divisions of the Law – Glanville Williams

3 In the Court – Anton Chekov

4 The Five Functions of the Lawyer – Arthur T Vanderbilt

5 The Language of the Law – Urban A Lavery

Unit - II

6 Cross – Examination of Pigott before the Parnell Commission – Sir Charles Russel

7 A Plea for the Severest Penalty upon his Conviction for Sedition – M K Gandhi

8 Educating Lawyers for A Changing World – Erwin N Griswold

9 Due Process of Law – Part I – Lord Denning

10 Ethics – On virtues & vices – Aristotle

Unit – III

Language Acquisition and use of Language (10 marks)

Four Skills of Language Learning – Understanding Spoken Language and Speaking – Understanding Written Language and Writing – Stages of Acquisition of Languages – Laws of Language Learning – Factors Influencing Results in Language Learning – Place of Mother Tongue in Language Learning

Figures of Speech

Simile, Metaphor, Hyperbole, Allegory, Personification, Metonymy, Synecdoche, Euphemism, Climax, Bathos, Epigram, Pun, Irony, Alliteration, Assonance and Tautology – examples

Unit – IV **(15 marks)**

Logic (10 marks)

1 The scope of Logic – Definition of Logic – Logic and Psychology and Ethics – The Principles of thinking and syllogism

2 Proposition and its parts – classification of propositions – Distribution of terms – The opposition of propositions

3 Syllogism – Kinds and rules of syllogisms

4 Fallacies – deductive fallacies – formal and material fallacies – inductive fallacies

Composition (5 marks)

Essay Writing on topics of Legal interest precise writing and letter writing

Unit – V (10 marks)

Legal Terms

List of Legal Terms

Accomplice	Homicide	Proviso
Ad-Idem	In Camera	Quid Pro quo
Adjudication	In-forma Pauperis	Receiver
Adjournment	In-Limine	Redemption
Admission	Injunction	Remand
Advalorem	Insolvency	Remedy
Affidavit	Insurance	Rent
Amendment	Issue	Resjudicata
Amicus Curiae	Judgement	Settlement
Approver	Jurisdiction	Sine-die
Bona-fide	Liability	Specific performance
Breach of Contract	Licence	Stamp duty
Capital Punishment	Magna Carta	Stay of execution
Coercion	Maintenance	Summons
Compromise	Malafides	Surety
Consent	Minor	Taxation
Counter claim	Mortgage	Tenant
Cur advelt	Murder	Title
Damages	Natural Justice	Tort
Defamation	Necessaries	Trademark
Defence	Negligence	Transfer
De-facto	Negotiable Instrument	Treason
De-jure	Oath	Trespass
Deposit	Obscene	Trial
Detinue	Partition	Trust
Distress	Persona designate	Ultra-vires
Earnest-Money	Perjury	Usage
Equity	Plaintiff	Vakalat
Estoppel	Power of attorney	Verdict
Evidence	Pre-emption	Vis-Major
Execution	Prescription	Void
Ex-parte	Presumption	Voidable
Fraud	Privity	Waiver
Habeas Corpus	Promissory note	
Hearsay	Proof	

Books Recommended

1 *Law and Language by Bhatnagar*

2 *Learning the Law by Glanville Williams*

3 *Due Process of Law by Lord Dennings*

4 *The Language Riddle by David Annousamy*

****

UNIT – I

1. MOOTS, MOCK TRAILS AND OTHER COMPETITIONS

Glanville Williams

FULL TEXT OF THE LESSON[1]

"In my youth, said his father I took to the law,
And argued each case with my wife,
And the muscular strength which it gave to my jaw
Has lasted the rest of my life"

- Lewis Carroll, *Alice in the Wonderland*

MOOTS are legal problems in the form of imaginary cases, which are argued by two student "counsel" (a leader and a junior) on each side, with a "bench" of " judges" (more usually, perhaps, only one judge) representing the Court of Appeal or sometimes the Supreme Court (or another tribunal which is the product of the organiser's imagination) Much stress is laid by educationalists on literacy and numeracy, but we hear little about the importance of being articulate Footballers practice passing and shooting pianists, singers and clowns also assiduously Why is it supposed that speaking comes naturally and needs no effort or concentration? Fluency and clear enunciation are particularly important for the lawyer, when our forensic practice is largely oral Although you will be given training in this at the professional stage, there is no reason why you should not participate in the activities of public speaking well before then Talking part in moots will help you in these respects, giving your experience in the art of persuasion, and putting a case succinctly and intelligibly Mooting not only gives practice in court procedure but helps to develop the aplomb every advocate should possess

In some universities and colleges, mooting may be a formal part of the curriculum, although the arrangement of moots is usually the responsibility of the student' law society (which may well have a mooting officer on the executive committee) A law teacher or practicing lawyer can usually be persuaded to assist by setting the moot and presiding on the "bench" In the unlikely event that no one else is arranging them, organize one yourself There are also nationally organized moots, such as the Weekly Law Reports Mooting Competition arranged by the Incorporated Council of Law Reporting, and the *Observer* newspaper, and a rather more specialist competition, the Jessup International Law Moot Court Competition Your student law society should have the details of these, and quite possibly several others

The precise details of the conduct of the moot might vary somewhat, the organizer of your moot should let you have well in advance details of the rules according to which the contest will be held Typically though, the proceeding will be conducted as follows The moot should ideally have two separate points for argument, one of each of the two pairs of counsel Counsel should notify opposing counsel of the main propositions (a skeleton argument, in fact) and of all the authorities on which they rely This mirrors practice in the superior courts, and has the merit of identifying the issues somewhat more precisely in advance A copy should also be made available for judge, since it will save the time that might be spent in transcribing your agreement Ideally, the volumes containing the reports of to be cited should be produced at the moot and the Master/Mistress of Moots or other organizer should be informed of authorities to be cited, in order that arrangements may be made for such reports as are available to be brought to the courtroom If this is not possible it

[1] Glanville Williams, ***"Moots, Mock Trails and Other Competitions"***, **Learning The Law**, A T H Smith (ed), 14th ed , Sweet & Maxwell, South Asian Edition, Delhi, pp 193-205

is not uncommon for the mooters to prepare in advance both a list of authorities to be cited, and photocopies (or printed downloads) of the judgment upon which it is intended to rely, including if necessary a copy for the judge-particularly if the moot is being conducted in a place where there is not ready access to the law reports themselves.

Since the moot is attended by an audience it is important to confine the proceedings to a reasonable length Between half an hour and 40 minutes for each side (to be divided between leader and junior as they think fit) is enough time

The presiding "judge" begins by referring to the case (he need not read it out if copies have been made available to the audience), then he says, "I call upon Mr/Miss X" (the leading counsel for the appellant, who sits upon the judge's left-that is to say, what the judge sees as his left) Junior counsel for the appellant is then invited to address the court, followed by two counsel for the respondent (or Crown) The appellant is supposed to have a right of reply, but this may have to be sacrificed if it has grown too late Alternatively, the speaking order can be leading counsel for the appellant, both counsel for the respondent, junior counsel for the appellant (who thus has the last word)

But counsel and judges follow the punctilios of court procedure and conduct, and a few words may be said on these Counsel rise to their feet when addressing or being addressed by the court If your opponent interrupts, resume your seat If you have occasion to refer to your colleague, you refer to your "learned junior", as the case may be, and your opponent is "my learned friend", or occasionally, informally, "my friend" (not "the opposition"!) "It has been argued on the other side that" is permissible

Do not interrupt anyone if this can possibly be avoided If you must interrupt, do so as gently and courteously as possible Beginners sometimes get confused between the two polite ways of addressing a judge-"my Lord" and "your Lordship" The difference is that "my Lord" is the mode of addressing a judge in the vocative case, i e as a polite way of drawing the attention of the judge to yourself and what you are about to say, while "your Lordship" is the mode of referring to the judge in the course of sentence, i e as a polite substitute for "you" The formula for opening a case is "May it please your lordship(s), I am appearing with Mr/Miss for the plaintiff (prosecution) (appellant), and my learned friends Mr__ and Miss__ are for the defendant (respondent)(Crown) The claim (charge) is " Other counsel will begin by saying "May it please your lordship(s)" Female judges are addressed as "my Lady", "your Ladyship"

In referring to the Queen as prosecutor in the course of a case one speaks not of "the Queen" but "the Crown"

The most common breach of etiquette committed by the enthusiastic beginner when arguing a moot case is the expression of a personal opinion on the merits of the case being presented Counsel may "submit" and "suggest" strongly, and may state propositions of law and fact, but should not express a personal "belief" or "opinion" You should also avoid the expression "I think", however natural it may seem to employ it It is regarded as being disrespectful to the Bench to say "My Lords, in my opinion the law is so-and-so", still more to say "My Lords, in my opinion this man is innocent" As an advocate you are paid to present your client's case, not to offer a sincere opinion on how you would decide if you were the judge It is only by maintaining this rule that the advocate can be kept free from any possible charge of hypocrisy

Begin your address to the court by address to the court by stating quite brief what you wish to show Enumerate the points to be made, and state what part of the argument is being left to your junior (if you are acting as leader) This will enable the court, if it so wishes, to express particular interest in one point, in which case you should of course respond by devoting yourself chiefly to it Take any hint the court drops if the presiding judge indicates

that as at present advised the court is with you on a particular matter, leave it alone- do not insist upon reading out your argument merely because you have come prepared upon it State your main point as impressively as you can After stating it, pause to give time for it to sink in Speak slowly, and get as soon as possible to the core of your case Your time is much more limited than it would be in a real case, and you cannot afford to waste it, on the other hand, it is no use gabbling what you have to say, for then it will not be understood Establish eye contact with the judge, and make sure that you can be heard Do not read out your argument if you can possibly avoid it, but in any case do not mumble into your notes While you must consistently keep your voice at a level at which it can be easily heard, you should try to put expression into it, avoiding a dull monotone It is probably unwise to permit yourself a joke in arguing a moot, at least until you are sufficiently experienced to know when one is allowable Members of the legal professions do not lack a sense of humour, but there is an ever-present danger that the levity might be interpreted as being deployed at the expense of the litigants

When citing cases the reference should always be given, and it should be pronounced in full, not in abbreviated form For instance, [1944] A C 200 is, "reported in the Appeal Cases for 1944 at page two hundred", and 2 B & Ald 6 is "in the second volume of Barnewall and Alderson's Reports at page six" You should be prepared to be able to recite the facts of the case, since the judge may not be familiar with them or wises to check that you are aware of them It may be sufficient to read the head note and the passage you want, but if the case is an important part of your argument you would, in court, read what you consider the essential facts in full When you read an authority, do so slowly, with proper periods and emphasis

Refer to judges by their full full and proper titles (see pp 88-90)

Citing cases, though usually a necessary part of the moot, tends to take a long time and to be boring for the audience Try, therefore, to pick out the cases that are most apt for your argument, and rely on them In professional practice it is the duty of the advocate to call the attention of the court to all decisions that are in any way against the submissions made, but this may not be possible in moot conditions The other side can be relied upon to cite any decision of importance, and you must have mastered those cases too as part of your preparation, being prepared to distinguish them if called upon to do so Purely for the purposes of keeping the exercise with the bounds of practically, it is not a bad plan to have a positive rule that not more than, say, six cases shall be citied on each side The object of a moot is to provide practice in developing an argument, and while the reading out of decided cases is often the necessary foundation of an argument, it should not constitute the whole of it Remember that your primary object as an advocate is to persuade the citing of cases is only a means to this end

Just as you should not overload your argument with cases, you should not load it with too many separate points of law "Mooty" as the case may be, it is unlikely that there are many good points to be made for your side All first-class advocates concentrate on what they consider to be their goo points, they do not run the risk of alienating the judge's affections by producing obviously bad ones If you must add indifferent points to good ones, at least put the good ones first

A frequent fault is to read out passages from textbooks as though they represented the last word on the law Although textbooks and treatises are not taboo in court, they should be used sparingly and cautiously What the judge principally wants to hear about are the relevant cases (and, of course, statutes) It is always desirable, at least in the superior courts, to refer the court to the cases cited by writer for the propositions

As will have appeared previously, judges do not take kindly to abbreviations in speech Always use the official longhand The Royal Air Force, for example, should be so referred to, and not simply as "the RAF"

All moot court judges may and should give counsel a hot time by interjecting questions and objections to the argument presented (In this they will not behave quite like real judges, who interrupt only occasionally) The objection need not represent the judge' real opinion, this is done in order to see how the student counsel responds If you are counsel and recognize that the judge's objection is valid, concede the point gracefully by saying, "I am obliged to your Lordship" If you think you have an argument, stand up for yourself and say, "with great respect, my Lord", and so on It does not matter how convinced or dogmatic the judge appears to be keep at your point as long as you think you have some hope of success and the judge is still willing to listen to you

When you think that the judge has got your point, do not go on repeating it If you have presented your case to the best of your ability, and the judge is evidently unconvinced, accept defeat and sit down All this advice applies equally to argument in real cases If the judge intimates that you should take a certain course, say, "if your Lordship pleases"

The judge may have tried to throw you with an interruption partly because you were reading your argument in a monotonous way In answering the judge you will have had to abandon your notes Try to continue your argument without them, referring to them only in order to read out an authority

In a moot, you should keep punctiliously to your allotted time In real life you will not have this limitation, but it will still be important not to ramble and repeat yourself

After counsel have concluded their arguments the presiding judge may invite members of the audience to express their opinions upon the legal problem as *amici curiae* The member of the court may then confer, and may deliver their judgments in turn If there are two students on the bench they may be asked to deliver their judgments before the senior member (My own opinion is that, owing to the pressure of time, it is best if the senior member alone gives the judgment without consulting the other members The main function of the other members of the court is to assist in putting possible objections to counsel)

The organizer of the moot should consider its timing Half an hour is the minimum for each side, so if the moot starts at 8 30pm, and if three judges each take 10 minutes to give judgment, it is 10pm even if not a minute has been lost-and this does not allow time for the presiding judge to invite the audience to comment before judgment is given It would be much better to hold the moot, say, between 2 and 5pm The presence of an audience is relatively unimportant Far better have many moots with a small, or even no audience, than one moot with a large audience The moot competition provides a further element of rivalry At the close of a moot the judge or judges declare which counsel or side performed best, he, she or they then go on to the next round

Almost all of us can, if we wish, add to the attractiveness of our speech You will not be at ease speaking in court if you are conscious of defects in this respect For all who have to speak regularly, money is well spent on lessons in elocution (speech training), but some blemishes can be cured by self-help Many experienced speakers mar their conversations as well as their orations with a profusion of "um"s and "er"s which distract attention Other bad habits are using "I mean" and "you know" The simplest way to cure these defects- which probably exist in your own speech, although you are unaware of them-is to record your conversation with some other person on a serious subject in which you are both interested, and then listen to it critically Probably you will be surprised at the imperfections in your own expression Only by means of a recording device can you hear yourself as others hear you

Try to eliminate all the "filled pauses" in your speech moments of silence are usually far more impressive than meaningless noises

Poor, slurred speech is another common defect As a Spanish observer caustically wrote

"To learn English you must begin by thrusting the jaw forward, almost clenching the teeth, and practically immobilizing the lips" (Jose Ortega y Gasset)

As things are going, the clarity and music of our language will remain only in the BBC sound archives Good diction can still be heard occasionally, particularly on Radio 3, so that no one who aspires to self-improvement need lack exemplars, yet many people are content to mumble and fumble their words If your speech suffers from this defect, your teachers are unlikely to tell you if it They have not the time (or expertise) for speech training, and are perhaps afraid to embarrass you, and by criticizing your speech to add to your shyness in discussion (They may themselves have fallen victims to the cult of mediocrity in articulation, as though slovenly speech is a way of expressing radical views) Lawyers, above almost all others, should be able to express themselves clearly and pleasantly Do you open your lips properly when speaking, or do you try to talk like a ventriloquist? (If you took singing lessons the first instruction would be to open your mouth, and the same applies to speech)

Do you need to turn your volume control up? Quite a number of the people you speak to will be getting on in years and have lost their sharpness of hearing Some people not only fail to speak up but talk with their hands wandering to cover their mouths

OTHER COMPETITIONS

A number of different sorts of competitions involving the acquisition and display of legal skills such as client interviewing, negotiation and the examination of witnesses are now held There is also now a formidable list of internationally organized (which as its title implies is set around a problem in International Law) which is held annually in Washington, and the William C Vis International Commercial Arbitration Moot which takes place in Vienna and in Asia A number of these competitions are discussed in the book by C Kee mentioned in the reading section at the end of this chapter Participation in such events is expensive, the competition is fierce since the participants come from universities and other institutions the world over, and they are very time consuming As a result, not all Law schools can afford to send a team, but the opportunities that they afford to the lucky few are considerable

SPEAKING IN PUBLIC

It is an excellent thing to take part in debates The skills involved in addressing a jury are common to the skills involved in public speaking Here are a few hints for speech-making of any kind

Plan your speech under a number of points so that it has a definite structure Write it out in full, reflect on it overnight and polish it the next day Then summarise the main headings on a small card or cards about the size of a postcard Include in the card any figures, quotations, names, key phrases or other material which you wish to state exactly Read through the full speech several times, preferably aloud and preferably into a tape-recorder, but do not succeed in being word-perfect, and there is danger in reciting a memorized speech either of appearing unnatural or of forgetting a complete section, or even coming to a dead halt If you play back a recording of the rehearsal, consider whether you spoke at the right moment When on your feet before the audience, have the outline card or cards in your hand and, with this aid, speak naturally in the way you have planned

The commonest fault among inexperienced speaker (and even many experienced ones) is to speak too fast All good advocates speak with great deliberation and force Tell yourself before you begin that you are going to speak slowly, and keep reminding yourself to do so Don't hide behind any furniture if you can help it, and don't fold your arms or fiddle with your ears, your spectacles, or anything else Look at the audience as you speak, and turn to different sections of them You may use your hands to emphasise points-not in too exaggerated a way, but sufficiently to show that you are putting your whole being into it When you are not using your hands in this manner, keep them at your sides Don't sidle around, keep your feet still If you make joke, pause before the punch line-and let the audience know that humour is about to enliven the proceedings by enjoying it yourself beforehand

If you are nervous, console yourself with the thought that the initially nervous speaker often performs far better than the stolid individual with no nerves And remember that the audience are on your side They want to be engrossed by your speech, they want the occasion to be success They are not there to criticize you, unless you force the criticism on them

Ask a friend to observe your performance and to report to you on it with ruthless candour Ask particularly whether you have any irritating mannerisms scratching yourself, flicking your hair, pulling your clothes, waving your arms unduly, or swaying hypnotically

MOCK TRAILS

A mock trail differs from a moot in that it is a mock jury-trail, with jury and witnesses, not an argument on law The proceedings may be somewhat humorous, witnesses may dress themselves up, and court and counsel wear robes (if procurable) The audience may consist of non-lawyers, who, of course, come simply to be entertained Since the trail is unrehearsed, it requires a high standard of forensic ability on the part of the student "counsel", and the proceedings should either be leavened by humour or present an intellectual problem of the "whodunit" type

There are two ways in which the "case" may be got up It may have been enacted beforehand by the witnesses, so that they testify to what they have actually witnessed, alternatively, the organizer of the mock trail may simply have given to each witness a statement of his evidence, which he or she is expected to remember The former method requires some effort, but it makes the case more realistic when it comes to cross-examination, and it enables the preliminary proceedings, including the interviewing of witnesses and briefing of counsel, to be done by student "solicitors" The actual trail is, of course, a valuable experience for budding advocates who take part in it as counsel

It is good plan to set the scene of these case (for example, the murder) in some place known to the audience (such as the college or law school) Alternatively, the case can be modelled upon an actual case in one of the Trails Series (below, p 266) try to depart from your trail just sufficiently to prevent counsel using the same speeches and the same questions to witnesses Keep the number of witnesses down to five or six See that the legal participants have attended real trails in order to learn how things are done, the clerk of the court in particular should know what the job involves If you are at all doubtful about the success of the evening, do not advertise the event outside your law society

As another diversion from the serious business of moots, the students' law society may like to try one evening the game of "Alibi" The gathering divides into groups of four, each group being composed of two prosecuting counsel and two defendants It is assumed that the two defendants have committed some crime at a stated time-say between 10 and 11 pm last Wednesday-and have set up an alibi They go out of the room for not more than 10 minutes in order to prepare their story They then return, one at time, for cross-examination by the prosecuting counsel Counsel's aim is to break down the alibi by asking unexpected

questions and so getting contradictory answers from the two defendants After the two cross-examinations, lasting perhaps 10 or 15 minutes in all, the two counsel put their heads together for a minute, and then one of them addresses the rest of the gathering, who have acted as jury, and submits that the alibi has been broken down because of this and that discrepancy The jury signify their verdict by a show of hands, the opinion of the majority being taken A master of ceremonies is needed to dispatch successive pairs of defendants out of room, in order to keep the game going continuously Would-be lawyers will game not at all a bad test of their powers of advocacy No training for would-be defendants is intended

A somewhat similar game is called "False Evidence" Three masked "defendants" are interrogated on their day-to-day lives by two counsel One of these defendants has assumed completely false name and occupation, and it is the task for jury to decide which Each defendant must submit to counsel a week in advance a couple of hundred words containing a life summary, and this enables counsel to prepare their questions Each defendants calls a witness who has also submitted a statement with the facts of his or her life, particularly where that life crosses that of the defendant In the case of the innocent parties they must have known each other for at least two years The witness is not shake the evidence and establish discrepancies between the defendant and the witness Each defendant and witness are given a limited time-say 15 minutes altogether-in the box The judge sums up briefly to the jury, who consider and announce their verdict The imposter then declares himself, and it is interesting to see if the judicial process has succeeded in ascertaining the truth of the matter It may be mentioned that the written statements do not identify who the person is Two or three trials may be held on the same evening

Yet another variant is "Third Degree" One member of the party is selected as the defendant who is told the outline of an alibi defence and has to fill the details impromptu under questioning For example, the defendant may be told that the alibi relates to a period between 2 and 5 pm last Thursday, when she left the house after lunch and took a train to a named neighbouring town and visited a friend in time for tea The defendant on being told this alibi must immediately amplify it under questioning, and can be "gonged" for undue hesitation in answering or for any vagueness in answering (she must not say "I think so" or "that is probably what I would have done") She can also be gonged for self-contradiction The object of the rest of the company, who ask questions for 15 minutes, is to establish a self-contradiction Leading questions may be asked for example, if the defendant says that she was not carrying a raincoat, she can later be asked whether the host put her raincoat on a peg in the hall or somewhere else? If the defendant is gonged, or runs for the allotted time without mishap, another outline alibi can immediately be supplied to another volunteer defendant A beauty of this game is that it can be played by two players only, and it may help you to bring out unsuspected ability as an implacable interrogator

For the procedure at a mock trail, consult any book on criminal or civil procedure "Counsel" should make themselves acquainted not only with this procedure but with the main rules of evidence, for example, those relating to leading questions

*****

ABOUT THE AUTHOR

Glanville Williams studied in the University of Cambridge and the University of Wales, then enrolled in the bar and became a member of Middle Temple in 1935 He was a research fellow from 1936-1942 and completed his Ph D in law at the St John's University of Cambridge

ACADEMIC CAREER

He started as a reader specializing in English law, and went on to become a professor in public law, and jurisprudence at the university of London, from 1945- 53, from 1957-68 worked as a professor of law in the University of Cambridge He also served in many official committees especially - The Criminal Law Revision Committee between 1959 and 1980

He wrote a number of books and is considered as Britain's foremost scholar of criminal law Some of the books written by him are Text Book on Criminal Law

Criminal Law The General Part, Joint Obligations (1949), The Law Reports (1943) The book Learning the Law, from which this essay is taken was written in 1945 It was written as a small introductory about law studies for the new entrants to the legal education This book remains indispensible to any would-be law students

LESSON ANALYSIS

Glanville Williams has authored a book entitled "Learning the Law" There are 14 chapters in that book All these chapters can be taken as advice to students who take up the study of law The Chapter "Moots and Mock Trials" deals mainly with the importance of practice of advocacy skills by law students As fluency and clear enunciation are important for a lawyer, taking part in moots helps the law student to gain these skills Mooting helps students to speak fluently and clearly, gives experience in the art of persuasion and to put a case as intelligibly as possible

LAW STUDENTS AND MOOTS

Taking part in moot helps the law students to not only speak fluently and clearly, but also helps them to develop the art of persuasion and present the facts of the case intelligibly It also gives practice in court proceedings Moots are legal problems where imaginary cases are argued by two student council Each team have a leader and a junior council It will be judged by a bench of one or three judges In England the student law society takes the responsibility of organizing moots It can also be organized by a teacher or practicing lawyer or by the students themselves

STUCTURE AND ORGANISATION

Normally two separate points for argument shall be there before hearing both sides should exchange their main proposition and authorities which they are sighting Each side

should take time from 30 minutes to a maximum of 40 minutes to present their case The moot is started by the judge calling upon the council to start the proceedings The student council have to abide by the court procedure and conduct

While speaking they have to rise to their feet and do so The author also advises the students on how to address his team mate, opposition council and the judges While addressing a judge initially, "My Lord" is the mode of addressing While "Your Lordship" can be used in the course of argument If it's a lady judge "My Lady" is the mode of addressing at the initial stage, While "Your Ladyship" can be used in the course of argument The fellow team mate should be addressed as "My Co-Council" and the opposition council can be addressed as "My learned friend on the other side" Refer the King or Queen as "The Crown"

RULES ON SUBMISSION

The rules stated by Glanville Williams are on the importance of enumerating points to be made by the senior and the junior council They have to maintain eye contact with the judges to find out the level of interest of the judges They should not give their opinion or judgment they should not read out the argument or passage and should give a few citation but not to overload them they should take adequate care to make available casebooks for the bench which you were referring They should not site longish cases And if the judge tells not to continue with the point, drop that and go to the next one

Interruptions by the judges are the important part of the moot as also questioning If you accepts the judge's objection you reply by saying "Much obliged your Lordship" but if you have to proceed with the different perspective you stand up and say "With great respect my Lord " If the judge intimates that you should follow a distinct course you should say "If your Lordship pleases "

The author also suggests that members (i e) other students may be invited as Amicus Curie for giving their opinion after the argument And finally the judges declare the winner who can go on for the next round Apart from that the author insist that it is always better to keep improvising our style of speaking It can be done through moots or by listening to your recorded speeches The filled pauses, searching for apt words and repeating certain terms like "U know, as such, gap fillers" have to be eliminated from the speech He also gives advice on right accent, right voice modulation and right articulation

SPEAKING IN PUBLIC

Glanville Williams also gives tips on how to speak in public which are almost similar to lawyers arguing skills The main points are,

i Planning the speech along with the points to be discussed

ii Give main headings and sub headings and remember what to speak under that

iii Read the full text of the speech many times so that to understand what you are going to say

iv Before the audience just have the points and speak naturally without reading

v Never speak fast, speak with great deliberation and force

vi Look composed and use non-verbal gestures sparingly

vii Before the main addresses speak to your friend and get corrected and then face the audience with confidence

MOCK TRIALS

Mock Trials is different from the moot by Jury and Witnesses Mock trials helps us to fine tune our cross examination skills A mock trial can be made by an actual trial so that speeches and questions to the witnesses are different 5-6 witnesses shall be the maximum

In mock trials the game of alibi can also be tried out For example, two defendants committed a crime at a point of time and have set up an alibi The council through cross examination has to breakdown the alibi and get the answer After 10-15 minutes if the jury has arrived at some truth they can show some truth they can show the verdict of the majority opinion Two such evidence can be constantly sent

Another game in this is false evidence Three masked defendants are interrogated by the jury, as one of them has assumed a fake name and occupation Prayer information of the activities has to be submitted to the jury member These evidence are allowed to continue until imposter then declares himself At times the jury member succeeds and sometimes the imposter succeeds

The final variant is "Third Degree" One member is given the details of the alibi and the other member have to question him to establish self-contradiction Such voluntary defendant can be sent one after the other in 15 minutes This act helps in developing the art of imagination

CONCLUSION

Thus in this lesson "Moots and Mock Trials" author "Glanville Williams" gives a concrete advice to the law students in developing their advocacy skills through mooting and cross examination skills through mock trials

*****

2. THE DIVISIONS OF THE LAW

Glanville Williams

FULL TEXT OF THE LESSON[1]

> But in these nice sharp quillets of the law,
> Good faith, I am no wiser than a daw
>
> —Shakespeare, *King Henry the Sixth*, Part 1, II, iv

THIS little book aims to help those who have decided to study law—whether in a University or Polytechnic or Technical College or as a professional qualification

From time to time I have been told of some who have read the book before making the decision, and have been sufficiently attracted by the taste it has given them of legal studies to make up their minds to continue I did not, however, intend to proselytise when I wrote As you will see if you look at Chapter 13, there are quite enough people trying to enter the legal profession without adding to the number If you are uncertain about your career there may be strong personal and social reasons why you should take up something else entering the world of commerce or industry, or becoming a technologist or research scientist In the foreseeable future there is likely be a much greater shortage of IT professionals, electronic specialists, good business managers (not overlooking areas such as banking and management consultancy) and people who combine linguistic skills with other abilities than there will be of lawyers I assume, however, that you have decided to study the law or if you are giving the possibility serious thought

On the question whether you should study law as opposed to some other discipline throughout your time at university, with a view to qualifying to practice law later (assuming, that is, that you have decided that you wish to practice law later), it is difficult to be seen to offer objective advice The former course offers a quicker and cheaper route to employment, and the opportunity to assess for yourself at an early stage whether the law is a discipline to which you wish to subject yourself But there are some legal practitioners (who may themselves have studied something other than law at university) who would claim that too early a specialization in the law can narrow rather than broaden the mind by depriving the student of the opportunity to be exposed to other disciplines

That is not a view that I share On the contrary, I would wish to argue that the longer course offers a chance to acquire both a necessary legal framework and a deeper understanding of the law Even if you have only narrowed your immediate options to obtaining higher education in one of the humanities, I would certainly wish to bring to your notice the attraction of law as compared with the traditional arts subjects

Law is the cement of society, and an essential medium of change Its study at a university enables you to explore how and why this is so A common misunderstanding is that the study involves little more than the rote learning of legal rules Closer acquaintance will show that it is more complex and challenging than that Far better to think of the law as forming an integral part of a constantly evolving social landscape Knowledge of law increases one's understanding of public affairs, as well as some understanding of social values At a more practical level, its study promotes accuracy of expression, facility in argument and skill in interpreting the written word It is of wider vocational relevance than most Arts subjects Its practice does, of course, however also call for much routine, careful, unexciting work, and it is for you to decide whether you think you are temperamentally suited to that

---

[1] Glanville Williams, ***"The Divisions of The Law"***, **Learning The Law**, A T H Smith (ed), 14th ed , Sweet & Maxwell, South Asian Edition, Delhi, pp 1-24

12

In this book I offer an introduction to English law and its study at university or college A word or two about the term English law The use of "England" is taken generally to include both England and Wales Without at this stage wishing to trouble you with the constitutional niceties, you should know that the Scottish legal system is in detail very different from the English When England, Wales and Scotland are intended to be referred to as a single entity, the correct term is "Great Britain", and when Northern Ireland is added, it becomes the United Kingdom The reason why the law emanating from these islands is worthy of study is that it is the home of common law, the place where a family of law was born, quite different from the civil law that underlies much German, Italian and French law, very different from Islamic law The system of law that was historically developed in the courts of Westminster spread with the development of the British Empire throughout much of the western world-to the United States of America, to the Commonwealth countries of Canada, Australia and New Zealand, to the African continent and to parts of the far east-India, Singapore, Malaysia and many more besides Ideally, perhaps, a university would offer in addition the chance to study at least some of the elements of these other legal systems-comparative law But that is to ask a great deal of the already crowed curriculum, and the ideal is achieved only rarely

CRIMES AND CIVIL WRONGS

One of the non-lawyer's inveterate errors is to suppose that the lawyer is largely—even exclusively—concerned with criminal law In fact the law is divided into two great branches, the criminal and the civil, and of these much the greater is the civil An old chestnut that the reader beginning legal studies is likely to hear recounted (so why not by me?) concerns the visitor who was being given a glimpse of the Court of Chancery He peered round and asked where was the prisoner

The distinction between a crime and a civil wrong, though capable of giving rise to some difficult legal problems, is in essence quite simple The first thing to understand is that the distinction does *not* reside in the nature of the wrongful act itself This can be proved quite simply by pointing out that the same act may be both a crime and a civil wrong If I entrust my bag to person working in the left-luggage office at a railway station, and that person then runs off with it, he or she commits the crime of theft and also two civil wrongs—the tort of interference with goods and a breach of contract with me to keep the bag safe The result is that two sorts of legal proceedings can be taken, a prosecution for the crime, and a civil action for the tort and for the breach of contract (The claimant in the latter action will not get damages twice over merely because there are two causes of action, there will be only one set of damages)

To take another illustration If a railway signaller, in the words of the poet "to dumb forgetfulness a prey", fails to press the button at the right moment so that a fatal accident occurs, this carelessness may be regarded as sufficiently gross to amount to the crime of manslaughter It is also the tort of negligence towards the victims of the accident and their dependants, and a breach of contract with the employer to take due care whilst at work It will be noticed that, this time, the right of action in tort and the right of action in contract are vested in different parties

These examples show that the distinction between a crime and civil wrong cannot be stated as depending upon *what is done*, because what is done (or not done) is the same in each case The true distinction resides, therefore, not in the nature of the wrongful act but in *the legal consequences that may follow it* If the wrongful act (or omission) is capable of being followed by what are called criminal proceedings, that means that it is regarded as a crime (otherwise called an *offence*) If it is capable of being followed by civil proceedings,

that means that it is regarded as a civil wrong If it is capable of being followed by both, it is both a crime and a civil wiong

THE COURTS

Civil and criminal courts in England and Wales are largely but not entirely distinct *Magistrates* are chiefly concerned with criminal cases, but they have important civil jurisdiction over licensing and family matters *The Crown Court* has almost exclusively criminal jurisdiction On the other hand, the jurisdiction of the *county court* is only civil, and so is the *High Court* apart from appeals

Over most of the country, magistrates are lay justices of the peace sitting with a clerk The *clerk to the justices,* whose function is to advise on matters of law, legally qualified But he or she is often occupied with administration, and is in practice supported by assistant clerks who may be legally unqualified In the large cities magistrates' courts are now presided over by full-time *district judges (magistrates' court)* who are legally qualified, and who until recently were known as *stipendiary magistrate,* or colloquially as "stipes" Since the Access to Justice Act 1999 requires that professional, full-time magistrates are to be known as District Judges (Magistrates' Court), the expressions "justices of the peace" and "magistrates" have effectively become synonymous

Courts with Civil Jurisdiction

Before looking more closely at the court by which civil cases are tried, the general point might be made that justice in this country is conducted in public With a few expectations (particularly relating to the welfare of young people and matters of family law), all courts are open to public view An intending student should take the opportunity to visit one court of each level operating in the locality to see the process of justice in operation

Neglecting magistrates' courts, the English system of civil judicature about to be explained may be represented thus

The courts with original civil jurisdiction are chiefly the High Court and county courts The High Court is divided into three Divisions the *Queen's Bench Division* (commonly referred to as the *Divisional court*) the *Chancery Division,* and the *Family Division* The first administers primarily the *common law,* the second primarily *equity* More will be said about this particular distinction later in the chapter The Family Division was created by an Administration of Justice Act of 1970 in place of the previous Probate, Divorce and Admiralty Division—a curious miscellany of jurisdictions (over "wills, wives and wrecks" was the jocular reference) which were lumped together for no better reason than they were all founded (to some extent) on Roman and canon law In 1970, wills went to the Chancery Division and wrecks to the Queen's Bench Division For administrative purposes, the head of the Divisional Court is the Lord Chief Justice of England, assisted by a President of the Queen's Bench Division The Chancellor of the High Court presides in practice over the Chancery Division (technically, the Lord High Chancellor is the head of Chancery) and the most senior judge of the Family Division is known as the President

A civil trial in the High Court is held before a judge, sometimes called a *puisne* (pronounced "puny") judge, generally sitting without a jury The judge may sit in London or one of the other major legal centres In practice, the sheer volume of work is such that High Court cases are often taken by deputy High Court judges By contrast, certain applications to the High Court made to the Queen's Bench Division consisting of a Lord Justice and a judge of the High Court

Court of Appeal (Civil Division)

There is almost always the possibility of an appeal *from* (i e against) the decision of a court of trial, providing permission is given by trail judge or by the Court of Appeal itself

The party who appeals is the *appellant,* the other is the *respondent* For the High Court the appropriate appellate court is the *Court of Appeal (Civil Division)* This may be presided over by one of the following the *Master of the Rolls*, the *Lords Chief Justices*, one of the *Heads of Divisions* of the Court ~~of Appeal or a *Lord Justice of Appeal*~~-there are currently ~~nearly 40~~ members of the Court of Appeal who are Lords (or Lady) Justices The Court of Appeal generally sits with three members but sometimes with two (depending on the importance of the case), and there will be several such courts in action at the same time

Country courts

Going down the ladder again, the less important civil cases are tried in the county courts, with appeals to the High Court if permission is given If the High Court or country court judge when granting permission considers the matter to be of sufficient general importance, the case may be referred directly to the Court of Appeal

Magistrates' courts

Magistrates also have some civil jurisdiction, chiefly in matrimonial matters, guardianship, adoption, and child support cases There are approximately 350 magistrates' courts (numbers have been declining rapidly in recent years as the court system is "rationalized"), staffed by over 30,000 lay magistrates and approximately 100 district judges (magistrates' courts) Appeals from magistrates' courts (by means of what is called a "case stated") go to a Divisional Court—which in family matters will be composed of judges of the Family Division

Together the Crown Court, High Court and Court of Appeal (but for reasons to be explained, not the House of Lords) make up the Supreme Court of Judicature The present High Court, and the Court of Appeal on its civil side (but not yet criminal) were set up by the Judicature Act 1873

Appeals to the Supreme Court

Parliament enacted a Constitutional Reform Act 2005 which, when it came in to operation in 2009 created for the United Kingdom a new Supreme Court to replace the Judicial Committee of the House of Lords The driving force behind the reform was the idea that it is not constitutionally appropriate for the most senior judges to be simultaneously members of the legislature The existing members of the Judicial Committee of the House became Justices of Supreme Court but, since they retain their Peerages, are still referred to by the former titles As and when further members are appointed, they will as the President, and that office is senior judicial office in the country

Now the position is as follows When an appeal is taken to the Court of Appeal (either from the High Court or from Divisional Court), a further appeal lies (with permission) to the Supreme Court Why two appeals should be allowed can be explained only by reference to history "The institution of one court of appeal may be considered a reasonable precaution but two suggest panic", said A P Herbert It is a panic that pays little regard to the resources of the parties to the proceedings who must bear the costs

The Judicature Act 1873, which was passed by a Liberal Government, would have abolished the appellate jurisdiction of the House of Lords, but the Conservatives took office before it came into force, and repealed this provision fearing that the abolition of the Lords as a judicial body might be the thin end of the wedge leading ultimately to their abolition as a legislative body Such fears have nothing to do with the question whether a double appeal is justifiable From time to time there have been suggestions that we should dispense with our top-heavy system

Despite its undoubted expense, however, the balance of opinion is clearly in favour of a further appeal, for a number of reasons The sheer volume of work undertaken by the Court of Appeal (particularly the Criminal Division) is such that it does not have the opportunity for detached reflection that should characterize the work of a final court Both Divisions of the Court of Appeal (i e civil and criminal) operate in several courts simultaneously, giving rise to the possibility (admittedly rare) that the courts will decide the same point in different directions Should that happen, it is open to a later Court of Appeal to choose between the two, but the decision of a higher court is more definitive In those circumstances, with the consent of the parties and on certificate from judge, a civil case may go on appeal direct from High Court to Supreme Court under the "leap-frogging" procedure introduced by the Administration of Justice Act 1969 This can happen if the case turns on the construction of legislation, or is governed by a previous decision of the Court of Appeal, House of Lords or Supreme Court which one of the parties wishes the Supreme Court overturn

It will have been understood from what has gone before that "the House of Lords" was an ambiguous expression It referred (1) to all the peers who choose to sit as the Upper House of the legislature (Parliament), which continues to be the case, and also (2) to a court consisting of the highest level of the judiciary The House of Lords no longer performs the latter function Originally the House of Lords was a single body, but a convention (understanding) developed that only peers with senior judicial experience should decide appeals This was finally established until 1844 Because they were regarded as being a part of Parliament, the House of Lords was not part of Supreme Court of Judicature

The "Law Lords" (the "Lords of Appeal in Ordinary" and peers who held or had high judicial office such as former Lords Chancellor), as the *Judicial Committee* of the House of Lords, exercised its judicial function The Lords of Appeal in Ordinary (like Lord Mance and Lord Simon Brown) were (and still are) salaried life peers appointed by the Crown Generally, this was by way of promotion from the Court of Appeal, but it was not unknown for a member of the Bar to be appointed directly to the House Members of the Court of Appeal are appointed by promotion from High Court Even after the Supreme Court had been created, those remaining members of the old body as Law lords are truly peers, and can take part in debates and vote in the House, though by custom the Lords of Appeal in Ordinary do so only on legal matters The "Lords Justices" of the Court of Appeal, by contrast, are not peers and cannot sit in parliament We refer, for example, to "Lord Justice Sedley", not "Lord Sedley"

Although, when exercising its appellate jurisdiction, the House of Lords consisted exclusively of the Law Lords, it nevertheless sat in the same building as the House of Lords when meeting as a limb of the legislature, these sittings were in a committee room rather than on the floor of the House itself This changed when the House became the Supreme Court, but one reason for the delay in implementing the Constitution Act 2005 has been the entirely practical need to find new accommodation for the new Supreme Court sat for the first time in the new court which is in the former Middlesex Guildhall on Parliament Square

Courts with Criminal Jurisdiction

The classification of offences

Next, the trial of criminal cases in England Crimes are divided into *indictable, summary* and offences *triable either way* Indictable offences are the most serious sort of crimes triable by judge and jury in the Crown Court Summary offences are tried by magistrates in a magistrates' court Many crimes, though capable of being tried on indictment, can be tried in magistrates' courts if certain conditions are satisfied, these are the intermediate category of offences "triable either way", so called because they might be tried in either the Crown Court or the magistrates' court

Crown Court

Created by the Courts Act 1971, the Crown Court is now our main criminal court Theoretically a single court, it is (like the High Court and Court of Appeal) in fact manifold, sitting in about 70 centres throughout the country

A criminal trial in the Crown Court is always by jury, the expection being where the court is hearing an appeal from magistrates by way of rehearing, in which case the judge will be assisted by two lay magistrates The court is normally presided over by a *circuit judge* or *recorder*, who controls the trial and directs the jury, but it may also be constituted with a *High Court Judge* Notwithstanding their name, circuit judges do not travel a circuit, they are located in one of the six *circuits* into which the county is divided High Court judges are generally presumed to be more able or more experienced than circuit judges, and the theory is that they therefore try the more serious and difficult cases But the time of the High Court judge is precious, so having tried any case requiring that level of expertise, the more senior judge will leave lesser cases to be tried by a circuit judge The old name "recorder" is preserved for part-time judges who are given the same jurisdiction as circuit judges, they continue other occupations such as practice at the Bar or as solicitors, whereas circuit judges are full time

The Crown Court sitting in the City of London (off Ludgate Hill) is still known officially as the Central Criminal Court and colloquially (never in court) as the Old Bailey (or, more frequently, the Bailey) Two of its judges (of senior circuit judge rank) are called the Recorder and the Common Serjeant of London Some of the centres in which the Crown Court sits are served only by circuit judges, some are visited from time to time by High Court judges

Court of Appeal (Criminal Division)

Appeal from the Crown Court in criminal cases lies (with leave) to the *Court of Appeal (Criminal Division)* Created in 1966, superseding the Court of Criminal Appeal, which in turn had superseded the Court for Crown Cases Reserved in 1907 The Court of Appeal (Criminal Division) sits in practice in several separate courts One is often presided over by the Lord Chief Justice, others by a Lord Justice of Appeal, the remaining members of the court being either two High Court judges or one such judge and a circuit judge Where the appeal is against sentence only (and not conviction), it is not uncommon for the only two judges to sit This court and the Divisional Court normally sit in London, but they very occasionally sit in religion centres So far as the conviction is concerned, the appeal may be on law or fact, but only the defendant can appeal-not the Crown On sentence, the Attorney-General can appeal against those considered to be unduly lenient Where an appeal against conviction either completely, or substituting a conviction of some other offence of which the jury could have convicted

From the Court of Appeal a further appeal lies in important cases (with leave) to the Supreme Court At this stage the appeal is open even to the prosecutor

In summary cases, the defendant may appeal to the Crown Court, which rehears the whole case, there is no jury, but at least two magistrates sit with the judge or recorder Or a case may be stated on a point of law for the decision of a Divisional Court of the Queen's Bench Division, and a further appeal may be taken from the Divisional Court (subject to restrictions) to the Supreme Court

Reverting to the earlier discussion about the wisdom of a further appeal, it might be said that, in criminal cases at least, the principle of a second (qualified) right of appeal is justifiable, if only because the volume of work confronting the Criminal Division of the

Court of Appeal is such that the court only rarely has sufficient time to consider and deliver a reserved judgment, and the pressures of time are such that it may be doubted whether that court should be burdened with the role of being the final appeal court

The scheme of criminal courts can be represented diagrammatically as follows

The terminology of criminal procedure

The term "indictment" itself needs explanation Originally an indictment (pronounced "inditement") was a *true bill* found by a *grand jury*, i e a jury for presenting suspected offenders The trial upon it at assizes or quarter sessions was by a *petty jury* Nowadays the grand jury is abolished, but we still retain the word "indictment" for the document commencing criminal proceedings that are to be tried by jury The present-day indictment may be defined as a document put before the Crown Court by anyone, and signed by the clerk of the court It may charge different offences in separate *counts*

Prepositions have come to be used rather sloppily in criminal matters In good usage, one is charged, tried, acquitted, convicted, or sentenced *on* (or *upon)* an indictment or count or charge One is indicted *on* a charge of theft (or some other offence) or on two counts of theft One is indicted or tried *for* theft, and the indictment/count/information/charge is *for* theft (An information is a document making a criminal charge before magistrates) We also speak of a count or charge *of* theft One is charged (verb) *with* theft One pleads guilty (or not guilty) *to* a count or charge or indictment of theft, or *to* theft One is acquitted or convicted (or found guilty) *of* theft

Formerly there will have been a preliminary investigation (known as *committal proceedings*) of a charge before magistrates only if the magistrates concluded that there was sufficient evidence to put the accused on trial by jury would they have committed the defendant for trial But the value of such proceedings has long been doubted and, increasingly, the committal has become an exercise conducted on paper rather than in person In an increasing number of situations, provision is made for the case to be transferred directly to the crown court without preliminary consideration of the evidence by the magistrates

Other Courts

European Court of Justice

The Supreme Court is no longer the highest court in the United Kingdom, because the European Court of Justice (sitting in Lexenbourg) adjudicates upon European Union law, and its decisions can be binding on British courts by reason of the European Communities Act 1972 The impact of Community law grows continually, it is to be seen in company law, trade marks and other "industrial property," the law of monopolies, employment law, social security, customs, and many other areas An English court can ask the European Court for a ruling on any doubtful question of Community law

European Court of Human Rights

Any person who claims to be aggrieved by a violation of the provisions of the European Convention on Human Rights, and who is satisfied with the determinations of the domestic courts, can still complain to the European Court of Human Rights at Strasbourg If the decision is in favour of the Applicant, the Government is under an obligation in international law to take steps to amend our law or practice accordingly The Human Rights Act 1998 (which incorporated the Convention into United Kingdom law and which is discussed in Chapter 3) should reduce considerably the number of occasions upon which resort to this court should be necessary, since the British court should have taken the European jurisprudence into account in the course of arriving at its own decision

Judicial Committee of Privy Council

The Judicial Committee of the Privy Council is the final court of appeal from what remains of the old colonial Empire (with remnants also of its appellate jurisdiction from the self-governing members of the Commonwealth) Its composition is much the same as that of the Supreme Court when exercising appellate jurisdiction, though certain Commonwealth judges (and members of the Court of Appeal, since they are Privy Councillors) may sit in addition Until the establishment of the Supreme Court, it had jurisdiction to deal with devolution arrangements but these have been transferred to the new Court It used to meet in a room in Downing Street, but now there is a separate room set aside for the purpose in the same building as is occupied by the Supreme Court on Parliament Square In either case, since justice in Britain is normally administered in public, you can (having navigated the security arrangements at the entrance) walk in boldly and listen to its proceedings

Other courts and tribunals

There are many courts and tribunals of special jurisdiction, chief among which are the employment tribunals administering various legislation relating to employment Appeals lie to the *Employment Appeal Tribunal,* with possible further appeals to the Court of Appeal and Supreme Court Other tribunals include the *Tax Chamber,* the *Social Entitlement Chamber* and the *Lands Chamber* (which deals with such matters as rating appeals and land compensation) Again an appeal for a decision of one of these bodies may lie to the Court of Appeal and Supreme Court The tribunal system has developed historically in a rather piecemeal and haphazard way, and is in the process of substantial reform following the enactment of the Tribunals, Court and Enforcement Act 2007

ELEMENTARY LEGAL TERMINOLOGY

I am about to consider some elementary matters of English legal terminology, because it is important that the student should become familiar with legal language at an early stage A preliminary word of explanation Many lawyers think that the language of the law is opaque and difficult for the layperson to understand Efforts have been made to alter this by changing the terminology, particularly in the course of the April 1999 reform of the system of civil procedure This has the drawback for those coming new to the law that they need to be familiar with both the new language and the old, since they will find that they study will be couched in the language of yesteryear The beginner may be pleased to know that the language of the criminal law has not been subjected to the same sorts of changes

Civil Terminology

Turning to civil proceedings, the terminology generally is that a *claimant* (known as a *plaintiff* prior to April 1999) *sues* (i e brings an action against) a *defendant* The proceedings if successful (with the defendant being found *liable*) result in *judgment for the claimant,* and the judgment may order the defendant to pay the claimant *damages* (money), to transfer property, to do or not to do something (an *injunction*), or to fulfill obligations under a contract (*specific performance*) In proceedings against the government or certain public authorities, known as *applications for judicial review,* whether by means of a *mandatory, prohibiting* or *quashing* order, or otherwise, the parties are also called *claimant* and *defendant* respectively In matrimonial cases in the Family Division the parties are called *petitioner* and *respondent,* the relief sought concerns *dissolution* of marriage and the proceedings result in a *decree* of divorce

Criminal Terminology

In English criminal proceedings the terminology is as follows You have a *prosecutor* prosecuting a *defendant,* the result of the prosecution if successful is a *conviction,* and the

defendant who found guilty may be *punished* by one of a variety of punishments or *sentences* ranging from a fine to life imprisonment, including released on *probation* and other alternatives to custody, or may be discharged without punishment

The terminology of the one type of proceedings should never be transferred to the other "Criminal action," for example, is a misnomer, so is "civil offence" (the proper expression is "civil wrong") One does not speak of a claimant prosecuting or of the criminal defendant being sued The common announcement "Trespassers will be prosecuted" has been called a "wooden lie," for trespass has traditionally been a civil wrong, not (generally) a crime

CLASSIFICATION OF CIVIL WRONGS

The more important types of civil wrong may be briefly mentioned One is the *breach of contract* This is easy to understand, and all that the student needs to know at the outset of his studies is that a contract need not be in a formal document or indeed in any document at all You make a contract every time you buy a newspaper or a bus ticket

Another civil wrong is a *tort* This word conveys little meaning to many outside the legal profession, and its exact definition is a matter of great difficulty even for the lawyer However, the general idea of it will become clear enough if one says that torts include such wrongs as negligence and nuisance, defamation of character, assault, battery, false imprisonment, trespass to land and interference with goods It is a civil wrong independent of contract that is to say, it gives rise to an action for damages irrespective of any agreement not to do the act complained of Etymologically the word comes to us from the law-French *tort,* signifying any wrong, and itself derived from the Latin *tortus*, meaning "twisted" or "wrung", the latter having the same in origin as "wrong " Nowadays, however, a tort is not any wrong but only a particular kind of wrong that the recognizes as such, of which examples were given above The adjective from tort is "tortious" thus one speaks of a tortious act

A third civil wrong is a *breach of trust* A "trust" is not a mere obligation of honour, as the word may seem to suggest, but an obligation enforced by the courts It occurs where a person, called technically a *settlor*, transfers property (such as land or shares) to another, called a *trustee,* on trust for yet another, called a *beneficiary* Where the trust is created by will the *settlor* is also called a *testator* (the name for anyone who makes a will), and an alternative name for the beneficiary is *cestui que trust,* an elliptical phrase meaning "the person [for] whose [benefit the] trust [was created] " In this phrase *cestui* is pronounced "settee" (with the accent on the first syllable), *que* is pronounced "kee," and trust as in English Grammatically the plural should be *cestuis que trust* (pronounced like the singular), but by an understandable mistake it is sometimes written *cestuis que trustent,* as if trust were a verb The beginner will perceive by this time that several law-French words survive in our law from the time when French was the language of the legal class In the case of a charitable trust there need be no definite beneficiary but the property is held on trust for the public as a whole or for some section of it Thus the heritage organization "National Trust" preserves beautiful places for the public enjoyment, and there are many trusts for educational and religious purposes

The only other type of civil obligation (it is not thought of as a wrong) that the beginner need hear about is the *restitutionary* obligation Suppose that I pay you £5, mistakenly thinking that I owe it to you I can generally recover it back in the law of restitution You have not agreed to pay it back and so are not liable to me in contract, but in justice you ought to pay it back There are various other heads of unjust enrichment besides the particular example just given, such as the obligation to repay money paid on a consideration that has totally failed

PUBLIC AND PRIVATE LAW

Another distinction that needs to be considered is that between public and private law. Until relatively recently, it was widely believed (or at any rate conventionally asserted) that the United Kingdom knew no system of public law regulating the citizen and the state separate from ordinary private law that governs the relationships between citizen and citizen. Professor A V Dicey in his *Introduction to the Study of the Constitution* (1885) had insisted that it was a feature of the rule of law itself that it was undesirable to seek to control the state other than through the ordinary law of the land, as developed for private citizens. The development in the course of the twentieth century of the doctrines of judicial review of administrative action made this perspective quite unrealistic by the beginning of the twenty-first century. "Judicial review" refers to a body of doctrine and legal rules whereby the courts have ensured that government ministers and other public authorities act within the bounds of the legal powers conferred upon them by Parliament, and that they do so in accordance with appropriate procedural practices. The result is that there is undoubtedly a distinctive body of public law, frequently studied as such in universities, sometimes called by a name such as "constitutional and administrative law."

The distinction between public and private law is not hard and fast the diving line can sometimes be a crucial one. The public law remedies of judicial review are not available against a purely private body, for example and different procedures are adopted for proceeding against a public as opposed to a private concern. For a time, this dichotomy threatened to return the legal system to the abysmal wrangling portrayed in Charles Dickens' novel *Bleak House*. The position was rectified by the House of Lords after a decade of confusion, now the applicant will lose only if the chosen course (chosen let it be said by the legal advisers, since the client will rarely have expertise in these matters) is manifestly wrong. Similarly, the notion that the validity of a byelaw could be challenged only by bringing separate proceedings for judicial review and not by way of (for example) a defence in a criminal trial was eradicated by the House of Lords before it could gain too entrenched a foothold.

COMMON LAW AND EQUITY

Two technical terms of great importance that are likely to puzzle the novice are "common law" and "equity".

The law of England may be said to be composed of three great elements: legislation, common law and equity. To this must be added the directly applicable law emanating from Europe, which will be explained in Chapter 3.

Legislation

The most important kind of legislation is the Act of Parliament (otherwise called a *statute*), through which the government of the day carries into effect its principal policies. This is known as *primary legislation*. What is called *delegated legislation*, like the many government order generally known as *statutory instruments*, has come to be of great importance as well. Upwards of 3,800 such instruments are promulgated every year, adding detail to the legislative framework created by the Act of parliament.

A non-lawyer (or layman) is not likely to experience difficulty in understanding what constitutes primary legislation. Not so, however, with common law and equity, which need fuller discussion.

Common law

The phrase "the common law" seems a little bewildering af first, because it is always used to point a contrast and its precise meaning depends upon the contrast that is being pointed An analogy may perhaps make this clearer Take the word "layman" In the preceding paragraph the word was used to mean *a person who is not a lawyer* But when we speak of ecclesiastics and laymen, we mean by "laymen" non-ecclesiastics When we speak of doctors and laymen, we mean by "laymen" non-doctors "Laymen" in short, are people who do not belong to particular profession of which we are speaking It is somewhat similar with *the common law* Originally this meant, *the law that was not local law*, that is the law that was *common to the whole of England* This use may occasionally be encountered, but it is no longer usual meaning

More usually the phrase will signify *the law that is not result of legislation*, that is, the law created by the *decisions of the judges* The decisions of the courts which create and lay down the law are called *precedents*

A third use to which the phrase may be put is to denote *the law that is not equity* (i e that developed by the old Court of Chancery) In this sense it may even include statutory modification of the common law, though in the previous sense it does not

Finally, it may mean *the law that is not foreign law*, in other words, the law England, or of other countries (such as America) that have adopted English law as, a starting-point In this sense it is contrasted with (say) Roman, Islamic or French law, and here it includes the whole of English law, even local customs, legislation and equity

It will thus be seen that the precise shade of meaning in which this chameleon phrase is used depends upon the particular context, and upon the contrast that is being made In contrasting common law with legislation and equity I am making particular reference to the distinctions set out in the second and third senses of the phrase

Equity

The term *equity* is an illustration of proposition that some words have a legal meaning very unlike their ordinary one In ordinary language "equity" means natural justice, but the beginner must get that idea out of mind when dealing with the system that lawyer call equity Originally, indeed, this system was inspired by ideas of natural justices, and that is why it acquired to name, but nowadays equity is no more (and no less) natural justice than the common law, and it is in fact nothing other than,a particular branch of the law of England

Equity, therefore, is law Students should not allow themselves to be confused by the lawyer's habit of contrasting "law" and 'equity", for in this context "law" is simply an abbreviation foi the common law Equity is law in the sense that it is part of the law of England, it is *not* law *only in the sense that it is not part of the common law*

The process whereby equity came into being may be briefly described as follows In the Middle Ages, the courts of common law failed to give redress in certain types of case where redress was needed Disappointed litigants petitioned the King, who was the "fountain of justice", for extraordinary relief and the King, through the Chancellor, eventually set up a special court, the Court of Chancery, to deal with these petitions Eventually the rules applied by the Court of Chancery hardened into law and became a regular part of the law and the land The most important branch of equity is the law of *trusts*, but equitable remedies such as *specific performance* and *injunction* are much used

The student will learn how, in case of *conflict or variance* between the rules of common law and the rules of equity, equity came to prevail This was by means of what was called a *common injunction* Suppose that A brought an action against B in one of the non-Chancery courts and, in the view of the Court of Chancery, the action was inequitable B's proper course was to apply to the Court of Chancery for an order, called a common injunction, directed to A and ordering him not to continue the action If A defied the injunction the Court of Chancery would put him in prison for contempt of court Equity thus worked "behind the scenes" of the common law action, the common law principles were theoretically left intact, but by means of this intricate mechanism they were superseded by equitable rules in all cases of conflict or variance The result justified the sarcasm of the critic who said that in England one court was set up to do injustice and another to stop it

This system went on until 1875, when as a result of Judicature Act 1873 the old courts of common law and the Court Of Chancery were abolished In their place was established a single Supreme Court of Judicature, each branch of which had full power to administer both law and equity Also, common injunctions were abolished and instead it was enacted that, in cases of conflict or variance between the rule of equity and the rules of common law, the rules of equity should prevail

Common law as made by judges

When the term "common law" is used in contrast to statutory law, it may mean either of two things, though they are closely related It generally means the body of law produced by decided cases without the aid of legislation Occasionally, however, the invocation of common law refers not to previously existing law but to the power of judges to create new law under the guise of interpreting it Nearly all the common law in the first sense is created by the common law in the second sense, that is to say by the judges in the exercise of their discretion How much discretion a judge has to expand the law is a complex question

*****

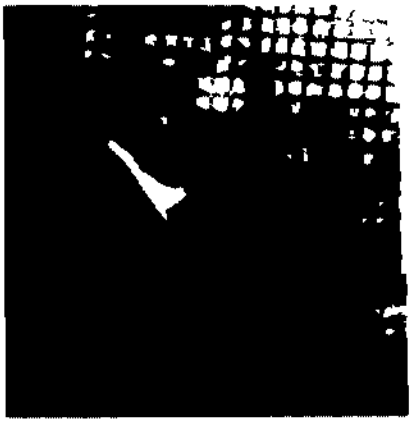
ABOUT THE AUTHOR

Glanville Williams studied in the University of Cambridge and the University of Wales, then enrolled in the bar and became a member of Middle Temple in 1935 He was a research fellow from 1936-1942 and completed his Ph D in law at the St John's University of Cambridge

ACADEMIC CAREER:

He started as a reader specializing in English law, and went on to become a professor in public law, and jurisprudence at the university of London, from 1945-53, from 1957-68 worked as a professor of law in the University of Cambridge He also served in many official committees especially - The Criminal Law Revision Committee between 1959 and 1980

He wrote a number of books and is considered as Britain's foremost scholar of criminal law Some of the books written by him are Text Book on Criminal Law, Criminal



Law The General Part, Joint Obligations (1949), The

Law Reports (1943)

The book Learning the Law, from which this essay is taken was written in 1945 It was written as a small introductory about law studies for the new entrants to the legal education This book remains indispensible to any would-be law students

LESSON ANALYSIS

Glanville Williams' **Learning the Law** has fourteen chapters, dedicated to and published with the noble intention of enlightening the new entrants to the study of law *The Divisions of Law* is the first essay in this book He starts the essay by quoting Shakespeare's words, which talks about a lawyer's sharp thinking The author points out that law is the cement of the society and also an essential medium of change An understand and knowledge of law helps one to understand public affairs It is a study that promotes accuracy of expression, facility in argument and skill in understanding social values and is of relevance to the society

DISTINCTION BETWEEN CRIME AND CIVIL WRONG

The distinction between crime and a civil wrong is simple and it does not lie in the nature of the wrongful act itself In many cases, the same act may be both a civil wrong as well as a crime For example if a cloak room employee runs away with a bag entrusted to him, he commits the crime of theft and two civil wrongs namely the tort of conversion and breach of contract As a result two sorts of legal proceedings can be taken against him, a prosecution for the crime and a civil action for the tort and breach of contract It reveals that the true distinction between a crime and a civil wrong resides not in the nature of the wrongful act, but in the legal consequences that may follow it In criminal proceedings there is a prosecutor prosecuting a defendant and the result of the prosecution, if successful, is the conviction and the accused may be punished by one of a variety of punishments ranging from fine to death In civil proceedings the person instituting a suit is called plaintiff and the opposite party is the defendant The proceedings if successful, will result in judgment for the plaintiff by way of order for payment of compensation, specific performance, declaration of title, recovery of possession, injunction etc

CLASSIFICATIONS OF CIVIL WRONG

Breach of contract, tort and breach of trust are three broad categories of civil wrong Breach of contract implies failure on the part of one of the parties to perform his part of legal obligations arising out of the contract In this context it is important to note that a contract

need not be in a formal document It can be oral also Every time a transaction is made a contract is entered

Tort is a civil wrong independent of contract. It gives rise to an action for damages irrespective of any agreement not to do the act complained of It includes such wrongs as assault, battery, false imprisonment, trespass, conversion, defamation, negligence and nuisance

A trust is an obligation enforced by courts A trustee who fails to fulfill his obligation is liable for the breach of trust In the case of the private trusts the beneficiaries may be determinate where as the beneficiaries under the public trust are indeterminate For example, in case of a charitable trust there need not be any definite beneficiary but the property is held on trust for the public as a whole or for some section of it

Apart from these three classes of civil wrongs there is another type of civil obligation called the Quasi contractual obligation In quasi contact, though the parties are not liable in contract, they are liable for injustice For example, if 'A' pays some amount to 'B' by mistake thinking that 'A' owes the amount to 'B' it can be recovered as the law treats it as if B had contracted to repay it

SUBSTANTIVE AND ADJECTIVAL LAW:

Substantive law lays down people's rights, duties, liabilities, and powers Adjectival Law relates to the enforcement of rights and duties It is mainly concerned with procedural laws and evidence For example, Civil procedure, Criminal procedure and Evidence Criminal and civil procedure and something missing so are criminal and civil evidence

THE TITLES OF CASES:

Students of law have to remember and cite many titles of cases It is important to know the rules for naming of cases Criminal trials are differently named based on the two main divisions of crimes as indictable offences and summary offences Indictable offences are more serious offences triable in the crown court Trials on indictment are in the name of the Queen or the King who is on the throne Reg (Regina) or Rex respectively both conveniently abbreviate to 'R' Thus Reg V Sikes or Rex V Sikes may both be written R V Sikes In some types of criminal cases the title of the case will not contain Reg or Rex before V, but will contain the name of a private person This happens when the case is tried summarily before magistrates i e justices of peace

Civil cases will usually be cited by the names of the parties (eg) Rylands V Fletcher If the Queen or the King as representing the Government, is a party, she is, in civil cases called "The Queen" and similarly with the King, thus British Coal Corporation V The King, but 'R' may also be used, when an appeal is taken to the Court of Appeal(Civil Division) the name of the appellant is put first This means that the names may become reversed, in some cases where a will is being interpreted, the name of the case is "In re (in the matter of) somebody or something, for instance "In re Smith" Certain applications to the court are called "Ex Parte" Ex P smith means on the application of Smith In the probate cases i e cases concerned with the proof of a will, the title In Bonis i e in the Goods of- In bonis Smith may be used

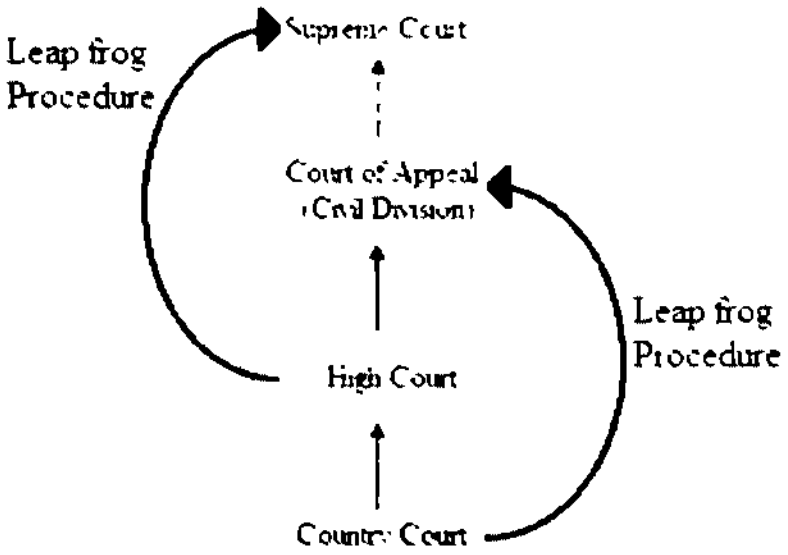
COURTS WITH CIVIL JURISDICTION

Civil and Criminal courts in England are distinct to a certain extent Magistrates mainly deals with criminal cases but they do have some important civil jurisdiction over licensing and family matter The crown court has almost exclusively criminal jurisdiction, while the county court deals only with civil matter Apart from appeals, the High Court deals mainly with civil matters

The Courts with original jurisdiction are the High Courts and County Courts The High Court is divided into three divisions The Queens division, the Chancery division and Family

division The First administers primarily the common law, the second equity and the third probate, divorce and admiralty cases

Hierarchy of courts with civil jurisdiction



A civil trial in the High Court is before a single judge, generally sitting without a jury The judges may sit in London or in Provinces High court cases outside London are often taken by Deputy High Court Judges or plain Barristers The less important civil cases are tried in the county courts Appeals from both the High Courts and the County courts lie to the Court of appeal The Court of appeal generally sits with three members, and there will be several such courts in action at the same time When an appeal is taken to the court of appeal either from the High Court or from the County Court, a further appeal lies, with leave, to the House of Lords However the system of two appeals is subject to criticism among the jurists

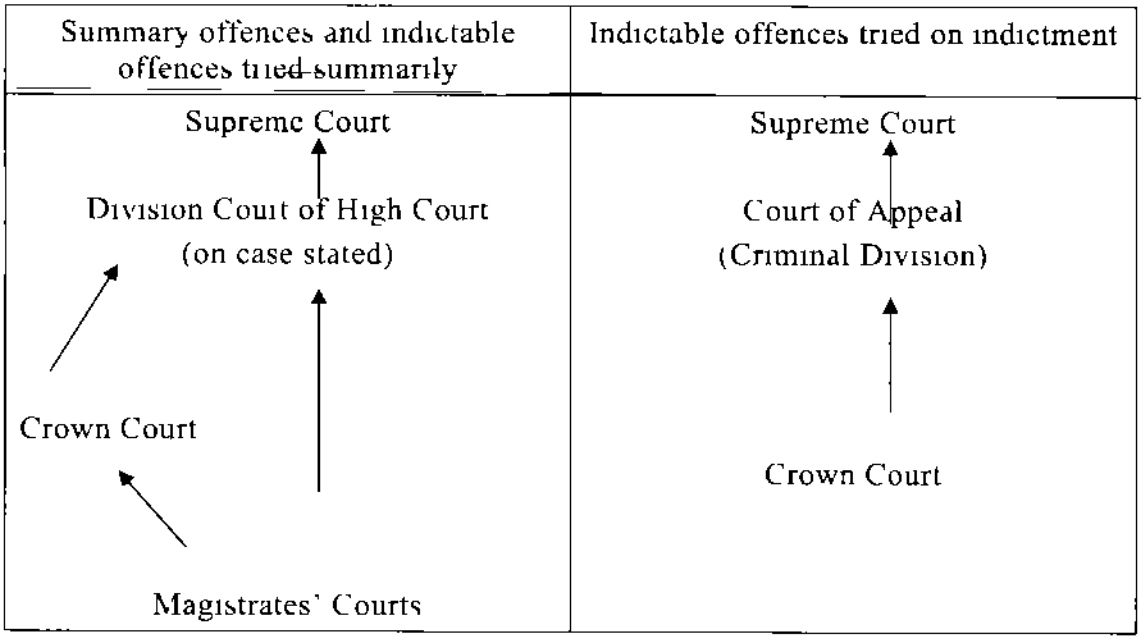
A civil case may go on appeal direct from the High Court to the Supreme Court under the "Leap Frog" procedure introduced by the Administration of Justice Act 1960 This can happen with the consent of the parties and on certificate from the judges, if the case involves the interpretation of the legislation or is governed by a previous decision of the Court of Appeal or House of Lords which one of the parties wishes to overturn

COURTS WITH CRIMINAL JURISDICTION

The classification of offences

In trial of criminal cases, crimes are divided into indictable offences, summary offences and offences triable either way Indictable offences can be tried only by judge and the jury in the Crown Court as they are serious crimes Summary offences are tried by Magistrates in a Magistrate's Court Many crimes, though capable of being tried on indictment, can be tried in Magistrate's Court if certain conditions are satisfied These are the intermediate category of offences "triable either way" as they may be tried either in the Crown Court or Magistrates' Court

Hierarchy of courts with criminal jurisdiction



The Crown Court is the main criminal court in England and was created by *The Courts Act*, 1971 A criminal trial in the crown court is always by jury The court is normally presided over by a circuit judge or recorder who controls the trial and directs the jury, but it may also be constituted with a High Court Judge Appeal from the crown court in the criminal cases lies to the court of appeal (criminal division) The appeal may be on law or fact or against sentences, but only the defendant can appeal and not the crown On a successful appeal against conviction the court will quash the conviction, but it may substitute a conviction of some other offences of which the jury could have convicted From the court of appeal, a further appeal lies in important cases with leave, to the Supreme Court The lower appellate court must certify that a point of law of general public importance is involved and it must appear to the Supreme Court that the point ought to be considered by the House

Summary offences i e crimes not triable on indictment, are triable without a jury by Magistrate's Courts Many crimes though falling within the category of indictable offences, can be tried in Magistrate's Courts if certain conditions are satisfied, they are said to be triable both ways Appeal from Magistrate's Courts in criminal cases are similar to those in civil cases The defendant may appeal to the Crown Court, which rehears the whole case, there is no jury, but atleast two magistrates sit with the judge or recorder A case may also be stated on a point of law for the decision of a divisional court of the Queen's Bench Division and a further appeal may be taken from the divisional court, subject to restrictions, to the Supreme Court An appeal by way of case stated is open not only to the defendant but also to the prosecutor, whereas in trials on indictment there is no appeal from an acquittal

The Supreme Court of United Kingdom

The British Parliament enacted a Constitutional Reform Act by which a new Supreme Court was established to replace the judicial committee (Law Lords) of the House of Lords It started working on 1st of October 2009 and is located in Middle sex Guildhall on Parliament Square, London It assumed the judicial function of the House of Lords which were executed by the lords of appeal in ordinary, commonly called Law Lords It is the apex court in all matters under English Law, Northern Irish Law and Scottish Civil Law It is the Court of last resort and the highest appellate court in the United Kingdom

ELEMENTARY LEGAL TERMINOLOGY

Civil Terminology

Turning to civil proceedings, the terminology generally is that a *claimant* (known as a *plaintiff* prior to April 1999) *sues* (i e brings an action against) a *defendant* The proceedings if successful (with the defendant being found *liable*) results in *judgment for the claimant*, and the judgment may order the defendant to pay the claimant *damages* (money), to transfer property, to do or not to do something (an *injunction*), or to fulfill obligations under a contract (*specific performance*) In proceedings against the government or certain public authorities, known as *applications for judicial review*, whether by means of a *mandatory*, *prohibiting* or *quashing* order, or otherwise, the parties are also called *claimant* and *defendant* respectively In matrimonial cases in the Family Division the parties are called *petitioner* and *respondent*, the relief sought concerns *dissolution* of marriage and the proceedings result in a *decree* of divorce

Criminal Terminology

In English criminal proceedings the terminology is as follows You have a *prosecutor* prosecuting a *defendant*, the result of the prosecution if successful is a *conviction*, and the defendant who is found guilty may be *punished* by one of a variety of punishments or *sentences* ranging from a fine to life imprisonment, including being released on *probation* and other alternatives to custody, or may be discharged without punishment

The terminology of the one type of proceedings should never be transferred to the other "Criminal action," for example, is a misnomer, so is "civil offence" (the proper expression is "civil wrong") One does not speak of a claimant prosecuting or of the criminal defendant being sued The common announcement "Trespassers will be prosecuted" has been called a "wooden lie," for trespass has traditionally been a civil wrong, not (generally) a crime

CLASSIFICATIONS OF CIVIL WRONGS

Some of the important civil wrongs are breach of contract, tort and breach of trust A contract is made every time we buy something such as Bus ticket, Newspaper, Train ticket, etc a contract need not be a formal document or in any document Tort is a civil wrong independent of contract It gives rights to an action for damages irrespective of any existing agreement on doing it or not doing it Tort includes such wrongs as negligence and nuisance, defamation of character, assault, battery, false imprisonment, trespass to land and interference with goods Etymologically the word comes from the law-French *tort*, signifying any wrong, and itself derived from the Latin *tortus*, meaning "twisted" or "wrung", the latter having the same in origin as "wrong " The adjective form of tort is "tortious" thus one speaks of a tortious act

A third civil wrong is a *breach of trust* A "trust" is not a mere obligation of honour, as the word may seem to suggest, but an obligation enforced by the courts It occurs where a person, called technically a *settlor*, transfers property (such as land or shares) to another, called a *trustee*, on trust for yet another, called a *beneficiary* Where the trust is created by will the *settlor* is also called a *testator* (the name for anyone who makes a will), and an alternative name for the beneficiary is *cestui que trust*, an elliptical phrase meaning "the person [for] whose [benefit the] trust [was created] "

PUBLIC AND PRIVATE LAW

Another distinction that needs to be considered is that between public and private law There is undoubtedly a distinctive body of public law, frequently studied as such in universities, sometimes called by a name such as "constitutional and administrative law" The distinction between public and private law is not hard and

fast the dividing line can sometimes be a crucial one The public law remedies of judicial review are not available against a purely private body, for example and different procedures are adopted for proceeding against a public as opposed to a private concern

The author Glanville Williams points out the basic things about in the judicial system in England in order to help a new entrant to the Study of Law by providing the needed information

*****

3. IN THE COURT

Anton Chekhov

FULL TEXT OF THE LESSON[1]

At the district town of N in the cinnamon-colored government house in which the Zemstvo, the sessional meetings of the justices of the peace, the Rural Board, the Liquor Board, the Military Board, and many others sit by turns, the Circuit Court was in session on one of the dull days of autumn Of the above-mentioned cinnamon-colored house a local official had wittily observed

> 'Here is Justitia, here is Policia, here is Militia—a regular boarding school of high-born young ladies '

But, as the saying is, 'Too many cooks spoil the broth,' and probably that is why the house strikes, oppresses, and overwhelms a fresh unofficial visitor with its dismal barrack-like appearance, its decrepit condition, and the complete absence of any kind of comfort, external or internal Even on the brightest spring days it seems wrapped in dense shade, and on clear moon lights, when the trees and the little dwelling-houses merged in one blur of shadow seem plunged in quiet slumber, it alone absurdly and inappropriately towers, an oppressive mass of stone, above the modest landscape, spoils the general harmony, and keeps sleepless vigil as though it could not escape from burdensome memories of past unforgiven sins Inside it is like a barn and extremely unattractive It is strange to see how readily these elegant lawyers, members of committees, and marshals of nobility, who in their own homes will make a scene over the slightest fume from the stove, or stain on the floor, resign themselves here to whirring ventilation wheels, the disgusting smell of fumigating candles, and the filthy, forever perspiring walls

The sitting of the circuit court began between nine and ten The program of the day was promptly entered upon, with noticeable haste The cases came on after another and ended quickly, like a church service without a choir, so that no mind could form a complete picture of all this parti-colored mass of faces, movements, words, misfortunes, true sayings and lies, all racing by like a river in flood By two o'clock a great deal had been done two prisoners had been sentenced to service in convict battalions, one of the privileged class had been sentenced to deprivation of rights and imprisonment, one had been acquitted, one case had been adjourned

At precisely two o'clock the presiding judge announced that the case 'of the peasant Nikolay Harlamov, charged with the murder of his wife,' would next be heard The composition of the court remained the same as it had been for the preceding case, except that the place of the defending counsel was filled by a new personage, a beardless young graduate in a coat with bright buttons The president gave the order—'Bring in the prisoner!'

But the prisoner, who had been got ready beforehand, was already walking to his bench He was a tall, thick-set peasant of about fifty-five, completely bald, with an apathetic, hairy face and a big red beard He was followed by a frail-looking little soldier with a gun

Just as he was reaching the bench the escort had a trifling mishap He stumbled and dropped the gun out of his hands, but caught it at once before it touched the ground, knocking his knee violently against the butt end as he did so A faint laugh was audible in the audience Either from the pain or perhaps from shame at his awkwardness the soldier flushed a dark red

After the customary questions to the prisoner, the shuffling of the jury, the calling over and swearing in of the witnesses, the reading of the charge began The narrow-chested,

---

[1] Anton Chekov, ***"In the Court"***, **Law and Language**, R P Bhatnagar (ed), Trinity Press, New Delhi, pp 59-65

pale-faced secretary, far too thin for his uniform, and with sticking plaster on his cheek, read it in a low, thick bass, rapidly like a sacristan, without raising or dropping his voice, as though afraid of exerting his lungs, he was seconded by the ventilation wheel whirring indefatigably behind the judge's table, and the result was a sound that gave a drowsy, narcotic character to the stillness of the hall

The president, a short-sighted man, not old but with an extremely exhausted face, sat in his armchair without stirring and held his open hand near his brow as though screening his eyes from the sun To the droning of the ventilation wheel and the secretary he meditated When the secretary paused for an instant to take breath on beginning a new page, he suddenly started and looked round at the court with lusterless eyes, then bent down to the ear of the judge next to him and asked with a sigh

"Are you putting up at Demyanov's, Matvey Petrovitch?"

"Yes, at Demyanov's," answered the other, starting too

"Next time I shall probably put up there too It's really impossible to put up at Tipyakov's! There's noise uproar all night! Knocking, coughing, children crying It's impossible!"

The assistant prosecutor, a fat, well-nourished, dark man with gold spectacles, with a handsome, well-groomed beard, sat motionless as a statue, with his cheek propped on his fist, reading Byron's 'Cain' His eyes were full of eager attention and his eyebrows rose higher and higher with wonder From time to time he dropped back in his chair, gazed without interest straight before him for a minute, and then buried himself in his reading again The council for the defense moved the blunt end of his pencil about the table and mused with his head on one side , His youthful face expressed nothing but the frigid, immovable boredom which is commonly seen on the face of schoolboys and men on duty who are forced from day to day to sit in the same place, to see the same faces, the same walls, he felt no excitement about the speech he was to make and indeed what did that speech amount to? On instructions from his superiors in accordance with long-established routine he would fire it off before the jurymen, without passion or ardor, feeling that he was colorless and boring, and then—gallop through the mud and the rain to the station, thence to the town, shortly to receive instructions to go off again to some district to deliver another speech It was a bore!

At first the prisoner turned pale and coughed nervously into his sleeve, but soon the stillness, the general monotony and boredom infected him too He looked dull-witted respectfulness at the judges' uniforms, at the weary faces of the jurymen, and blinked calmly The surroundings and procedure of the court, the expectation of which had so weighed on his soul while he was awaiting them in prison, now had the most soothing effect on him What he met here was not at all what he could have expected The charge of murder hung over him, and yet here he met with neither threatening faces nor indignant looks nor loud phrases about retribution nor sympathy for his extraordinary fate, not one of those who were judging him looked at him with interest or for long The dingy windows and walls, the of secretary, the attitude of the prosecutor were all saturated with official indifference and produced an atmosphere of frigidity, as though the murderer were simply an official property, or as though he were not being judged by living men, but by some unseen machine, set going, goodness knows how or by whom

The peasant, reassured, did not understand that the men here were as accustomed to the dramas and tragedies of life and were as blunted by the sight of them as hospital attendants are at the sight of death, and that the whole horror and hopelessness of his position lay just in this mechanical indifference It seemed that if he were not to sit quietly but to get up and begin beseeching, appealing with tears for their mercy, bitterly repenting, that if he

were to die of despair- it would all be shattered against blunted nerves and the callousness of custom, like waves against a rock

When the secretary finished, the president for some reason passed his hands over the table before him, looked for some time with his eyes screwed up towards the prisoner, and then asked, speaking languidly,

"Prisoner at the bar, do you plead guilty to having murdered your wife on the evening of the ninth of June?"

"No, sir," answered the prisoner, getting up and holding his gown over his chest

After this the court proceeded hurriedly to the examination of witnesses Two peasant women and five men and the village policeman who had made the inquiry were questioned All of them, mud-bespattered, exhausted with their long walk and waiting in the witnesses' room, gloomy and dispirited, gave the same evidence They testified that Harlamov lived "well" with his old woman, like anyone else, that he never beat her except when he had had a drop, that on the ninth of June when the sun was setting the old woman had been found in the porch with her skull broken, that beside her in a pool of blood lay an axe When they looked for Nikolay to tell him of the calamity he was not in his hut or in the streets They ran all over the village, looking for him They went to all the pothouses and huts, but could not find him He had disappeared, and two days later came of his own accord to the police office, pale, with his clothes torn, trembling all over He was bound and put in the lock-up

"Prisoner," said the president, addressing Harlamov, "cannot you explain to the court where you were during the three days following the murder?"

"I was wandering about the fields Neither eating_nor drinking "

"Why did you hide yourself, if it was not you that committed the murder?"

"I was frightened I was afraid I might be judged guilty "

"Aha! Good, sit down!"

The last to be examined was the district doctor who had made a post mortem on the old woman He told the court all that he remembered of his report at the post-mortem and all that he had succeeded in thinking of on his way to the court that morning The president screwed up his eyes at his new glossy black suit, at his foppish cravat, at his moving lips, he listened and in his mind the languid thought seemed to spring up of itself

"Everyone wears a short jacket nowadays, why has he had his made long? Why long and not short?"

The circumspect creak of boots was audible behind the president's back It was the assistant prosecutor going up to the table to take some papers

"Mihail Vladimirovitch," said the assistant prosecutor, bending down to the president's ear, "amazingly slovenly the way that Koreisky conducted the investigation The prisoner's brother was not examined, the village elder was not examined, there's no making anything out of his description of the hut "

"It can't be helped, it can't be helped," said the president, sinking back in his chair "He's a wreck dropping to bits!"

"By the way," whispered the assistant prosecutor, "look at the audience, in the front row, the third from the right a face like an actor's that's the local Croesus He has a fortune of something like fifty thousand "

"Really? You wouldn't guess it from his appearance Well, dear boy, shouldn't we have a break?"

"We will finish the case for the prosecution, and then "

"As you think best Well?" The president raised his eyes to the doctor "So you consider that death was instantaneous?"

"Yes, in consequence of the extent of the injury to the brain substance "

When the doctor had finished, the president gazed into the space between the prosecutor and the counsel for the defense and suggested

"Have you any questions to ask?"

The assistant prosecutor shook his head negatively, without lifting his eyes from "Cain", the counsel for the defense unexpectedly stirred and, clearing his throat, asked

"Tell me, doctor, can you from the dimensions of the wound form any theory as to as to the mental condition of the criminal? That is, I mean, does the extent of the injury justify the supposition that the accused was suffering from temporary aberration?"

The president raised his drowsy indifferent eyes to the counsel for the defense The assistant prosecutor tore himself from "Cain," and looked at the preesident The merely looked, but there was no smile, no surprise, noperplexity—their faces expressed nothing

"Perhaps," the doctor hesitated, "if one considers the force with which er-er-er the criminal strikes the blow However, excuse me, I don't quite understand your question "

The counsel for the defense did not get an answer to his question, and indeed he did not feel the necessity of one It was clear even to himself that that question had strayed into his mind and found utterance simply through the effect of the stillness, the boredom, the whirring ventilator wheels

When they had got rid of the doctor the court rose to examine the 'material evidences ' The first thing examined was the full-skirted coat, upon the sleeve of which there was a dark brownish stain of blood Harlamov on being questioned as to the origin of the stain stated

"Three days before my old woman's death Penkov bled his horse I was there, I was helping to be sure, and and got smeared with it "

"But Penkov has just given evidence that he does not remember that you were present at the bleeding "

"I can't tell about that "

"Sit down "

They proceeded to examine the axe with which the old woman had been murdered

"That's not my axe," the prisoner declared

"Whose is it, then?"

"I can't tell I hadn't an axe "

"A peasant can't get on for a day without an axe And your neighbor Ivan Timofeyitch, with whom you mended a sledge, has given evidence that it is your axe "

"I can't say about that, but I swear before God (Harlamov held out his hand before him and spread out the fingers), before the living God And I don't remember how long it is since I did have an axe of my own I did have one like that only a bit smaller, but my son Prohor lost it Two years before he went into the army, he drove off to fetch wood, got drinking with the fellows, and lost it "

"Good, sit down "

This systematic distrust and disinclination to hear him probably irritated and offended Harlamov He blinked and red patches came out on his cheekbones

"I swear in the sight of God," he went on, craning his neck forward "If you don't believe me, be pleased to ask my son Prohor Proshka, what did you do with the axe?" he suddenly asked in a rough voice turning abruptly to the soldier escorting him "Where is it?"

It was a painful moment! Everyone seemed to wince and as it were shrink together The same fearful, incredible thought flashed like lightning through every head in the court, the thought of possibly fatal coincidence, and not one person in the court dared to look at the soldier's face Everyone refused to trust his thought and believed that he had heard wrong

"Prisoner, conversation with the guards is forbidden " the president made haste to say

No one saw the escort's face, and horror passed over the hall unseen as in a mask The usher of the court got up quietly from his place and tiptoeing with his hand held out to balance himself went out of the court Half a minute later there came the muffled sounds and footsteps that accompany the change of guard All raised their heads and, trying to look as though nothing had happened, went on with their work

*****

ABOUT THE AUTHOR

Anton Chekhov was born on January 29, 1860, in Taganrog, Russia Through stories such as "The Steppe" and "The Lady with the Dog," and plays such as*The Seagull* and *Uncle Vanya*, the prolific writer emphasized the depths of human nature, the hidden significance of everyday events and the fine line between comedy and tragedy Chekhov died of tuberculosis on July 15, 1904, in Badenweiler, Germany

Youth and Education

Anton Pavlovich Chekhov's father, Pavel, was a grocer with frequent money troubles His mother, Yevgeniya, shared her love of storytelling with Chekhov and his five siblings

When Pavel's business failed in 1875, he took the family to Moscow to look for other work while Chekhov remained in Taganrog until he finished his studies Chekhov finally joined his family in Moscow in 1879 and enrolled at medical school With his father still struggling financially, Chekhov supported the family with his freelance writing, producing hundreds of short comic pieces under a pen name for local magazines

Early Writing Career

During the mid-1880s, Chekhov practiced as a physician and began to publish serious works of fiction under his own name His pieces appeared in the newspaper New Times and then as part of collections such as Motley Stories (1886) His story "The Steppe" was an important success, earning its author the Pushkin Prize in 1888 Like most of Chekhov's early work, it showed the influence of the major Russian realists of the 19th century, such as Leo Tolstoy and Fyodor Dostoyevsky

Chekhov also wrote works for the theater during this period His earliest plays were short farces, however, he soon developed his signature style, which was a unique mix of comedy and tragedy Plays such as Ivanov (1887) and The Wood Demon (1889) told stories about

educated men of the upper classes coping with debt, disease and inevitable disappointment in life

Major Works

Chekhov wrote many of his greatest works from the 1890s through the last few years of his life In his short stories of that period, including "Ward No 6" and "The Lady with the Dog," he revealed a profound understanding of human nature and the ways in which ordinary events can carry deeper meaning

In his plays of these years, Chekhov concentrated primarily on mood and characters, showing that they could be more important than the plots Not much seems to happen to his lonely, often desperate characters, but their inner conflicts take on great significance Their stories are very specific, painting a picture of pre-revolutionary Russian society, yet timeless

From the late 1890s onward, Chekhov collaborated with Constantin Stanislavski and the Moscow Art Theater on productions of his plays, including his masterpieces *The Seagull* (1895), *Uncle Vanya* (1897), *The Three Sisters* (1901) and *The Cherry Orchard* (1904)

Later Life and Death

In 1901, Chekhov married Olga Knipper, an actress from the Moscow Art Theatre However, by this point his health was in decline due to the tuberculosis that had affected him since his youth While staying at a health resort in Badenweiler, Germany, he died in the early hours of July 15, 1904, at the age of 44

Chekhov is considered one of the major literary figures of his time His plays are still staged worldwide, and his overall body of work influenced important writers of an array of genres, including James Joyce, Ernest Hemingway, Tennessee Williams and Henry Miller

Lesson Analysis:

In The Court, a short story by Russian author ridicules the proceedings in the court It is set in Communist Russia, where the theory of separation of power seems to be non-existence from the author's description of one government house in which all the departments conduct their official meetings in turns Of that Government house, Chekhov says, "Here is Justicia, here is Policia, here is Militia – a regular boarding school of high-born young ladies " The author very subtly describes the dull and lifeless atmosphere of the court hall, the colour and structure of the building From his description the pathos and depressing feeling both inside and outside the building can be felt intensely These minute descriptions reveal not only Anton Chekhov's skill and mastery over words, but also his keen observatory power

The short story revolves around the trial of a farmer, Nikolai Harlamov, accused of murdering his wife Nikolai Harlamov's wife was found murdered with her head smashed and lying in front of their house Nikolai who comes home in the evening finds his wife's dead body with a broken skull in the porch of their house On seeing that, He panics and goes to the fields to hide, afraid that he might be judged guilty of murdering his wife After two days of hiding from the police without food and water, he himself goes and surrenders in the police station and is promptly charged with murdering his wife

The trial of Nikolai Harlamov takes place in the government building where the circuit court conducts its proceedings The narration reveals the way cases are disposed off speedily At 2 p m , the presiding judge announced the hearing of the case of the farmer Nikolai Harlamov, changed with the murder of his wife The defending counsel alone changed while and the existing members continued

Nikolai Harlamov, while being led into the court hall felt very dejected and ashamed He hung his head scared to see people's reaction He was led by a frail soldier Only after the

proceedings commenced Nikolai realized that no one in the court hall, the officials or the audience were really bothered about him That realization made him feel light and he was able to see the people around him But the gloomy surroundings and the court procedure and general indifference made him restless again as one would be bothered, whatever happened to him

The secretary read out the charge against the prisoner The bored President started a conversation with a fellow judge, while the assistant prosecuter was reading Byren's "Cain", [Cain, was the first son of Adam and Eve, who killed his brother Abel] and looked up once in a while The counsel for the defence came with a prepared speech and was waiting for his turn to speak Anton Chekhov mocks at the whole procedure in the court and the indifferent attitude of not only the officials, but the audience as well The author says that dingy windows and walls, the voice of the secretary, the attitude of the prosecuter were all saturated with official indifference and it looked like the accused was simply an official property or was not being judged by living men but by some official machine

The questioning began after the secretary ended reading the charge First Nikolai Harlamov was asked whether he pleaded guilty and he replied that he was innocent Replying to the question as to why he ran away if he was innocent, Nikolai replied that he was afraid he might be judged as guilty and so hid in the fields After this, seven witnesses were called for questioning, including two women and five men and the village policemen They replied that Harlamov and his wife lived well and he rarely beat her, unless he drank On finding the murdered women, they ran in search of Harlamov, but could not find him

The doctor who conducted the post-mortem was next called and he gave evidence that she died instantaneously due to injury caused to brain Some unnecessary questions were asked and the answers were equally vague Next the material evidence was examined There was a full-skirted coat with blood stain on the sleeve Harlamov when questioned said that it was horse's blood Next the axe, the murder instrument was taken up and Harlamov said it was not his as he lost it some 2 years back when his son took it and lost it His neighbor testified that it was Harlamov's Aware that the court thought he was lying Harlamov said that they can ask his son about it and turning to the soldier who escorted him, he said, "Prohor, what did you do with the axe, where is it?"

Suddenly in the court hall there was a painful thought about the fateful coincidence of father trying to shield the son Was the father standing and facing trial in the place of his son? The president asked the prisoner not to talk to guards and immediately there was a change of guard The story ends abruptly and it can be inferred that the judgement probably was written before the trial and the whole procedure was just an eyewash

*****

4 THE FIVE FUNCTIONS OF THE LAWYER

Arthur T. Vanderbilt

FULL TEXT OF THE LESSON[1]

Many lawyers fail to attain full growth Indeed, many of them never glimpse the vision either of what is rightly expected of the legal profession or of them individually For them, alas, their responsibilities begin and end with serving their clients and for them the law is only a set of mechanical rules which they attempt to manipulate for the interests of their clients A lawyer with such an outlook on his profession is not likely either to attract clients or to serve them well, nor will he ever enjoy the solid and durable satisfactions that come from a well-rounded, complete life in the law

What, then, are the functions of a great lawyer?

1 First of all, a truly great lawyer is a wise counselor to all manner of men in the varied crises of their lives when they most need disinterested advice Effective counseling necessarily involves a thorough-going knowledge of the principles of law as they appear in the books and as they actually operate in action In equal measure counseling calls for a wide and deep knowledge of human nature and of modern society Most difficult of all, truly great counseling calls for an ability to forecast the trends of the law

Very often what the client really wants to know is not what the law is today but what it will be at the time the problem under discussion is likely to come up for adjudication in the courts This is what Mr Justice Holmes had in mind when he said, 'Prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law ' This may not have seemed pretentious to Holmes but what profession demands greater skill in meeting its obvious requirements?

2 Next, the great lawyer is a skilled advocate, trained in the art of prosecuting and defending the legal rights of men both in the trial courts and on appeal Unless a lawyer has had experience as advocate, it is difficult to see how he can be a thoroughly competent counselor, for he will not be able to evaluate his client's cause in terms of the realities of the courtroom It is in the courtroom that the law is applied to concrete facts in specific cases, and it is the advocates who, with the judges, in the last analysis set the course of the law

Advocacy is the most intensive work a lawyer is called on to do It was not until I was fifty that I began to understand that the decision in every great case is likely to be written with the lifeblood of some lawyer Advocacy is not a gift of the gods In its trial as well as in its appellate aspects it involves several distinct arts, each of which must be studied and mastered No law school in the country, so far as I know, pays much attention to them Indeed, it seems to be blithely assumed with disastrous results that every student coming to law school is a born Webster or Choate Clearly somewhere in the course of his professional training our complete lawyer must learn the arts of advocacy

3 The third task of the great lawyer is to do his part individually and as a member of the organized Bar to improve his profession, the courts and the law As President Theodore Roosevelt aptly put it, 'Every man owes some of his time to the upbuilding of the profession to which he belongs '[1] Indeed, this obligation is one of the great things which distinguishes a profession from a business The soundness and, the necessity of President Roosevelt's admonition insofar as it relates to the legal profession cannot be doubted The advances in natural science and technology are so startling and the velocity of change in business and in social life ids so great that the law along with the other social sciences, and even human life itself, is in grave danger of being

[1] Arthur T Vanderbilt, "***The Five Function of the Lawyer***", **Law and Language**, R P Bhatnagar (ed), Trinity Press, New Delhi, pp 98-108

extinguished by new gods of its own invention if it does not awake from its lethargy A few law professors have pondered long and hard on these problems, but the law schools by and large have done nothing about the matter beyond an occasional unpopular and generally ineffective course in legal ethics

4 In a free society every lawyer has a fourth responsibility, that of acting as an intelligent, unselfish leader of public opinion-I accent the qualities 'intelligent' and 'unselfish'—within his own particular sphere of influence In our complicated age sound public opinion is more indispensable then it ever was, with out it even courageous leadership may fail Did not president Franklin D Roosevelt warn us as early as October 1937, over four years before Pearl Harbor, in his quarantine speech in Chicago, of the dangers ahead? And did not the newspapers of both parties throughout the country condemn his speech as warmongering? And did not Charles Lindbergh in February 1939, over six months before the outbreak of world war II in Europe, warn the that he had actually seen 30,000 warplanes in Germany? And did not the English practically drive him from the country for telling them, for merely telling them, a fact that was of supreme importance to their individual welfare and to their survival as a nation?

How different might history have been and our life today, if only one American lawyer in each city had written a letter to his paper or made a speech supporting the President or if an English barrister in each community in his country had reminded his contemporaries that Lindbergh was undoubtedly an expert on airplanes and that he could certainly count to 30,000? No individual class in our society is better able to render real service in the molding of public opinion

5 Finally, every great lawyer must be prepared, not necessarily to seek public office but to answer the call for public service when it comes The attorney whose professional thoughts begin and end with his own private clients is a pitiable mockery of what a great lawyer really is Training for public service is a lifelong career There is no sadder sight in the legal profession than that of a lawyer who has long dreamed of unselfish public service but who has been so engrossed in serving private clients that when the call does come to him for a public career he has so lost contact with the spirit and problems of the day that his efforts in the public interest prove abortive What should have been a crown of laurel frequently turns out to be one of thorns

These five– counseling, advocacy, improving his profession, the courts and the law, leadership in molding public opinion and the unselfish holding of public office –are the essential functions of the great lawyer Education in these five functions of the lawyer is partly the province of the college, partly the duty of the law school, but in large measure it is the responsibility of the individual lawyer not only while in law school but throughout his working years This is practicing law in the grand manner—the only way it is worth practicing

These are days of great debate concerning whether the law schools are doing their part in preparing their students for the profession Chiefly, the debate rages around whether the law schools should teach not merely the 'what' and the 'why,' but also the 'how' of the law just as the medical schools teach the 'how' of medicine and surgery I must not engage in that debate, but I do venture to say that the law schools generally are not doing what they should be doing to prepare their students for the third function of the lawyer-improving his profession, the courts, and the law

I shall limit my remarks to a single phase of this responsibility-improving the work of the courts Is it not the responsibility of the law schools to teach procedure with due regard to the realities of the law?

When I was a law student, the teaching of the procedural law was limited to common law pleading and evidence All I can remember from our study of demurrers, traverses, pleas in confession and avoidance, novel assignment and departure (the chief topics we studied) is that it was demurrable to plead that one threw a stone gently, but that it was not demurrable to plead that the events alleged occurred on the Island of Minorca, to wit, at London, in the parish of St Mary le Bow in the ward of Cheap, provided one did it under a *videlicet*[1] All of this seemed to me then and, after thirty-four years of practice largely in the courts followed by some years on the Bench, still seems to me an utterly inadequate preparation for understanding what is going on in the courts today The course in evidence was devoted to telling us how to keep evidence out of the case, but what I needed when I first went to court was someone to tell me how to get it in!

What the law student most needs in these days when the courts are so much under attack is to be told quite frankly, first, of these shortcomings and, second, of his responsibility for correcting these shortcomings The picture has never been painted so well as by Dean Pound in his memorable address at the American Bar Association meeting in St Paul in 1906, concerning "The Causes of Popular Dissatisfaction with the Administration of Justice " You should first read Dean Wigmore's moving introduction to this speech, written thirty years afterwards, to get its full significance If I had my way, I would make it prescribed reading once a year for every judge, practicing lawyer and law professor and law student on the day he returns from his summer vacation and starts a new year of professional activity

It should be added that since 1906 the American Bar Association has made honorable amends for its reception of Dean Pound's speech by furnishing the leadership that has brought about the drafting and promulgation of the Canons of Professional and Judical Ethics It has led the fight against Theodore Roosevelt's campaign for th recall of judges and of judical decisions, raised the standards of legal education throughout the country, agitated for years for the Federal Rules of Civil Procedure, opposed President Franklin D Roosevelt's proposal for packing the United States Supreme Court, aided in the establishment of the Administrative Office of the United States Courts and in the movement for the promulgation of the Federal Rules of Criminal Procedure, and brought about the passage of the Federal Administrative Procedure Act

What can the lawyer, what can the law school student do about improving the administration of justice? Well, the first and greatest complaint against the courts is what is known, euphemistically, as the law's delays I say "euphemistically," because the "law's delays" is the polite phrase for the delays of judges and lawyers While I am going to speak principally about the delays of judges, let me say that it is the delays of lawyers that are largely responsible for delays of judges Now, what can we do about the delays of the law? Well, those delays are of three kinds The most irritating delay of all to the lawyer and the layman alike is the delay of the judge in getting on the bench on time in the morning The jurors have to be there, the lawyers have to be there, and so do the litigants, the witnesses, and the newspaper reporters—everybody except the judge I am speaking only of my own state in the old days, and there are some New Jersey lawyers here who know I am not exaggerating You could hear peals of laughter emanating from the judge's chambers, and when His Honor emerged about half an hour later, he would very seriously tell us he had been, detained by important work in chambers But you knew, despite his solemn assurance, that he had been listening to some story-teller recounting the jokes he would tell in his next speech

How did we in New Jersey get away from that sort of delay? Our Supreme Court used to start at ten-thirty, so we concluded that if we set an example by starting at ten o'clock at the

state capitol, there would be no reason why every trial judge should not get on the bench by ten o'clock in his county In short, a good example overcame that kind of delay

The second kind of unnecessary delay is in_getting cases on to trial after the pleadings and the necessary preliminaries in preparation for the trial are complete Almost everywhere you will hear the cry, "But we need more judges " Well, that may be true now and then, but I think in most states you will find that there are enough judges if the chief justice is authorized to shift the trial judges from court to court as needed There are always counties where there is not as much business as in other counties, there are always courts in the larger counties that are not as busy as some other courts in these counties

Accordingly, the first thing you need to do to overcome delay in getting cases on to trial is to give the chief justice or a presiding judge the power to assign the judges where they are_needed, and to the kind of work, moreover, that they are best fitted to do Of course, there is nothing more detrimental to good judicial work than assigning a judge who is good with a jury—whether in civil or criminal work—to equity work that he doesn't enjoy, and vice versa

The second result from a power to assign judges is that-and this is something you will have to take on faith because it doesn't sound possible until you see it tried-if you have Judge A sitting in Courthouse A and Judge B sitting in Courthouse B, each operating from a separate list of cases, they will try a certain number of cases Yet if you put Judge A and Judge B in the same courthouse and let them operate from a common list, they will try half again as many cases as they did sitting alone in different courthouses You can continue the process up to the limit of trial judges available, the number of courtrooms available and the number of trial lawyers available There is something about having a lot of judges working together on an active integrated list that makes for the rapid disposition of cases Don't ask me why it is so for I don't know, but I do know that it is so It works that way

But the right to assign judges alone will not clear up court congestion To that you must add pre-trial conferences

The pre-trial conference is an institution that is probably more misunderstood that anything else in our procedural law In its fully developed sense it means that after the lawyers on each side of a case have consulted with each other about the issues of law and fact in the case, they come before the judge in open court The judge, having looked over the pleadings and listened to each side's outline of its case, proceeds to state the issues, shaking out of the case any nonessentials in the pleadings He then proceeds to discuss with the attorneys what proofs may be stipulated He asks, "What documents are you going to introduce in evidence?" Ordinarily there is no dispute about such documents, accordingly they are produced and given a number in evidence, so that they will be ready for presentation at the trial without calling the attesting witnesses In automobile negligence cases, the ownership of the car and the agency of the driver are generally stipulated and likewise the damages to the car when the main issue is liability for damages to the person of the plaintiff

This process of consultation results in a pre-trial order which defines the issue, provides for any necessary amendments to the pleadings and states the admissions of each side It is dictated in open court and signed by the judge and the lawyers The remarkable thing about it all is that at the end of a pre-trial conference very often the plaintiff's lawyer for the first time really understands the plaintiff's case This statement is not meant to be humors because the case may not have been prepared by the plaintiff's lawyer at all but by some bright young man in his office It is highly desirable, you see, that the plaintiff's lawyer should know his case before he attempts to try it, and that is one of the good results of pre-trail conference For the first time, too,he gets a proper perspective on the defendant's case

Likewise the defendant's lawyer for the first time gets a true concept of his own and his adversary's case Suddenly it dawns on each of them that instead of this being a case that

the plaintiff can't lose or the defendant can't lose, it begins to be one that has a monetary value in terms of a settlement But that is not the most important result of a pre-trial conference, for month in and month out, in every county in our state -metropolitan, suburban and rural—three quarters of the cases are settled between the date of the pre-trial conference and the date when the case goes to trial two weeks later without the judge saying a word about settlement

But, settlements are not the most important thing about pre-trial conferences, nor the fact that they shorten the trial of cases from a third to a half The great, important thing about pre-trial conferences is that the judge knows what the case is about from the beginning If it involves some proposition of law that he is not familiar with, he can order briefs in advance, so that before the trial starts he will know as much about the law of the case as the lawyers do That, as you see, also helps the lawyers because otherwise they would not prepare their briefs until some later date, hoping to avoid their preparation Thus the assignment of judges where needed and the holding of pre-trial conferences are simple ways of avoiding delay in getting cases on to trial

The third great cause of the law's delay comes after the case is tried and the judge says the fatal words, "I will take the matter under advisement " I have waited in the old days two years, four years, six years, eight years, ten years for decisions in our Court of Chancery We have had a lot of Lord Eldons in New Jersey They were aided and abetted by many a prospective Lord Eldon at the Bar, who would wait until the end of the case, and then would say, "Your Honor realizes now that this is a complicated case, and I would like to submit a brief to help Your Honor I would like a month's time "The defendant would want a month for an answering brief, and the plaintiff at least two weeks for a reply brief-to and a half months in all The judge would push the case aside, and all of it would disappear from his mind as he went on to the trail of other cases

I submit that a trial judge will never know as much about the case he is trying as he does after he has read trial briefs, after he has heard the evidence and after he has listened to the argument of counsel Then, if ever, the moment of decision has arrived If he lets it go until the next day, he is going to start off on a new case and then another case and then still another case, and each case he tries will rendered the facts of the indicated case still dimmer in his mind

Thus, in my state we have a rule that the lawyer must file their briefs in advance If the judge doesn't decide the case within twenty days after oral argument, he must indicate the reason on his weekly report And here is a strange bit of judicial psychology- even the hardest-pressed judge would rather write out an opinion than to write down in his report some reason why he hasn't decided the case Thus almost all cases are decided promptly and the law's unnecessary delays, as we have seen, are easily avoided

Next to the law's delays, nothing irritates the public as much as decisions based on technicalities of procedure and pleading How can we prevent such decisions which fail to dispose of the controversy on its merits? Well, the easiest way to eliminate them is to allow your court of last resort to make the rules of procedure rather than to have a legislative code If there is a code, the judges feel that they are bound to follow the code literally and exactly

If there are judicial rules of procedure instead of a code, they are not only likely to be better designed for litigation, but they are made by judges and they will be interpreted by judges They always contain, or at least should always contain, a provision that the purpose of the rules is the advancement of justice and the prevention of delays and that they are to be construed to that end with the privilege of waiving them when they would work injustice Rules of court make for avoiding decisions on technicalities The rule-making process,must be a continuous process, and there should be some body in the state, either a judicial conference or a judicial council, which reviews the rules annually to see if they can be improved in the light of experience Most of all in this

country we need to give the trial judge real power Believe it or not, there are over twenty-five states in the Union where the trial judge is not allowed to comment on the evidence, where he is not allowed to ask questions even though neither plaintiff's nor defendant's counsel has brought out what the judge sees is the pertinent fact concerning which a particular witness should testify In these states the judges are not allowed to sum up in their own language to the jury, but, on the contrary, they take their instructions from either one or the other of the trail counsel, and that is called a charge

Also, in these states, just to make sure that reading these written instruction doesn't amount to anything, the code of procedure provides that the judge must give his charge before counsel for the defendant and counsel for the plaintiff sum up to the jury Now, if I were to stand here and mumble seven or eight typewritten pages of legalistic requests to charge and that was to be followed by two impassioned addresses by other lawyers, I submit that no jury would remember a single word that I had said They would merely remember that the other lawyers had said it all better than I had because they had been talking to them and I was only reading

This putting of the trial judge in a strait jacket occurs in over one half of our states If you come from one of these backward states, one of your first jobs is to make your professor of procedure conscious of that fact, because he is probably taking it for granted that that is a necessary and natural way to try a case You can begin to improve the work of your courts right away by asking, "Why cannot we give our trial judges real power as they do at common law and in the federal courts and in many of the states?"

Another major cause of complaint about our courts is the occasional bad manners of judges Some judges are just constitutionally cross-grained They never should have been permitted to get on the Bench, and there should be some method devised for getting rid of them One of the things that makes judges irritable, I am told, is the pressure of work When a judge is conscious that he has twenty-five or thirty cases undecided, how can he be cheerful when he says, "Good morning"? He just can't be, because he has missed the moment of decision in those twenty-five or thirty undecided cases, and he realizes that he will never do as well as he might have done in these cases

Another thing that makes some judges irritable is the consciousness that they are subject to political pressure We all like to be free and independent, but if you happen to be an unfortunate judge who is subject to politics—and I have had judges tell me that they know what that means—that makes for bad manners So the thing to do is to get rid of political pressure

That brings us right to the heart of the matter To have good judicial administration, to have good judges, you need judges who know the law, you need judges who can think, you need judges who can express themselves, you need judges who are diligent you need judges who are honest, and you need judges who the public believes are honest Those are all reasonable qualifications, and yet in a national poll taken not too long ago, 28 per cent of those questioned said in so many words that they did not think that their local and county judges were honest I know that these 28 percent are wrong in their impressions of their judges—I would stake my life on that statement-but the fact that the public *thinks* they are dishonest is just as bad from the standpoint of respect for the law as if they were in fact so

Why does the public have that notion? Obviously, it gets the notion because your local police judges, your local justices of the peace and your county judges in many states are forced to run for elation on a partisan ticket They travel around with the candidate for governor, for senator, for Congress, and for the state legislature, and all the other fellows running for election, and they attend political meetings, dinners and clambakes How can the people think the judge is any different from all the rest of the politicians who are running for election? Those who are informed know that the county judge is the smartest of these

politicians and probably is planning the whole campaign Indeed, in certain states it is admitted by everybody in the county that the county judge is the unofficial head of the dominant political party In fact, if he isn't, he isn't going to be re-elected when his term expires That is how the public gets its notions about its local judges who run in political primaries and elections

Does it not suggest to us that in every state we should carefully examine the method of the selection of judges—and that goes for the appointed judges as well as elected judges? If the governor is not supported and buttressed by the strong opinion of the Bar to appoint the right kind of judges, you won't ordinarily get them by the appointive process any more than you will through partisan elections But we need more than good judges We also need jurors who are representative of the honest and intelligent citizenry of the county if the fact finding of our courts is to be done properly

These are some of the pressing problems in the administration of justice that you should keep in mind in law school as well as in practice

Our system of popular government cannot survive without a clear recognition of the supremacy of law Sound procedure in the courts is quite as important as sound substantive law These problems all relate to improving the administration of justice, but there are many other equally important points relating to the betterment of the profession and the adaptation of our substantive law to the needs of the times that should engage your attention from your earliest days in law school Above and beyond all that you need to cultivate from the beginning an active and intelligent interest in public affairs if you are to be great lawyer, so as to qualify as leaders of public opinion and eventually as our leaders in public office

Interest and action with respect to all of these matters are essential to the great lawyer, and the desired results are all attainable if you pursue the law in the spirit of Mr Justice Holmes Let me end by quoting him

Law is a business to which my life is devoted, and I should show less than devotion if I did not do what in me lies to improve it, and when I perceive what seems to me to be the ideal of its future, if I hesitated to point it out and press toward it with all my heart

*****

ABOUT THE AUTHOR

Arthur T Vanderbilt (July 7, 1888 - June 16, 1957) was the first Chief Justice of the New Jersey Supreme Court from 1948 to 1957, the first Chief Justice under the revamped New Jersey court system established by the Constitution of 1947, in which the Supreme Court replaced the old court of Errors and Appeals as the highest court He was also an attorney, legal educator and proponent of court modernization

Early years and education

He was born in Newark, New Jersey He attended Wesleyan University, where he was a President of the student body and he studied at the Columbia University School of Law

Career

He was the President of American Bar Association from 1937 to 1938, Dean for many years – of New York University Law School, delegate to the Republican National Convention in 1936, 1940 and 1944 He was awarded 32 honorary degrees and received the American Bar Association Gold Medal Many of his court reforms were incorporated into the new judicial article of the New Jersey Constitution like designation of the Chief Justice as the administrative head of all courts in the state As Chief Justice, he created the first state Administrative Office of the Courts in the nation

Publications

He wrote many articles and books such as,

- Men & Measures in the law
- The Challenge of Legal Reform
- The Doctrine of the Separation of Powers & its present day significance
- Judges & Jurors
- Improving the Administration of Justice

LESSON ANALYSIS

Introduction

Arthur T Vanderbilt in this lesson gives his opinion on two broad things 1 Five Functions of a lawyer and 2 The problems in the American judiciary Firstly he identifies five functions which if a lawyer follows, will surely become a great lawyer They are

a counseling,

b good advocacy skills,

c giving back to the profession that gave him the status,

d offering wise advice when the public needs it and

e taking up government posts when it comes in order to serve society

The author next discusses thread bare the problems afflicting the American judiciary According to him, the Law Schools have to instill in their students professional ethics When they step into the judiciary, they should come prepared for weeding out the problems The author while discussing specific problems hampering justice points out how some issues were overcome in the state of New Jersey The points are discussed in detail

Five Functions

Counseling:

A great lawyer is a wise counselor who invokes a thorough – going knowledge of the principles of law as they appear in books It calls for an ability to forecast the trends of the law The client often wants to know the problem under discussion for adjudication in the courts According to Justice Mr Holmes, "prophecies of what the courts will do in fact and nothing more pretentions are what he means by law"

Advocacy:

The great lawyer is a skilled advocate, trained in the area of prosecuting and defending the legal rights both in the trial and experienced Counselor Advocacy is the most intensive work of a lawyer It is not a gift of the gods It involves several distinct arts to be studied and mastered

Professional Improvement:

A great lawyer should improve his profession in the court as well as in law According to President Theodore Roosevelt, "every man owes some of his time to the up building of the profession to which he belongs" The advances in natural science and technology, the velocity of changes in business and social life is in grave danger of being extinguished by new goods of its own inventions

Leadership in molding Public Opinion:

Every lawyer has a responsibility to act as an intelligent, unselfish leader of public opinion In our complicated age sound public opinion is more indispensable In fact it is of supreme importance to individual welfare and also to the survival of a nation No individual class in our society is better able to render real service in molding public opinion than the legal professionals

Unselfish holding of Public Office:

Every great lawyer must be prepared to seek public office Training for public service is a lifelong career A lawyer who dreams of unselfish public service should keep in touch with the changes in the society through the clients and also the general public When the call to take up public office comes, the lawyer should be prepared to accept it and do justice to the public at large without minding the monetary loss This is a way of paying back to the society that sustains the lawyer

Thus these five functions are essential qualities to make a lawyer flower into a great lawyer Education in these five functions is partly the province of the college, law schools, and largely the responsibility of the individual lawyer This responsibility is limited in improving the works of the courts The author next analyses the problems in the American judiciary He points out that a law graduate before entering the courts should understand the complications and problems in judicial service so as to think of measures to overcome them The greatest complaint against the courts is law's delay There are three kinds of delays of law They are delay of the judge getting on the bench, delay in getting cases on to trial, and delay in giving judgement after the case is tried

Delay of the judge getting on the bench:

The most irritating delay for the lawyers and the clients occurs when the judges occupy the benches after a delay of 30 minutes or more Except the judge all the others like jurors, lawyers, litigants, witnesses and newspaper reporters would be waiting for the arrival of the judge In New Jersey, the judges used to sit after a delay of 30 minutes, wasting the time of so many people To set right the situation, the author and other legal officers ensured that the judges belonging to the Supreme Court of New Jersey sat and commenced the cases on time It led to all the other county court judges to commence work on time By ensuring this, unnecessary delay was avoided in New Jersey, setting a positive example But the author says that in many courts across America, commencing of cases by the judges is delayed It also leads to piling up of cases

Delay in getting cases on to the Trial:

After the pleading and the necessary preliminaries are completed, still there is unnecessary delay in getting cases on to trial In order to overcome delay in getting cases on to trial, the author suggests that it is better to assign the power to the chief justice or the presiding judge to allot the cases to judges based on equitable distribution Secondly preparation of a common schedule listing out the cases for different judges every week also ensures more completed cases Each judge in the list will know how many cases have been completed by the other judges This comparison helps in speeding up the process The right to assign judges alone will not clear up court congestion Pre-trial conference is also very useful for the concerned lawyers and the judge to understand the finer points of the cases they are dealing At times, out of court settlement is also possible after the pre-trial conference All the documents required as evidence can be sorted out in this pre-trial conference But shortly after this the concerned case should be disposed off so that the lawyers and the judges remember the facts of the case

The law's delay comes after the case is tried:

Yet another great cause of the law's delay comes after the case is tried The judge would push the case aside and it would even disappear from his mind The trial judge will never know as much about the case he is trying after reading, hearing the evidence and listening to the argument of the counsel The lawyers must file their briefs in advance If the judge does not decide then he must indicate the reason This helps to stop unnecessary delay in getting justice

Decisions based on technicalities of procedure and pleading:

Delays occur because of technicalities of procedure and pleadings and in order to prevent such delay, the author opines that the rules of procedure should be framed by the judiciary and not by the legislature The rule making process must be a continuous process The trail judge should be given real power in writing judgments

Another cause of complaint about the courts is the occasional bad manners of judges Constitutionally some of them are cross grained judges and they should not be permitted to get on to the bench and there should be some method to get rid of them

Some judges are irritated because of the pressure of work Some are irritated due to political pressure To have good judicial administration, good judges are needed who should know the law, think and express for themselves are diligent, honest and public believe that they are honest

Conclusion:

The system of popular government cannot survive without a clear recognition of the supremacy of law Some of the procedures in the courts are quite as important as sound substantive law Lawyers should cultivate from the beginning an active and intelligent interest in public affairs Interest and action are essential and the desired results are all attainable if one pursues law diligently Law is a business to which one should be devoted it and only then system can be improved

*****

5. THE LANGUAGE OF THE LAW

Urban A. Lavery

FULL TEXT OF THE LESSON[1]

When Shakespeare made Hamlet say to the grave-digger

> Why may not this be the skull of a lawyer? Where now be his quiddities, his quillets, his cases, his tenures, and his tricks?

he was paying the profession a real compliment, and a compliment none the less because it was intended as a slur A "quiddity" is defined by Webster as a "trifling nicety," and the word "quillet" is another form of "quibble " Both words seem to have been in fairly common use three hun3red years ago and Shakespeare used them to express the sharpness of the lawyer and his facility in the use of words even in that day and time (For the ability of the lawyer to confuse others by_ thejuse of words has long been the subject of proverbs The reasons for this distinction—or if you prefer, for this reproach—are not hard to find, they lie in the lawyer's training and in the work he is called upon to do And yet, no matter what else may be said of him, the lawyer, in his field—even as the physician and the priest in theirs— remains the last resource of other men and women When the wisdom of common men fails them and disaster is at hand, when the layman's brain is overworked till his mental fuse burns out, when the motorcar of "Business" blows out its tires and piles up in the ditches of insolvency, when the human derelict is finally tossed upon the rocks by the stormy seas of life, then the lawyer is sent for and his "quiddities" and his "quillets" are more than welcome, then the myriad complexities of human frailty and the baffling chicanery of men test out all "his cases, his tenures, and his tricks "

And yet it is not the purpose of this paper to praise the linguistic nimbleness, of the lawyer, but rather to consider some of his defects It is to ask Why is it that the lawyer, who thinks and speaks the King's English better than his fellows, falls below them when he writes it? Why does the lawyer seem to lose his mastery of words when he puts his pen, instead of his tongue, to the task of expressing them in statutes, in judicial opinions or in legal documents? For it is an ancient charge that the lawyer, as compared to other writers, is prolix and muddy in his literary style and is unduly given to the overuse of words

But discussing such a subject is no easy task For teaching others the art of writing—and especially it is true of writing laws—has ever been recognized as a difficult and dreary job, difficult and dreary alike for both teacher and scholar Moreover, he who undertakes the task is likely to be marked down as an egoist for his pains, he runs the risk of being called a pedantic preacher Especially does he run this risk in this day and time, when the world is full of preachers and nobody stops to listen, when everybody gives his neighbor advice on every topic under the sun and nobody pays the slightest heed Just as a current example one might mention the fact that almost more books have been written about the war than there were soldiers who fought in it, while the river of ink about the treaty and the League of Nations flows on and on even though all those who were the real actors in the great drama have silently gone back to work

There is another point about our task which must be kept in mind, it must be carried out with a nice delicacy and a subtle sense for the egotism of others For it is quite true, as the grammarian Goold Brown has said

---

[1] Urban A Lavery, ***"The Language of the Law"***, **Law and Language**, R P Bhatnagar (ed), Trinity Press, New Delhi, pp 33-48

It is even impertinent to tell a man of any respectability that the study of his native language is of great importance and interest, if he does not from the most obvious considerations feel it to be so, the suggestion will be less likely to convince him than to give offense

Nevertheless, this most laborious and exhaustive of all students of English grammar proceeds in more than a thousand pages of fine octavo print to tell his fellow men how important the study of their native English really is Indeed, in spite of the difficulty and delicacy of the task a great many others have done the same thing, for the list of books on the art of writing is endless There are books on writing poetry, there are books on writing prose, there are books on writing scientific English, on writing business English, on writing orations, on writing plays—on writing every kind of English except (so far as I know) on writing legal English Everybody seems to have assumed that all lawyers write good English, even though everybody knows pretty well that they do not One of the purposes of this paper is to call attention to the lack of such a book rather than to supply it And if in discussing the subject, this paper too should seem to preach, it is done with fear and trembling, for although words are to be loved when they are well used, yet even more does the active man love deeds best

And so without further explanation or introduction let us come to grips with our subject

William Caxton was not only our first English printer, but he was also an observant and careful writer and one of the first English authors to be interested in keeping pure the style of his mother tongue In the year 1490 he published a translation of *The Aeneid* from the French, and in the preface to his book he refers to the literary style of some of the writers of his time, and says

> For in these days any man that is in any reputation in this country will utter his communication and matters in such manner and terms that few men shall understand them, and some honest and great clerks have been with me and desired me to write the most curious terms that I could find And thus, between plain, rude and curious, I stand abashed

These words were written before the discovery of America, and yet the reader will notice how clear the meaning is and how entirely the words are written in the English of today For the purpose of getting a good sample of the legal English of that time I turned to the Acts of Parliament, passed during the seventh year of the reign of Henry VII, which was also the year 1490, and there I hit upon an Act to provide for "The penalty of a captain or soldier retained to serve the King in his intended wars, not doing their duties" The purpose of the Act as thus stated is clear and concise, but the statute goes on

> For as much as it is notoriously known that the King, to his great costs and charges, hath sent his ambassadors to Charles his adversary of France, to have had convenient peace with him, and to have his right without effusion of Christian blood, which was refused, wherefore the King, by the grace of God in whose hands and disposition resteth all victory, hath determined himself to pass over the sea into his realm of France, and to reduce possession thereof by the said grace to him, and to his heirs, Kings of England, according to his rightful title

This quotation gives less than a third of the first sentence of the statute The sentence goes on and on in terms and phrases strangely like those of modern legislators, until we come finally to the real business intended, where it is said

> BE IT THEREFORE ORDAINED by the authority of this present Parliament, THAT any captain etc

One can hardly help wondering if the "great clerks of whom Caxton speaks were not the lawyers of his time, and if that author - in referring to the men who "uttered their communication and matters in such manner and terms that few men shall understand them" —did not have in mind the gentlemen who sat in Parliament

A hundred years after Caxton we find Shakespeare speaking of the lawyer in the manner shown by the quotation already given, and we realize what was thought about the literary style of the lawyers in the Golden Age of Elizabeth Two hundred years more pass, and we come upon the name of Blackstone—a very great lawyer, but a lawyer who was an exception to the rule, for he wrote in a clear and fascinating style, so much so that laymen have read him with unceasing interest for over a century and a half Blackstone himself often criticized the language of lawyers Speaking of the lawyers who wrote the Acts of Parliament he said

To say the truth, almost all the perplexed questions, almost all the niceties, intricacies and delays (which have sometimes disgraced the English as well as other courts of justice), owe their origin not to the common law itself, but to innovations that have been made in it by Acts of Parliament, "overladen," as Sir Edward Coke expresses it, "with provisos and additions and many times of a sudden penned or corrected by men of none or very little judgment in the law "

This indictment is pretty severe, though lawyers no doubt will find their alibis It is easy to think some up, and yet they are not wholly good—for the lawyers are responsible for the wording of the written law

In my work for the Illinois Constitutional Convention I have read and used many books on the subject of drafting laws, but one book, though it is hardly more than a pamphlet, stands alone (in some respects) for its philosophic treatment of the subject It is called *Legislative Expression,* and was written by George Coode, a member of the Inner Temple, and submitted in 1843 as a part of a report presented to Parliament The words of Coode are so pat for the subject now in hand, they can hardly be omitted, for he says

There is apparently a notion among amateurs that legislative language must be intricate and barbarous Certain antick phrases are apparently thought by them to be essential to law writing A readiness in the use of "nevertheless," "provided also," "it shall and may be lawful," "is hereby authorized, empowered and required," "nothing in any act or acts to the contrary notwithstanding," etc , etc , seem to constitute the qualifications for drawing Acts of Parliament

The author here lays his finger on a defect which somehow always persists It appeared in the old statute of Henry VII, and it may be observed in this year of grace at Washington, at Springfield, or wherever the work of our modern legislators is considered And yet, as this critic truly says

It is, however, a clear mistake to think that this absurd style prevalent as it is, and much as we sacrifice to adhere to it, has the sanction of written authority It is to be observed that after all nothing more is required than that instead of an extended and incongruous style, the common, popular structure of plain English should be adhered to

These criticisms of Blackstone and Coode seem fair enough, and the lesson to be learned is obvious Yet the form and style and wording of our statutes have been changed but little—to say nothing of being improved—in five hundred years

This matter of drafting laws is really a large part of our subject and it may well concern our thoughts Indeed, it may be truly said that the form and style of our written laws make up a chief cause for complaint against the language of the lawyer For laws, like the poor, are not always with us They are above us and around us and almost reach within us They must be read and obeyed—and therefore understood—by laymen as well as

lawyers, since ignorance of the law excuses no man For obvious reasons therefore, laws should be as clear and simple as possible Yet, strangely enough, it is in this matter of writing laws that the lawyer often reaches and surpasses the limits of human capacity If you take up the present Constitution of the State of New York you may read a single sentence from Article 8, Section 10, beginning

All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes which covers a full page of print The sentence is far too long to quote, for it contains 462 words without a single break, it is more than five times as long as the entire Pen Commandments, which have altogether 91 words

Modern law books are full of examples of a like kind, for indeed our constitutions and statutes seem to vie with each other in a race to be long-winded and complex Two further examples will suffice The first is from Section 34 of Article 4 of the Constitution of Illinois Here is to be found a single sentence containing 494wor$is Yet the sentence is concerned with a complex and difficult subject matter which would be hard to understand if stated in the simplest terms This sentence would occupy more than one-third of a column of an average newspaper, and consequently it defies being understood even when read over and over again The Constitution of Oklahoma has many illustrations of this character, it is full of sentences containing from 100 to 400 words What might be considered as the PP* j»\ regard is found in Article 1, Section 7, of that Continuation where a "proviso" clause to another sentence contains 237 words, lawyers who read this indictment turn to these examples and answer if they can what is meant by the language used Certainly no layman— absolutely not one—could ever be guilty of writing in such a style, no matter how difficult the subject or how involved the idea to be expressed One must admit that this is strong criticism, but it certainly seems justified, because whatever else such examples may be called, they are not written in the English language

It is not only in writing laws that the style of lawyers has been criticized, but in writing everything else In order to prove the point let us take up at random two well-known, modern law books In Branson's *Illinois Forms,* at page 1109, there appears a lease for a dwelling house for a term of years, a form which is recommended for general use One does not criticize its use, it is far too old and too much crystallized in the body of our law But certainly the language there used proves the fairness of the criticism here made One paragraph of the lease begins

Provided always that these presents are upon this condition, that if the said rent shall be in arrears What more do these words mean than if the paragraph began—"If the said rent shall be in arrears?" There seems no difference in meaning or legal effect, except that one form says in 18 words what the other says in 8 In a book written nearly one hundred years ago—and yet a book of the greatest help to the legislative draftsman in his special work—there is found the following quotation

From the manner in which lawyers usually multiply terms in order to express their facts *precisely,* it would seem that, with them, precision consists rather in the use of *many* words rather than a *few* But the ordinary style of legal instruments no popular writer can imitate without becoming ridiculous

Certainly the language of this critic seems entirely fair if applied to the lease in question

The other modern book referred to is Foster's *Federal Practice* (fifth edition), which will be recognized as a widely used and popular lawbook In it there is given a set of forms for pleadings, and on page 2640 there appears a form for a Bill of Foreclosure of a Railway Mortgage The third paragraph of this bill contains a single sentence which covers more than a half page of fine print, the sentence by actual count has 352 words It has 15 or

16 main verbs and more than a score of modifying phrases and clauses The fourth paragraph of the bill consists of a single sentence, which again is very long, for it contains 261 words Both of these examples (to repeat) are taken from modern lawbooks, and yet it is quite true, as Goold Brown has stated, that no layman could imitate this style "without becoming ridiculous"

Of course, it may be said that counting words in sentence is poor way to prove our case, and yet this matter of sentence length seems to be maxima culpa of the lawyer On this point a recognized and authoritative modern textbook says

The sentence is the basic unit of expression We cannot so much as resolve to telephone a customer without forecasting it to ourselves in some sentence form Sentence length in business messages demands consideration in order that the best results may be secured As a general rule, sentences should be short, because short sentences are more quickly and easily understood than long sentences A sentence containing not more than fifteen words is called a short sentence

If 15 words is a short sentence, what then is to be said of the sentence of 494 words in the Illinois Constitution, or the sentence of 352 words in the Bill to Foreclose a Railway Mortgage?

In concluding the first part of this paper let us call—as an expert witness on the literary style of lawyers—an authority whose opinion carries weight More than thirty years ago the late Barrett Wendell wrote his famous treatise on *English Composition* It has been called an "epoch-making book" and is a work that practical lawyers (as well as other men who write) may study with constant interest and profit He refers at considerable length to the habit of judges of using interminable sentences in their written opinions He speaks also of the prolixity of the style of the average lawyer and criticizes the "appalling" manner in which legal English is so often written He says

At one time it was my fortune to read a good deal of law, even after I had learned what the technical terms meant, I found the greatest trouble in understanding the books Not long ago a friend sent me a sentence from a respectable legal periodical He described it as a beautiful expression of legal English, and here it is

At the risk of being tiresome I am giving the sentence in full, because I believe Wendell is entirely fair in his implication that the quotation is a good example of modern "legal English "

"The comparatively recent introduction of sleeping cars upon the great highways of travel, as a means of public conveyance, while it marks a new era in the history of common carriers of passengers, and signalizes the advancement of the age in the attainment of the luxuries of refinement and wealth, yet on account of the unique and peculiar features of the system as it exists both with reference to the railroads that employ them, and to the travelling public that enjoy their superior comforts and facilities, there have arisen interesting questions of law, touching the responsibility of such companies, for the loss or theft of the goods, luggage, and valuables of passengers, upon which there exists, among the bench and bar, an undesirable, and, it would seem, needless amount of uncertainty, not to say, diversity of legal sentiment " (p 225)

Wendell makes the same criticism of the opinions often written by judges and quotes a very long sentence from an English opinion written in 1842, and says, by way of conclusion

If the learned judge who laid down the law about pleas of set-off had given a little attention to the principle of unity he would have bettered his opinion without hurting his law, at all events, he would have said exactly what he did say, but in such a manner that an ordinary human being could understand that he was uttering something other than a string

of technical words If the gentleman who wrote about sleeping cars had given the principles of composition a tenth part of the consideration he gave the legal questions in hand, he might, by the simple exercise of good sense, have produced an essay that an ordinary human being could read

You will read in that book of Goold Brown's to which reference has been made so many times, that Henry VIII, who seems never to have done things by halves, caused a Jaw to be passed by Parliament commanding the English grammar written by one William Lily to be everywhere adopted and taught Indeed, the King went further, for he became in name at least one of the editors of the book which was called *King Henry's Grammar* The privilege of publishing (and no doubt the profits too) was patented by the Crown Goold Brown states that so far as he was able to learn when he wrote his book in 1832, the old act was still in force in England—at least it had never been repealed It is not so easy in these days to do such things, nevertheless, we, as lawyers, still have a practical interest in striving for correctness in such matters

The first part of this paper concerns itself chiefly with some illustrations of the defects in the written style of lawyers We come now to considering the why and the wherefore of these defects and— with grave modesty—to offering some suggestions as to their cure It has been said that our subject has been called dreary, and yet it need not be dreary if it is properly presented As a proof of this there may be cited an admirable modern book on rhetoric and style recently published by the Oxford University Press and written by two men who have largely helped to compile the great Oxford Dictionary The book is called *The King's English,* and in the preface you will find both the reasons for this dreariness and the ways to avoid it clearly pointed out, for it is there said

It is notorious that English writers seldom look into a grammar or composition book, reading of grammar is repellent, because, being bound to be exhaustive on a greater or less scale, they must give much space to the obvious and unnecessary, and composition books are often useless because they enforce their warnings only by fabricated blunders against which every tiro feels himself quite safe

It is "notorious," say these authors, that English writers seldom consult a book on grammar or composition Is this not even more true of lawyers? How many lawyers who write briefs or other documents requiring unusually careful statement ever consult such a book once to the hundred times they consult their lawbooks? How many lawyers, for example, know and apply in their writing the proper uses for those fundamentally different methods of expression—the loose and the periodic sentence? How often do they stop to consider questions of syntax, which is defined as "the construction of sentences", or to consider the laws of good use which apply to adverbs, prepositions, to conjunctions, to participles and infinitives, to relative pronouns and to all the other parts of speech? These things, no doubt, *sound* academic and dreary, and yet when convincing argument is to the fore, or clearness of expression is desired, they are often more important than piled-up citations of cases In this book which has just been mentioned you will find proof that these things are not so dreary or so remote or so impracticable as they sound The book is made up on an excellent scheme, for it consists almost entirely of what the authors call "Blunders that observation shows to be common " Accordingly, you will find in this book most of the great names of the last century—Emerson, Lowell, Thackeray, Balfour, Meredith—all quoted to show how bad English and bad grammar will sometimes be found in good company

But our special concern here is with the characteristic faults of the literary style of lawyers, and some of these faults will now be considered in some detail The chief fault of lawyers is certainly that of prolixity Webster defines "prolix" as "extending to great

length," and then in a note he says "Prolixity is one of the worst qualities of style " There are, of course, deep and subtle reasons for the prolixity of what lawyers write -reasons which lawyers do not generally realize or understand They lie chiefly in two ever-present factors, a constant and inherent complexity of subject matter, and an impelling urge toward guarded and cautious language It may be from experience, it may be from instinct-but the lawyer uses his pen as it were an old-fashioned breech-loading musket, he is always afraid of the "kick" when the thing goes off Lawyers who are intellectually honest will recognize this tendency toward prolixity in their own experience, and will constantly be on their guard against it

A clear example of what is here meant is found in the life of Jeremy Bentham, a lawyer who is almost as famous in English law as Blackstone himself Bentham has been called the greatest law reformer who ever lived in any country, and it is generally conceded that the form and style of the modern Acts of Parliament are largely due to his writing and his influence He became famous by publishing in 1776 his celebrated *Fragment on Government,* and he continued to write voluminously for nearly sixty years until his death in 1832 He was constantly thundering against the prolixity of statute law During his earlier years he wrote clearly and well, but as the years went by and he grew older, he gradually lost his sense of style, until his later works became most difficult to read Ilbert, one of the leading modern writers on legislative drafting, who for many years has acted as parliamentary counsel to the British Treasury, in discussing Bentham's influence on legislative drafting, says

Bentham in his early years wrote admirable English, terse, lucid, vigorous, racy, pungent but in his later years his eccentricities grew upon him until he became almost unreadable, except as interpreted and translated by such favorable disciples as Dumont

It was, no doubt, to take a fling at lawyers in general, rather than at one of the greatest of them, that made Fitzgerald exclaim

What would have become of Christianity if Bentham had had the writing of the Parables?

Bentham's case was exaggerated, but his faults in a less degree became the faults of many lawyers and judges Their style becomes crabbed because they are excessively cautious, because they move so slowly as to make their readers tired, and because they insist upon explaining what needs no explanation

What I am trying to convey here has been well expressed by John Stuart Mill, who was a great authority on rhetoric and the art of writing, as well as a famous critic of government and laws He was also speaking of Bentham when he said

He could not bear, for the sake of clearness, and the reader's ease to say as ordinary men are content to do, a little more than the truth in one sentence and correct it in the next The whole of the qualifying remarks which he intended to make he insisted upon imbedding as parentheses in the very middle of the sentence itself And thus the sense being so long delayed, and attention being required to the accessory ideas before the principal idea had been properly seized, it became difficult without some practice to make out the train of thought

Mill was a philosopher as well as a very learned critic and there is a wealth of meaning for lawyers in his words Does he not here express a cogent criticism of most lawyers' writing? Do *they* not also insist on "imbedding" their qualifying remarks in the middle of the sentence, before the main idea has been "properly seized?"

Professor Hill of Harvard, perhaps the greatest American rhetorician, discusses this subject of prolixity in a way to show its importance in writing He speaks of lawyers and gives

a famous quotation which seems still good advice for them, although more than 100 years have passed since it was spoken

"Mr Jones," said Chief Justice Marshall on one occasion, to an attorney who was rehearsing to the Court some elementary principle from Blackstone's Commentaries, "there are some things which the Supreme Court of the United States may be presumed to know "

This quotation is taken by Hill from a textbook on *The Theory of Preaching*, and some of the advice of this book may well be taken to heart by lawyers as well as preachers The quotation goes on

Be generous, therefore, to the intelligence of your hearers Assume sometimes that they know the Lord's Prayer Do not quote the Ten Commandments as if they had been revealed to you instead of to Moses The Sermon on the Mount is a very ancient specimen of moral philosophy, do not cite it as if it were an enactment of the last Congress The Parables are older than the "Meditations" of Aurelius Antonius, why then rehearse them as if from the proof-sheets of the first edition? In a word, why suffer the minds of your audience to be more nimble than your own, and to outrun you?

It is easy enough to be critical, but have we not all heard sermons— and read lawyers' briefs—which reminded us of the well-known quotation "You say an undisputed thing in such a solemn way!"

Another chief defect in the writing of lawyers is the fact that they use circumlocution rather than straight, blunt speech They prefer to go round a subject with their words rather than straight to it In their use of language they prefer a steam shovel rather than a spade—and then they neglect to cast away the rubbish Here again we can cite with profit an eminent modern authority, Sir Arthur Quiller Couch, the famous professor of English literature at Cambridge University He has written much—novels, poetry and essays—but nothing better than his treatise on the *Art of Writing* In that book he devotes a chapter—and any lawyer who has not read it is the poorer—to what he calls "Interlude On Jargon "

I will not ask pardon for making extended quotations from this book because to do so will carry us on our way The author seems particularly to have in mind the lawyer and the draftsman of legal English when he says, concerning jargon

Caution is its father, the instinct to save everything and especially trouble, its mother, Indolence It looks precise, but is not It is in these times safe, a thousand men have said it before and not one to your knowledge has been prosecuted for it It is becoming the language of Parliament, it has become the medium thru which boards of Government, County Councils, Syndicates, Committees, Commercial Firms, express the processes as well as the conclusions of their thought

And he illustrates his meaning by an example which is certainly a common one

Has a Minister to say "No" in the House of Commons? Some men are constitutionally incapable of saying no, but the Minister conveys it thus "The answer to the question is in the negative " That means "no " Can you discover it to mean anything less, or anything more except that the speaker is a pompous person?

It is in what Quiller-Couch calls "Jargon" that lawyers most offend They have a cautious diagnet method about their work, and they carry the same method into their writing To quote this author further

As a rule Jargon is by no means accurate, its method being to walk circumspectly around its target and its faith, that having done so it has either hit the bull's eye or at least achieved something equivalent and safer

Have you begun to detect the two main vices of Jargon? The first is that it uses circumlocution rather than short straight speech The second vice is that it habitually uses vague, woolly, abstract nouns rather than concrete ones

By way of conclusion Quiller-Couch gives what he calls "two extremely rough rules to avoid Jargon "

The first is Whenever in your reading you come across one of these words—*case, instance, character, nature, condition, pursuant, degree*—whenever in writing your pen betrays you to one or another of them, pull yourself up and take thought

For another rule just as rough and ready but just as useful Train your suspicions to bristle up whenever you come upon *"as regards" "with regard to" "in respect of" "in connection with" "according as to whether"—and* the like They are all dodges of Jargon, circumlocutions for evading this or that simple statement, and I say that it is not enough to avoid them nine times out of ten or ninety-nine times out of a hundred You should never use them

Under the first rule the author has in mind the "vague, woolly, abstract nouns rather than concrete ones," concerning which he has already spoken A little thought will indicate how often such words are used by lawyers, and yet a little care will usually prove how these words may be avoided and the writing improved, for such words are mostly used because they are handy dodges of a tongue or pen, whose thought is itself not sharp and clear Take the words "case," "instance," or "character", they are all (usually) grab bags into which we stuff rag ends of ideas whenever we do not care to be accurate and specific Like Charity, they cover a multitude of sins, and hence they find frequent use The phrases quoted by the author under the second rule are even less to be excused It is seldom that such phrases as "in respect of," or "as regards" really help the meaning of what is written, they are usually a sort of springboard, used for jumping from one idea to another No doubt it will sometimes be necessary to use such words or phrases, but let the writer be frank with himself and recognize he is being vague rather than clear, that he is being abstract rather than concrete, that he is dealing with the general rather than the specific, or that he is using one or more of the phrases which Quiller-Couch condemns, as a sort of coupling pin for his thoughts

It will, of course, be obvious that the lawyer cannot always accept these suggestions But where is the lawyer who can stand up boldly and plead "not guilty" to an indictment for using jargon as it is pointed out in these quotations? Where is the literary lawyer who will not improve his style if he keeps such things in mind?

It may be admitted—indeed it must not only be admitted but asserted—that the lawyer's problem in writing is a difficult one Whether he has to write a statute, a deed, a will or what not, the lawyer must do more than the average writer, he must make what he writes (as I have heard it put) "foolproof " Indeed, not only foolproof but "knave-proof " A lawyer must so word his document that it will be impossible to misconstrue it The average writer does not have this problem, he need only write for the average reader In other words, he so writes that his words *ought not* to be misconstrued, but the lawyer must so write that his words *cannot* be misconstrued To put the matter another way, the average writer may expect and demand good faith—that is, an honest intention to get at the meaning of what is written—from his reader The lawyer, on the other hand, must anticipate bad faith on the part of many of his readers and must guard against it, he must so write that the reader who is seeking some other meaning than the natural meaning of the words used will be foiled in his purpose Especially must the lawyer constantly anticipate the astute attack of other lawyers in an effort to destroy or muddle up the meaning of his words

But conceding this, it is the major thesis of this paper—as will be inferred from what has gone before—that lawyers do not give due attention to the detailed business of what Quiller-Couch calls the "art" of writing. Every lawyer thinks that he can write good English, forsooth because he is clever with his tongue, but nimbleness with oral words is not enough. Roget, the famous author of the *Thesaurus of English Words*, called attention to this fact in the admirable introduction which he wrote to his book nearly three quarters of a century ago. There is no doubt that Roget had in mind writing as distinguished from speaking, when he said:

> However distinct may be our views, however vivid our conceptions, or however fervent our emotions, we cannot but be often conscious that the phraseology we have at our command is inadequate to do them justice. We seek in vain the words we need and strive ineffectually to devise forms of expression which shall faithfully portray our thoughts and sentiments. The appropriate terms, notwithstanding our utmost efforts, cannot be conjured up at will. Like the spirits from the vasty deep they come not when we call.

It has already been said that lawyers use written words and sentences as if they were to be spoken orally, that is their chief mistake. Conversation is at its best when it is a hit and miss affair—often conveyed by a glance, a gesture, a tone, or even a pause. It is a truism to say that what is well spoken may have an abominable style if written. It is easy to apply a simple test, let anyone listen to the debates of a political assembly or a convention, and then let him read a stenographic report of the same speeches. What was clear and forceful when spoken will often appear disconnected, redundant and even ungrammatical when printed.

We must never forget the magic of the spoken word. It is as different from the written word as a man is from his photograph, indeed, the writing is after all but a picture for a word. The ancient Greeks, who were, and still remain, the great masters of the literary world, knew the deep difference between speech and writing. With them these two arts of oratory and rhetoric were carried to the highest point reached by man, and yet with them the two arts were always separate and distinct. Indeed this must be so. The spoken word is a living, breathing thing which fights for its life in the hurly-burly and give-and-take of talk. It is the natural, instinctive means of expression of the human being, compared to which the written word is highly artificial. In talk two or more personalities are always contending. On the other hand, writing is always what lawyers call an "ex-parte proceeding"—there is only one side represented. There is no opportunity in writing, as in talk, for instantaneous question and reply. Moreover, the spoken word cannot easily be smothered out, or if it is, it bobs up again in a moment, to be repeated and repeated until its point is made.

If one listens to a heated argument—as an outsider—between even common men, what impression does one get? Particular words are stressed and repeated and repeated again, until all doubts of the speaker's meaning have been cleared up. The person spoken to can no more avoid the meaning intended than he could avoid getting wet if he stood out in the rain—he is drenched in a shower of words. But written words cannot be used so lavishly, one by one they must pass before the reader's eye and each must make its point or fail, for there is no bringing up of reserves, as in a battle. Perhaps this point can be made clear by illustration. If an address is spoken, instead of written, the speaker—if he is experienced—will see from the faces of his audience the points they do not readily understand and will go back and cover the ground again. If a paper is read by the author to an audience, he can by emphasis and stress and voice control go part way in this direction. Finally, if the audience should read the same matter in type, they would probably be less impressed—certainly they would not get the same meaning or impression as if either of the other two methods were employed. Taken in the order of their effectiveness therefore, there are three grades in expression, first, the oral

address, second if the author reads what he has written, and third, if the reader does all the work and must interpret for himself

It is just this difference between oral and written word which makes the dictated brief such an atrocity That document is a mongrel which has speech for its father and writing for its mother, and it exhibits all the vices and none of the virtues of its parents Such a document shows an utter failure to realize the technique which lies in the art of writing, for there is a technique in writing English, and especially in writing legal English, as this paper has tried to show It is a technique which can only be acquired by persistence and effort and laborious attention to details, it does not come with the profession, as lawyers think

This paper is already overlong, but we are coming to the end Its purpose was to show that lawyers in their writing overlook—as beneath notice—what have been called the "subtle and inconsiderable elements of style " I know what some of the lawyers who read this will be saying in their hearts that it is all very pretty but is academic and has very little to do with the everyday business of the lawyer If this paper has not already made clear that these things of which we have been speaking are really of the greatest importance, it cannot do so by further argument

One further opinion on the point will be given from a book written nearly two thousand years ago The words are quoted from Quintilian, the greatest of Latin rhetoricians, he whom the Romans called "the supreme controller of the restless youth " He said

Wherefore they are little to be respected who represent this art as mean and barren, in which, unless you faithfully lay the foundation for the future orator, whatever superstructure you raise will tumble into ruins It is an art necessary to the young, pleasant to the old, the sweet companion of the retired and one which in reference to every kind of study has in itself more of utility than of show Let no one therefore despise as inconsiderable the elements of grammar

Is not this statement as true now as it was in the days when Cicero was the leading lawyer of Rome, as well as the best grammarian of his time? And yet how many lawyers ever concern themselves with these "little things?" How many lawyers ever stop to parse a sentence? To repeat a question that has been asked before How many lawyers ever consult once a book on grammar or on good use of English, where they consult a lawbook a hundred times? A short examination of what many lawyers write will answer these questions without further search It must be admitted that the lawyer too often is a careless writer, and he, before all men, might write well if he but strove to do it But he does not strive, he dangles his participles, he splits his infinitives, he scatters his auxiliary verbs, he leaves his relative pronouns and adjectives to die of starvation far removed from their antecedents, his various parts of speech are often not on speaking terms with their best friends And when it comes to making sentences, he piles phrase upon phrase and clause upon clause ("imbeds" them', as Mill has called it) until what he produces is as uninviting and as hard to penetrate as those rows upon rows of barbed wire, tangled deep with weeds, which used to stand before the outposts of Verdun As a result, when he gets through a paragraph of a bill of equity or a section of a statute, he is, as Wendell has pointed out, "far beyond means " where any human being retains the slightest idea of what all this means"

*****

ABOUT THE AUTHOR[1]

Urban Augustin Lavery was born in Ericounti, Pennsylvina in 1885 He was the son of an Irish immigrant In 1910 he earned a Law degree (J D) from the University of Chicago Law School He was admitted to Illinois Bar and practiced law in Chicago He took part in World War I and was wounded in 1918 Between 1918 to 1921 he served as legislative draftsmen during the Illinois constitutional convention He served as member in Chicago Board of Education, Chicago Board of Election commission, Cook County Board, National Recovery Act (NRA) Compliance Board and also was the Counsel for City of Chicago

He was a prolific writer and contributed articles regularly to Illionis Law Review, American Bar Association Journal, and wrote 3-part series in it on 'The Language of Law' He authored two books Illionis Revenue Act of 1939 and Ilionis Election Statute of 1944 and other enacted laws In 1952 he published a book "Federal Administrative Law, Its Practice and Application" and also served as Editor-in-Chief West Publishing Company He was keen on cataloging cases for better citations and reference He served as Professor Constitutional Law at Loyola University Law School He died in 1959

LESSON ANALYSIS

Urban A Lavery begins this essay with a quotation from Shakespeare's Hamlet, in which Hamlet looking at a skull dug by the grave digger wonders whether it was a lawyer's skull and if so where were his cases and his tricks Shakespeare's compliment about lawyer's ability can also be taken as a slur, since lawyer's ability to confuse others with his words was a well known fact Despite that, those in search of legal solutions for their problems surrender themselves to lawyers whose quiddities and quillets are accepted without murmur

In this lesson the author's intention is not praise the linguistic greatness of lawyer whose spoken skills are excellent, but rather to criticize the absurd way of writing legal documents It is well known that the written skills of lawyers are not good as they have a tendency to use more words than needed and also high sounding ones The charge against lawyers is the prolixity and muddiness in their written style It makes reading and understanding the document very difficult not only for the layman but even to educated and knowledgeable persons

The author cautions that well meaning advice may hurt the ego of the lawyers and so it has to be given very carefully William Caxton, the first English printer also pointed out many examples of absurd written skills of lawyers He then gives examples of some constitutional documents of different states of America, that are unreadable The acts of parliament also have a large number of cumbersome passages and sentences In 1490, an act that was passed to penalize the captain and soldiers for not taking part in the ongoing war with France was mired in so many words that the clear intention of the act was lost The same sluggish trend in legal language continued even in the sixteenth and seventeeth century as understood from Shakespeare is quotation The author discussing about the written skills of William Blackstone points out that he was an exceptionally good writer His works revealed clarity in thought and writing which helped the reader to understand his grasp over the subject namely Law At one point of time Blackstone was also highly critical of the prevalent style of legal writing But in his old age Blackstone writing also became so confusing that only his trusted junior could interpret it

Urban A Lavery points out that the laws of the land should be known and understood by the people and hence it must be clear, simple and understandable Yet in drafting the legal documents the absurdity of lawyers' written skills reaches its peak feels the author and gives

[1] "Serendipity at Mid-Module A case book opens a door to the past" by Jim Tyson EJD 3 L pp 16-18, The Concord Advocate, Vol II, NO 2, Spring 2005

few examples in support of his statement In the Constitution of the State of New York, Section 10 of Article 8 has a sentence with 462 words without a break Section 34 of Article 4 of the Constitution of Illions has a sentence consisting of 494 words The Constitution of Oklahama has many sentences having 100-400 words each A provisio clause to Article 1, Section7 has one sentence with 237 words

It is not ony in the writing of laws that the lawyer's come in for criticism, but in writing everything else For example he cites Branson's Illions Forms, in which a form for leasing a dwelling house for a term of some years is very confusing Likewise in Foster's Federal Practice, a set of forms of pleadings I sign in which a form for Bill of Fore closure for railway mortagage has one sentence in fine print with 352 words and another in 261 words

The sentence is the basic unit of expression and should preferably be short with not more than 15 words Barret Wendell, who wrote a treatise, on "English Composition", not only criticses legal documents, but also the lengthy judgement of Judges In this book he refers to an Act passed by Henry VIII, stipulating a grammar book by William Lily, called as " King Henry's Grammar, published and by the Crown, shall alone be read and patented taught everywhere in England It was done with the intention of making people study grammar and internalize its rules properly before becoming a writer The main complaint against writers of law is that they do not go through grammar books while writing and also the usage of jargon unnecessarily making the work unreadable

Conclusion

The author requests the lawyers to so word their document that it will be impossible to misconstrue it and also to refrain from using the words like pursuant in nature, neverthless, nonetheless, provided also, notwithstanding, he is here by authorized ,empowered and required, etc The magic of written word must not be forgotten as it's a living thing It is a natural, instinctive means of expression of the human beings compared to writing Finally the author says, "That document is a mongreal which has speech for its father and writing for its mother, and it exhibits all the voices and none of the virtues of its parents" Such documents are proof of failure of the written language Good written skills is the technique which can be acquired by wide reading, persistent efforts and attention to details

*****

UNIT – II

6. CROSS-EXAMINATION OF PIGOTT BEFORE THE PARNELL COMMISSION

Sir Charles Russel

FULL TEXT OF THE LESSON[1]

Probably one of the most dramatic and successful of the more celebrated cross-examinations in the history of the English courts is Sir Charles Russell's cross-examination of Pigott the chief witness in the investigation growing out of the attack upon Charles S Parnell and sixty-five Irish members of Parliament, by name, for belonging to a lawless and even murderous organization, whose aim was the overthrow of English rule

The case is an admirable illustration of the importance of so using a damaging letter that a dishonest witness cannot escape its effect by ready and ingenious explanations, when given an opportunity, as is often done by an unskilful cross-examiner The cross-examination of Pigott shows that Sir Charles Russell thoroughly understood this branch of the art, for he read to Pigott only a portion of his damaging letter, and then mercilessly impaled him upon the sharp points of his questions before dragging him forward in a bleeding condition to face other portions of his letter, and repeated the process until Pigott was cut to pieces

The principal charge against Parnell, and the only one that interests us in the cross-examination of the witness Pigott, was the writing of a letter by Parnell which the Times claimed to have obtained and published in facsimile, in which he excused the murderer of Lord Frederick Cavendish, Chief Secretary for Ireland, and of Mr Burke, Under Secretary, in Phoenix Park, Dublin, on May 6, 1882 One particular sentence in the letter read, "I cannot refuse to admit that Burke got no more than his deserts "

The publication of this letter naturally made a great stir in Parliament and in the country at large Parnell stated in the House of Commons that the letter was a forgery, and later asked for the appointment of a select committee to inquire whether the facsimile letter was a forgery The Government refused this request, but appointed a special committee, composed of three judges, to investigate all the charges made by the *Times*

In order to undertake this defence of Parnell, Russell returned to the *Times* the retainer he had enjoyed from them for many previous years It was known that the *Times* had bought the letter from Mr Houston, the secretary of the Irish Loyal and Patriotic Union, and that Mr Houston had bought it from Pigott But how did Pigott come by it? That was the question of the hour, and people looked forward to the day when Pigott should go into the box to tell his story, and when Sir Charles Russell should rise to cross-examine him Mr O'Brien writes "Pigott's evidence in chief, so far as the letter was concerned, came practically to this he had been employed by the Irish Loyal and Patriotic Union to hunt up documents which might incriminate Parnell, and he had bought the facsimile letter, with other letters, in Paris from an agent of the Clan-na-Gael, who had no objection to injuring Parnell for a valuable consideration

Addressing the witness with much courtesy, while a profound silence fell upon the crowded court, Lord Russell began his cross examination "Mr Pigott, would you be good enough, with my Lords' permission, to write some words on that sheet of paper for me? Perhaps you will sit down in order to do so?" A sheet of paper was then handed to the witness I thought he looked for a moment surprised This clearly was not the beginning that

[1] Sir Charles Russel, "***Cross-Examination of Pigott before the Parnell Commission***", **Law and Language**, R P Bhatnagar (ed), Trinity Press, New Delhi, pp 170-179

he had expected He hesitated, seemed confused Perhaps Russell observed it At all events he added quickly

"Would you like to sit down?"

"Oh, no, thanks," replied Pigott, a little flurried

THE PRESIDENT: Well, but I think it is better that you should sit down Here is a table upon which you can write in the ordinary way- the course you always pursue

RUSSELL. Will you write the word "livelihood"?

Pigott wrote

RUSSELL. Just leave a space Will you write the word "likelihood"?

Pigott wrote

RUSSELL. 'Will you write your own name? Will you write the word "proselytism," and finally (I think I will not trouble you at present with any more) "Patrick Egan" and "P Egan"?'

"He uttered these last words with emphasis, as if they imported something of great importance Then, when Pigott had written, he added carelessly, "There is one word I had forgotten Lower down, please, leaving spaces, write the word 'hesitancy '" Then, as Pigott was about to write, he added, as if this were the vital point, 'with a small 'h '" Pigott wrote and looked relieved

RUSSELL: Will you kindly give me the sheet?

Pigott took up a bit of blotting paper to lay on the sheet, when Russell, with a sharp ring in his voice, said rapidly, "Don't blot it, please " It seemed to me that the sharp ring in Russell's voice startled Pigott While writing he had looked composed, now again he looked flurried, and nervously handed back the sheet The attorney general looked keenly at it, and then said, with the air of a man who had himself scored, "My Lords, I suggest that had better be photographed, if your Lordships see no objection "

RUSSELL: (turning sharply toward the attorney general, and with an angry glance and an Ulster accent, which sometimes broke out when he felt irritated) Do not interrupt my cross-examination with that request

Little did the attorney general at that moment know that, in the ten minutes or quarter of an hour which it had taken to ask these questions, Russell had gained a decisive advantage Pigott had in one of his letters to Pat Egan spelt "hesitancy thus, hesitency " In one of the incriminatory letters "hesitancy" was so spelt, and in the sheet now handed back to Russell, Pigott had written "hesitency," too In fact it was Pigott 's spelling of this word that had put the Irish members on his scent Pat Egan, seeing the word spelt with an 'e' 'in one of the incriminatory letters, had written to Parnell, saying in effect, "Pigott is the forger" In the letter ascribed to you "hesitancy 'is spelt "hesitency " That is the way Pigott always spells the word ' These things were not dreamt of in the philosophy of the attorney general when he interrupted Russell's cross-examination with the request that the sheet "had better be photographed " So closed the first round of the combat

Russell went on in his former courteous manner, and Pigott, who had now completely recovered confidence, looked once more like a man determined to stand to his guns

Russell, having disposed of some preliminary points at length (and after he had been perhaps about half an hour on his feet), closed with the witness

RUSSELL: The first publication of the articles "Parnellism and Crime "was on the 7th March, 1887?

PIGOTT: (Sturdily) I do not know

RUSSELL: (Amiably) Well, you may assume that is the date

PIGOTT: (Carelessly) I suppose so

RUSSELL: And you were aware of the intended publication of the correspondence, the incriminatory letters?

PIGOTT: (Firmly) No, I was not at all aware of it

RUSSELL: (Sharply, and with the Ulster ring in his voice) What?

PIGOTT: (Boldly) No, certainly not

RUSSELL: Were you not aware that there were grave charges to be made against Mr Parnell and the leading members of the Land League?

PIGOTT: I was not aware of it until they actually commenced

RUSSELL: What?

PIGOTT: I was not aware of it until the publication actually commenced

RUSSELL: Do you swear that?

PIGOTT: I do

RUSSELL: (Making a gesture with both hands, and looking toward the bench) Very good, there is no mistake about that

Then there was a pause. Russell placed his hands beneath the shelf in front of him, and drew from it some papers - Pigott, the attorney general, the judges, every one in court looking intently at him the while There was not a breath, not a movement I think it was the most dramatic scene in the whole cross-examination, abounding as it did in dramatic scenes Then, handing Pigott a letter, Russell said calmly

"Is that your letter? Do not trouble to read it, tell me if it is your letter "

Pigott took the letter, and held it close to his eyes as if reading it

RUSSELL: Do not trouble to read it

PIGOTT: Yes, I think it is

RUSSELL: Have you any doubt of it?

PIGOTT: No

RUSSELL: (addressing the judges) My Lords, it is from Anderton's Hotel, and it is addressed by the witness to Archbishop Walsh The date, my Lords, is the 4th of March, three days before the first appearance of the first of the articles, "Parnellism and Crime "

He then read

"Private and confidential "

"My Lord The importance of the matter about which I write will doubtless excuse this intrusion on your Grace's attention Briefly, I wish to say that I have been made aware of the details of certain proceedings that are in preparation with the object of destroying the influence of the Parnellite party in Parliament "

Having read this much Russell turned to Pigott and said "What were the certain proceedings that were in preparation?"

PIGOTT: I do not recollect

RUSSELL: Turn to my Lords and repeat the answer

PIGOTT: I do not recollect

RUSSELL: You swear that --- writing on the 4th of March, less than two years ago?

PIGOTT: Yes

RUSSELL: You do not know what that referred to?

PIGOTT: I do not really

RUSSELL: May I suggest to you?

PIGOTT: Yes, you may

RUSSELL: Did it refer to the incriminatory letters among other things?

PIGOTT: Oh, at that date? No, the letters had not been obtained, I think, at that date, had they, two years ago?

RUSSELL: (Quietly and courteously) I do not want to confuse you at all, Mr Pigott

PIGOTT: Would you mind giving me the date of that letter?

RUSSELL: The 4th of March

PIGOTT: The 4th of March

RUSSELL: Is it your impression that the letters had not been obtained at that date?

PIGOTT: Oh, yes, some of the letters had been obtained before that date

RUSSELL: Then, reminding you that some of the letters had been obtained before that date, did that passage that I have read to you in that letter refer to these letters among other things?

PIGOTT: No, I rather fancy they had reference to the forthcoming articles in the *Time*

RUSSELL: (glancing keenly at the witness) I thought you told us you did not know anything about the forthcoming articles

PIGOTT: (looking confused) Yes, I did I find now I am mistaken --- that I must have heard something about them

RUSSELL: (severely) "Then try not to make the same mistake again, Mr Pigott "Now," you go on (continuing to read from Pigott's letter to the archbishop), "I cannot enter more fully into details than to state that the proceedings referred to consist in the publication of certain statements purporting to prove the complicity of Mr Parnell himself, and some of his supporters, with murders and outrages in Ireland, to be followed, in all probability, by the institution of criminal proceedings against these parties by the Government "

Having finished the reading, Russell laid down the letter and said (turning toward the witness), "Who told you that?"

PIGOTT: I have no idea

RUSSELL: (Striking the paper energetically with his fingers) But that refers, among other things, to the incriminatory letters

PIGOTT: I do not recollect that it did

RUSSELL: (with energy) Do you swear that it did not?

PIGOTT: I will not swear that it did not

RUSSELL: Do you think it did?

PIGOTT: No, I do not think it did

RUSSELL: Do you think that these letters, if genuine, would prove or would not prove Parnell's complicity in crime?

PIGOTT: I thought they would be very likely to prove it

RUSSELL: 'Now, reminding you of that opinion, I ask you whether you did not intend to refer --- not solely, I suggest, but among other things - to the letters as being the matter which would prove complicity or purport to prove complicity?'

PIGOTT: Yes, I may have had that in my mind

RUSSELL: You could have had hardly any doubt that you had?

PIGOTT: I suppose so

RUSSELL: You suppose you may have had?

PIGOTT: Yes

RUSSELL: There is the letter and the statement (reading), "Your Grace may be assured that I speak with full knowledge, and am in a position to prove, beyond all doubt and question, the truth of what I say " Was that true?

PIGOTT: It could hardly be true

RUSSELL: Then did you write that which was false?

PIGOTT: I suppose it was in order to give strength to what I said I do not think it was warranted by what I knew

RUSSELL: You added the untrue statement in order to add strength to what you said?

PIGOTT: Yes

RUSSELL: You believe these letters to be genuine?

PIGOTT: I do

RUSSELL: And did at this time?

PIGOTT: Yes

RUSSELL: (Reading) "And I will further assure your Grace that I am also able to point out how these designs may be successfully combated and finally defeated " How, if these documents were genuine documents, and you believed them to be such, how were you able to assure his Grace that you were able to point out how the design might be successfully combated and finally defeated?

PIGOTT: Well, as I say, I had not the letters actually in my mind at that time So far as I can gather, I do not recollect the letter to Archbishop Walsh at all My memory is really a blank on the circumstance

RUSSELL: You told me a moment ago, after great deliberation and consideration, you had both the incriminatory letters and the letter to Archbishop Walsh in your mind

PIGOTT: I said it was probable I did, but I say the thing has completely faded out of my mind

RUSSELL: (Resolutely) I must press you Assuming the letters to be genuine, what were the means by which you were able to assure his Grace that you could point out how the design might be successfully combated and finally defeated?

PIGOTT: (Helplessly) I cannot conceive really

RUSSELL: Oh, try You must really try

PIGOTT: (In manifest confusion and distress) I cannot

RUSSELL: (Looking fixedly at the witness) Try

PIGOTT: I cannot

RUSSELL: Try

PIGOTT: It is no use

RUSSELL: (Emphatically) May I take it, then, your answer to my Lords is that you cannot give any explanation?

PIGOTT: I really cannot absolutely

RUSSELL: (Reading) "I assure your Grace that I have no other motive except to respectfully suggest that your Grace would communicate the substance to some one or other of the parties concerned, to whom I could furnish details, exhibit proofs, and suggest how the coming blow may be effectually met " What do you say to that, Mr Pigott?

PIGOTT: I have nothing to say except that I do not recollect anything about it absolutely

RUSSELL: What was the coming blow?

PIGOTT: I suppose the coming publication

RUSSELL: How was it to be effectively met?

PIGOTT: I have not the slightest idea

RUSSELL: Assuming the letters to be genuine, does it not even now occur to your mind how it could be effectively met?

PIGOTT: No

Pigott now looked like a man, after the sixth round in a prize fight, who had been knocked down in every round But Russell showed him no mercy I shall take another extract

RUSSELL: Whatever the charges in "Parnellism and Crime," including the letters, were, did you believe them to be true or not?

PIGOTT: How can I say that when I say I do not know what the charges were? I say I do not recollect that letter to the archbishop at all, or any of the circumstances it refers to

RUSSELL: First of all you knew this that you procured and paid for a number of letters?

PIGOTT: Yes

RUSSELL: Which, if genuine, you have already told me, would gravely implicate the parties from whom these were supposed to come

PIGOTT: Yes, gravely implicate

RUSSELL: You would regard that, I suppose, as a serious charge?

PIGOTT: Yes

RUSSELL: Did you believe that charge to be true or false?

PIGOTT: I believed that charge to be true

RUSSELL: You believed that to be true?

PIGOTT: I do

RUSSELL: Now I will read this passage [from Pigott's letter to the archbishop], "I need hardly add that, did I consider the parties really guilty of the things charged against them, I should not dream of suggesting that your Grace should take part in an effort to shield them, I only wish to impress on your Grace that the evidence is apparently convincing, and would probably be sufficient to secure conviction if submitted to an English jury " What do you say to that, Mr Pigott?

PIGOTT: (Bewildered) I say nothing, except that I am sure I could not have had the letters in my mind when I said that, because I do not think the letters conveyed a sufficiently serious charge to cause me to write in that way

RUSSELL: But you know that was the only part of the charge, so far as you have yet told us, that you had anything to do in getting up?

PIGOTT: Yes, that is what I say, I must have had something else in my mind which I cannot at present recollect --- that I must have had other charges

RUSSELL: What charges?

PIGOTT: I do not know That is what I cannot tell you

RUSSELL: Well, let me remind you that that particular part of the charges --- the incriminatory letters --- were letters that you yourself knew all about

PIGOTT: Yes, of course

RUSSELL: (Reading from another letter of Pigott's to the archbishop) "I was somewhat disappointed in not having a line from your Grace, as I ventured to expect I might have been so far honored I can assure your Grace that I have no other motive in writing save to avert, if possible, a great danger to people with whom your Grace is known to be in strong sympathy At the same time, should your Grace not desire to interfere in the matter, or should you consider that they would refuse me a hearing, I am well content, having acquitted myself of what I conceived to be my duty in the circumstances I will not further trouble your Grace save to again beg that you will not allow my name to transpire, seeing that to do so would interfere injuriously with my prospects, without any compensating advantage to any one I make the request all the more confidently because I have had no part in what is being done to the prejudice of the Parnellite party, though I was enabled to become acquainted with all the details "

PIGOTT: (With a look of confusion and alarm) Yes

RUSSELL: What do you say to that?

PIGOTT: That it appears to me clearly that I had not the letters in my mind

RUSSELL: Then if it appears to you clearly that you had not the letters in your mind, what had you in your mind?

PIGOTT: It must have been something far more serious

RUSSELL: What was it?

PIGOTT: (Helplessly, great beads of perspiration standing out on his forehead and trickling down his face) I cannot tell you I have no idea

RUSSELL: It must have been something far more serious than the letters?

PIGOTT: Far more serious

RUSSELL: Can you give my Lords any clew of the most indirect kind to what it was?

PIGOTT: I cannot

RUSSELL: Or from whom you heard it?

PIGOTT: No

RUSSELL: Or when you heard it?

PIGOTT: Or when I heard it '

RUSSELL: Or where you heard it?

PIGOTT: Or where I heard it

RUSSELL: Have you ever mentioned this fearful matter --- whatever it is --- to anybody?

PIGOTT: No

RUSSELL: Still locked up, hermetically sealed in your own bosom?

PIGOTT: No, because it has gone away out of my bosom, whatever it was

On receiving this answer Russell smiled, looked at the bench, and sat down A ripple of derisive laughter broke over the court, and a buzz of many voices followed The people standing around me looked at each other and said, 'Splendid ' The judges rose, the great crowd melted away, and an Irishman who mingled in the throng expressed, I think, the general sentiment in a single word, 'Smashed '

Pigott's cross-examination was finished the following day, and the second day he disappeared entirely, and later sent back from Paris a confession of his guilt admitting his perjury, and giving the details of how he had forged the alleged Parnell letter by tracing words and phrases from genuine Parnell letters, placed against the window-pane, and admitting that he had sold the forged letter for £605

After the confession was read, the Commission "found" that it was a forgery, and the *Times* withdrew the facsimile letter

A warrant was issued for Pigott's arrest on the charge of perjury, but when he was tracked by the police to a hotel in Madrid, he asked to be given time enough to collect his belongings, and, retiring to his room, blew out his brains

*****

ABOUT THE AUTHOR

Charles Arthur Russell, Baron Russell of Killowen (10th November, 1832 to 10th August 1900), was an Irish statesman and Lord Chief Justice England

Early life and Education

Russell was born as the eldest son of Arthur Russell and Margaret Mullin He had three sisters and one brother He studied at the diocesan seminar and Castle Knock College, in Dublin He worked in some law offices and in 1854 was admitted as a Solicitor in 1854

As a legal professional

In 1856 with his succes in many cases, he became a barrister in London by entering Lincoln's Inn Due to his success, he was called to the Bar in 1859 and in 1872, he became a Queen's counsel His name and fame was increasing steadily In 1894, he was made Lord of Appeal in Ordinary and was raised to a life peerage taking his title Baron Russell of Killowen The same year he was appointed as Lord Chief Justice of England

Political career

He was an advocate of Home Rule in Ireland In 1880, he was knighted and the same year was appointed as the Attorney-General and for the second time in 1892 He was a strong advocate of Irish Home Rule in Parliament His cross examination of the witnesses of the Times and his exposure of Richard Pigott, the author of the forgeries made a favourable verdict inevitable His famous eight-day speech for the defence was his greatest forensic effort

Publications

1 "Diary of a Visit to the United States", since edited by his brother, Rev Matthew Russell, S J , and published (1910) by the U S Catholic Historical Society
2 "New Views of Ireland" (London, 1880),
3 "The Christian Schools of England and Recent Legislation" (1883),
4 Essay on Coleridge in the "North American Review" (1894),
5 Essay on the legal profession in the "Strand Magazine" (1896),
6 "Arbitration, its Origin, History, and Prospects" (London, 1896)

LESSON ANALYSIS

Charles S Parnell was a nationalist leader of the Irish Home Rule movement in the late 19th century In 1875, he was elected as a member of the British Parliament to advocate the cause of Home Rule for Ireland The Times started the publication of letters supposed to have been written by Parnell, in which he excused the murderers of Lord Frederick Cavendish, Chief Secretary for Ireland, and Mr Burke, Under Secretary in Phoenix Park, Dublin on May 6, 1882 Since Parnell was a Member of Parliament representing Ireland, his support of a murderous Irish group created a big stir in and outside Parliament In the House of Commons he stated that the letter was a forgery and asked for the appointment of a select committee to inquire the genuineness of the letter The Government appointed a special committee with 3 judges to investigate all the charges made by the Times Sir Charles Russell who was part of the committee, returned to Times the retainer he had enjoyed from them for many years

In the course of investigation it came to light that the Times bought the letter from Mr Houston, the Secretary of the Irish Loyal and Patriotic Union He in turn bought it from Pigott, a journalist, who had bought these letters in Paris from an outlawed underground group clan-na-Gael The Irish Loyal and Patriotic Union wanted Pigott to hunt up documents to incriminate Parnell

Sir Charles Russel's cross-examination of Pigott, was very dramatic and widely acclaimed Pigott, was the chief witness in this case, which was an attack upon Charles s Parnell and sixty five Irish members of Parliament for belonging to a lawless and murderous organization working for the overthrow of the rule in Ireland

The cross-examination commenced with Sir Charles Russell asking Pigott to write some words on a sheet of paper The startled witness was forced to do what he was asked to do He wrote the word 'hesitancy' as 'hesitency' The committee was informed by Pat Egan, an Irish politician that Pigott normally spelt the word wrongly, and so he suspected him to have forged the letter After the first round, Sir Charles Russell started intense rounds of questioning about the publication of the articles, the date the content etc and Pigott's knowledge about all these After Pigott gave the answers, Russel read a letter written by Pigott to the Archbishop Walsh on 4th March 1887, 3 days prior to the publication of the letter by the Times Pigott said that he was not aware of the publication or the contents of the letter But in his letter he had written about the publication of certain statements hurting the prospects of Mr Parnell and his party men inviting criminal proceedings against them by the Government

After every round of questioning, a part of Pigott's letter was read out which clearly revealed that he was lying At the end of this battle, Russell was victorious, Pigott was beaten, but he did not confess His answers were nailed one after the other by Russell

After Pigott's cross-examination was finished he went to Paris without informing and from there sent a letter confessing his guilt, admitting his perjury and giving the details of how he had forged the letter by tracing words and phrases from genuine Parnell letters, placed against the window pane and sold the forged letter for £605

The confession was read and the commission declared it as a forgery The Times withdrew the letter and a warrant was issued for Pigott's arrest on the charge of perjury The police went to his hotel in Madrid to arrest him He went inside to collect his belongings and committed suicide by shooting himself This case serves as a good example of how a skilful cross-examiner can use a damaging letter to tear a dishonest witness's defence to pieces and expose his lies

7. A PLEA FOR THE SEVEREST PENALTY, UPON HIS CONVICTION FOR SEDITION

M.K. Gandhi

FULL TEXT OF THE LESSON[1]

"Nonviolence is the first article of my faith In 1922 Gandhi was arrested and charged with sedition for three of his articles in his magazine, Young India At the conclusion of the trial Gandhi was asked by the judge if he wished to make a statement before receiving sentence Before I read this statement, I would like to state that I entirely endorse the learned Advocate General's remarks in connection with my humble self I think that he was entirely fair to me in all the statements that he has made, because it is very true and I have no desire whatsoever to conceal from this court the fact that to preach disaffection toward the existing system of government has become almost a passion with me, and the learned Advocate General is also entirely in the right when he says that my preaching of disaffection did not commence with my connection with Young India, but that it commenced much earlier, and in the statement that I am about to read, it will be my painful duty to admit before this court that it commenced much earlier than the period stated by the Advocate General It is the most painful duty with me, but I have to discharge that duty knowing the responsibility that rests upon my shoulders, and I wish to endorse all the blame that the learned Advocate General has thrown on my shoulders, in connection with the Bombay occurrences, Madras occurrences, and the Chauri Chaura occurrences Thinking over these deeply and sleeping over them night after night, it is impossible for me to dissociate myself from the diabolical crimes of Chauri Chaura or the mad outrages of Bombay He is quite right when he says that as a man of responsibility, a man having received a fair share of education, having had a fair share of experience of this world, I should have known the consequences of everyone of my acts I know that I was playing with me I ran the risk, and if I was set free, I would still do the same I have felt it this morning that I would have failed in my duty, if I did not say what I said here just now I wanted to avoid violence, I want to avoid violence Nonviolence is the first article of my faith It is also the last article of m cree but had to make my choice I had either to submit to a system which I considered had done an irreparable harm to my country, or incur the risk of the mad fury of my people bursting forth, when they understood the truth from my lips I know that my people have sometimes gone mad I am deeply sorry for it and I am therefore here sometimes gone mad I am deeply sorry for it and I am therefore here to submit not to a light penalty but to the highest penalty I do not ask for mercy I do not plead any extehuating act I am here, therefore, to invite and cheerfully submit to the highest penalty that can be inflicted upon me for what in law is a deliberate crime and what appears to me to be the highest duty of a citizen The only course open to you, the judge, is, as I am just going to say in my statement, either to resign your post or inflict on me the severest penalty, if you believe that the system and law you are assisting to administer are good for the people I do not expect that kind of conversion, but by the time I have finished with my statement, you will perhaps have a glimpse of what is raging within my breast to run this maddest risk which a sane man can run The following statement was then read I owe it perhaps to the Indian public and to the public in England 1 to placate which this prosecution is mainly taken up that I should explain why from a staunch loyalist and co-operator I have become an uncompromising disaffectionist and non-cooperator To the court too I should say why I plead guilty to the charge of promoting disaffection toward the government established by law in India My public life began in 1893 in South Africa in troubled

[1] M K Gandhi , ***"A Plea for the Severest Penalty, Upon his Conviction for Sedition"***, **Law and Language**, R P Bhatnagar (ed), Trinity Press, New Delhi, pp 158-162

weather My first contact with British authority in that country was not of a happy character I discovered that as a man and as an Indian I had no rights More correctly, I discovered that I had no rights as a man I was not baffled I thought that this treatment of Indians was an excrescence upon a system that was intrinsically and mainly good I gave the government my voluntary and hearty co-operation, criticizing it freely where I felt it was faulty but never wishing its destruction Consequently, when the existence of the Empire was threatened in 1899 by the Boer challenge, I offered my services to it, raised a volunteer ambulance corps, and served at several actions that took Place for the relief of Ladysmith Similarly in 1906, at the time of the Zulu revolt, I raised a stretcher-bearer party and served till the end or the "rebellion" On both these occasions I received medals and was even mentioned in dispatches For my work in South given by Lord Hardinge a Kaiser-i-Hind Gold Medal When he wai broke out in 1914 between England and Germany I raised a volunteer ambulance corps in London consisting of the then resident Indians in London, chiefly students Its work was acknowledged by the authorities to be valuable Lastly, in India, when a special appeal was made at the Wai Conference in Delhi in 1918 by Lord Chelmsford foi recruits, I struggled at the cost of my health to raise a corps in Kheda, and the response was being made when the hostilities ceased and orders were received that no more recruits were wanted In all these efforts at service I was actuated by the belief that it was possible by such services to gain a status of full equality in the Empire for my countrymen The first shock came in the shape of the Rowlatt Act, a law designed to iob the people of all real freedom I felt called upon to lead an intensive agitation against it Then followed the Punjab horrors beginning with the massacre at Jalianwala Bagh and culminating in crawling orders, public floggings, other in-describable humiliations I discovered too that the plighted word of the Prime Minister to the Mussulmans of India regarding the integrity of Turkey and the holy places of Islam was not likely to be fulfilled But in spite of the forebodings and the grave warnings of fiiends, at the Amritsar Congress in 1919,1 fought for co-operation and working with the Montagu-Chelmsfoid reforms, hoping that the Prime Minister would redeem his promise to the Indian Mussulmans, that the Punjab wound would be healed, and that the reforms, inadequate and unsatisfactory though they were, marked a new era of hope in the life of India But all that hope was shattered The Khilafat piomise was not to be redeemed The Punjab crime was whitewashed and most culprits went not only unpunished but remained in service and in some cases continued to draw pensions from the Indian revenue, and in some cases were even rewarded I saw too that not only did the reforms not mark a change of heart, but they were only a method of further draining India of her wealth and of prolonging her servitude I came reluctantly to the conclusion that the British connection had made India more helpless than she ever was before, politically and economically A disarmed India has no power of resistance against any aggressor if she wanted to engage in an armed conflict with him So much is this the case that some of oui best men consider that India must take generations before she can achieve the Dominion status cottages just the supplement she needed for adding to her meager agricultural resources This cottage industry, so vital for India's existence, has been ruined by incredibly heartless and processes as described by English witnesses Little do town dwellers know how the semistarved masses of India are slowly sinking to lifelessness Little do they know that their miserable comfort represents the brokerage they get for the work they do for the foreign exploiter, that the profits and the brokerage are sucked from the masses Little do they realize that the government established by law in British India is carried on for this exploitation of the masses No sophistry, no jugglery in figures can explain away the evidence that the skeletons in many villages present to the naked eye I have no doubt whatsoever that both England and the town dwellers of India will have to answer, if there is a God above, for this crime against humanity which is perhaps unequaled in history The law itself in this country has been used to serve the foreign

exploiter My unbiased examination of the Punjab Martial Law cases has led me to believe that at least ninety-five per cent of convictions were wholly bad My experience of political cases in India leads me to the conclusion that in nine out of every ten the condemned men were totally innocent Their crime consisted in the love of their country. In ninety-nine cases out of a hundred justice has been denied to Indians as against Europeans in the courts of India This is not an exaggerated picture It is the experience of almost every Indian who has had anything to do with such cases In my opinion, the administration of the law is thus prostituted consciously or unconsciously for the benefit of the exploiter or self-defense on the other, have emasculated the people and induced in them the habit of simulation This awful habit has added to the ignorance and the self-deception of the administrators Section 124 A, under which I am happily charged, is perhaps the prince among the A, under which I am The greatest misfortune is that Englishmen and their Indian associates in the administration of the country do not know that they are engaged in the crime I have attempted to describe I am satisfied that many Englishmen and Indian officials honestly behave that they are administering one of the best system devised in the world and that India is making steady though slow progress They do not know that a subtle but effective system of terrorism and an organized display of force on the one hand, and the deprivation of all powers of retaliation or self-defense on the other, have emasculated the people and induced in them the habit of simulation Political sections of the Indian Penal Code designed to suppress the liberty of the citizen Affection cannot be manufactured or regulated by law If one has an affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence But the section under which Mr Banker [a colleague in nonviolence] and I are charged is one under which mere promotion of disaffection is a crime I have studied some of the cases tried under it, and I know that some of the most loved of India's patriots have been convicted under it I consider it a privilege, therefore, to be charged under that section I have endeavored to give in their briefest outline the reasons for my disaffection I have no personal ill will against any single administrator, much less can I have any disaffection toward the King's person But I hold it to be a virtue to be disaffected toward a government which in its totality has done more harm to India than any previous system India is less manly under the British rule than she ever was before Holding such a belief, I consider it to be a sin to have affection for the system And it has been a precious privilege for me to be able to write what I have in the various articles, tendered in evidence against me In fact, I believe that I have rendered a service to India and England by showing in non-co-operation the way out of the unnatural state in which both are living In my humble opinion, non-co-operation with evil is as much a duty as is co-operation with good But in the past, non-co-operation has been deliberately expressed in violence to the evildoer I am endeavoring to show to my countrymen that violent non-co-operation only multiplies evil and that as evil can only be sustained by violence, withdrawal of support of evil requires complete abstention from violence Nonviolence implies voluntary submission to the penalty for non-co-operation with evil I am here, therefore, to invite and submit cheerfully to the highest penalty that can be inflicted upon me for what in law is a deliberate crime and what appears to me to be the highest duty of a citizen The only course open to you the judge, is either to resign your post, and thus dissociate yourself from evil if you feel that the law you are called upon to administer is an evil and that in reality I am innocent, or to inflict on me the severest penalty if you believe that the system and the law you are assisting to administer are good for the people of this country and my activity is therefore injurious to the public weal

*****

ABOUT THE AUTHOR

About the Author

M.K. GANDHI

Mohandass Karamchand Gandhi was born on October 2, 1869 in Porbandar, Kathiawai, India He studied law and espoused the cause of Indians in India and in South Africa He got married in his 13th year and he went to England in 1888 to study law Returning back to India in 1891, he struggled to establish himself as a lawyer In 1893, he obtained a one year contract to perform legal services in South Africa and when he went there he was shocked by the racial discrimination and segregation faced by the Indians His resolved to fight against the prejudice got strengthened in 1893 when he was thrown out from the first class compartment on a train He found the Natal Indian Congress in 1894 to fight discrimination and extended his stay till 1914 Despite organizing protest meetings regularly, whenever the South African government was in deep trouble due to civil war or revolt by tribes, Gandhi suspended the agitation and organized missions to offer help to victims In 1906, Gandhi organized his first mass civil disobedience campaign which he called Sathyagraha (truth and firmness) In reaction to the South African government restricting the rights of Indians and not recognizing Hindu marriages

In 1914, he went to London and in 1915 he came to India He continued the struggle to liberate Indians, at the same time supporting the British war effects by constant supply of Indian soldiers to the war front The atrocities committed by the British in India inspired Gandhi to unite all the Indians for waging a non violent, non cooperation against the British Mass movements were organized under his leadership in from 1921 to 1922 (Non-Cooperation Movement also Khilafath agitation) In 1922, he was jailed and released in 1924 in 1930 the Civil Disobedience Movement was started by Gandhi which has a cluster of agitation like Salt Sathyagraha, burning of foreign clothes, etc it continued till 1934 In 1942, Gandhi launched the Quit India Movement after which he was jailed and released in 1944 At the time of Indian independence, Gandhi was against the division of India but on August 15, 1947 India gained independence and Pakistan gained independence on 14th august On January 30,1948 the 78 year old Gandhi was shot at point blank range by Hindu extremist Nathuram Godse, upset at Gandhi's tolerance on Muslims Gandhi's legacy continues even after his death because of his commitments to non violence and as the leader of suppressed and upressed people His actions inspired future human rights movements across the globe Many great leaders like Martin Luther King Jr in the US, Nelson Mandela in South Africa followed in his footsteps He showed the world that without taking the violent part independence of a nation can be won This was a revelation to the entire world and because of his greatness Rabindranath Tagore called him as the 'Mahatma – a great soul

LESSON ANALYSIS

Gandhi was charged with sedition and arrested in the year 1922 for writing and publishing three articles in his magazine Young India At the end of the trial, the Judge asked Gandhi if he wish to make any statement before receiving the sentence Gandhi expressed his wish to read a prepared statement and before that he explained the reasons for going against the government He accepted the advocate general's accusation that he was preaching disaffection towards the existing government Gandhi admitted that his disaffection with the British government commenced even before the publication of his three articles He also accepted responsibility for the violent incidence committed by his followers in Bombay, Madras and Chauri Chaura Exclaiming that "Nonviolence is the first article of my fate" and also the last article of his creed, he still ran the risk of playing with fire by insighting the mob against the British Gandhi wanted to avoid violence at all cost, but the people in mad fury on understanding the ruthless exploitation by the British government in India at times indulged in violent activities Gandhi took the entire responsibility for their behaviour and apologized sincerely for that At the same time he said that it is the duty of the judge to decide whether Gandhi's action amounted to a deliberate crime or a highest duty of a citizen He told the judge to give him the highest penalty if he was guilty and to resign the post if he thought that Gandhi was not guilty Stating this he read the prepared statement which runs as follows

Gandhi traced his association with the British government, which began on a difficult note in South Africa, where he had gone to represent legally the cause of Indians In 1893, Gandhi landed in South Africa and understood that as an Indian he had no rights But he told that he held no grudge against the British government Whenever the South African government was in trouble he organized voluntary corps and helped the government for example during the Boer challenge in 1899, the Zulu revolt in 1906 etc Appreciating his services the government in England gave him a Kaiser-I-Hind Gold Medal In 1914 when war broke out between England and Germany, Gandhi raised a volunteer ambulance corps in London and backhome in India from 1918 till the end of the first world war he organized volunteers from India He did all this with a hope that Indians would be treated equally in India

Before the end of the first world war the true colours of the British government was revealed It went back on its promise to give Dominion status to India Many harsh laws were passed to rob Indians of their rights like the Rowlatt Act, Crawling orders, public floggings culminating in the Jallianwala Bagh, Massacar Earlier the Muslims in India were assured that Turkey and the Muslims living there will not be treated harshly That promise was also broken and muslims were very affected All those British officers who humiliated, ill treated and murdered the Indians were honoured and received pensions from Indian revenue Seeing all these atrocities Gandhi realized that the British government will never ever give freedom to India Even if India got freedom, she will not able to retain her freedom since she was weak and disarmed Economically India was drained of her wealth The government dictated what crops Indians have to sow The raw materials for England's industries were got from India at very low prices leaving the farmers as paupers As the leftover cotton was sold at retail prices the cottage industry in each house could not afford to buy the raw materials England dumped her finished products at cheap rates in India thereby closing the cottage industries especially the weaving industries In the Punjab martial law cases, Gandhi found that in 99 cases justice was denied to Indians He realized that the whole administration was used for the benefit of the exploiter The middle level administrators were not aware of the plans of the British governments to reduce Indians to nothingness

Gandhi was arrested under section 124(a) of the Indian Penal Code He studied the case histories of many Indians charged under this section and considers it a privilege to be

ranked along with such patriots He states that he has no personal ill will against any person or the king Yet he considers it a virtue to be disaffected towards a government which in its totality has done more harm to India than any previous systems To have affections in such a systems was a sin and he firmly believed that he has rendered a service to India and England through the path of non-violence and non-cooperation Non-violence according to him implies voluntary submission to the penalty for non cooperation with evil At the end of the statement he requested the judge to either give him the highest penalty if he thought Gandhi was wrong or to resign from his post if he accepted that the British government was harming the Indians and not doing anything good to them

8. EDUCATING LAWYERS FOR A CHANGING WORLD

Erwin N. Griswold

FULL TEXT OF THE LESSION[1]

Legal education in this country, in any modern sense, is only about eighty years old The Association of American Law Schools has recently had its fiftieth birthday

During this period there have been many changes and developments in the law schools and in law teaching The program of instruction of the schools of eighty years ago, or fifty years ago, or even twenty-five years ago is materially changed today Much of the older subject matter is still found in the first year courses and the second year courses of today But a large part of the work done now in the latter half of the law school curriculum was not taught and, to a surprising extent, not even seriously thought of, even a generation ago

These changes reflect not merely growth and development in our law and society, but also, I believe, a marked change in the nature of the work done by lawyers, or at least by many lawyers At an earlier date by far the largest part of the activities of a busy lawyer was in the preparation and trial of cases in court and in family counseling, usually with respect to real estate or other property transactions, such as wills and trusts For the past fifty years, first in the big cities and then in other active law offices, the work has more and more involved matters of business counseling Sometimes lawyers have given up their practices and have become businessmen But more often they have continued to function as lawyers, giving advice on many types of problems to their business clients During the same period many lawyers have been called into public service of one sort or another for an important portion of their careers The law schools have had no alternative but to devote much more of their time to problems of public law, labor law, administrative law, securities legislation, government regulation of business, including antitrust law and taxation, to mention only some of the newer fields

For a generation the law schools have been trying to learn how to teach these subjects They had a good background for this problem in the methods that had been developed for the older subjects like torts and contracts But the newer fields different in many ways They are largely statutory, so that cannot be dealt with satisfactorily or appropriately by a purely case method They change and develop rapidly so that a painstaking point-by-point approach which seeks to uncover an underlying thread of consistent doctrine or analysis is hardly applicable In many ways the newer subjects are more demanding of law teachers They cannot be handled satisfactorily by burying oneself in the cloisters One cannot become a great scholar by accumulating notes Even more than in the older courses, what must be sought is understanding of processes and social and economic forces and factors rather than specific content—although the content can by no means be ignored

Although the law schools lagged in meeting some of these problems, their lag was, on the whole, I am inclined to believe, rather less than that of most of the rest of the profession Over the past fifteen years the schools have made great progress in developing their work and methods I am by no means smug about what we have done We must always keep working at the task of improving our teaching job It is my thesis today, however, that the time has come for our law schools, or some of them, to take on new tasks

There is so much work to be done in the legal field Our knowledge of the facts underlying most problems of legal relations is sketchy in the extreme or nonexistent Much of our legislation is piecemeal and haphazard-surprisingly good, as a matter of fact, when it is recalled that it is for the most part drafted by part-time legislators with little or no staff

[1] Erwin N Griswold, *"Educating Lawyers for A Changing World"*, **Law and Language**, R P Bhatnagar (ed), Trinity Press, New Delhi, pp 70-77

assistance, and usually no real opportunity for detailed or long-range study Even some of our oldest legislative matters, such as the statute of limitations, for example, have never received comprehensive examination or re-examination In many states the procedure is ancient and outmoded In others much of the structure of the criminal law and the penal system is in need of revision and re-evaluation I mention these only as illustrations of the possibilities I could go on—referring, among other things, to the problems of justice for the poor and more adequate legal service for persons of moderate means

Much of this needed work cannot be done effectively by lawyers in active practice, though their aid and counsel will be invaluable and necessary in dealing with many of the problems Indeed, much of the knowledge to be gained lies in the day-to-day experience of the Bar In the rapidly growing areas of the law, the law offices are likely to be better sources of knowledge than the judicial reports But practicing lawyers have their, problems, too They have their living to make They have their clients to serve Many of them are very generous in devoting large portions of their time and energy to public causes But it is unrealistic to expect that busy practitioners on a part-time basis can themselves do all the things that need to be done This is a task, I think, to which the law schools can make a major contribution Indeed, unless the law schools make this one of their jobs, I suspect it may suffer the fate of everybody's business and remain undone

The challenge which I think is being put to the law schools by our times is that, in addition to being effective teaching agencies, they should become, on a scale far greater than has heretofore been the case, centers for the carrying on of research into the law and its development and its application to the solution of current problems encountered in the adjustment of human relations This is the field of the law and the lawyer Within the legal profession, it is, I believe, peculiarly the opportunity of the law schools to meet this need

But, you will say, the law schools have long been centers of research For many years, following the example of the great Supreme Court Justice, Joseph Story, law professors have been turning out great streams of books and articles which have contributed to our knowledge of the law and of its place in society In modern times there have been the great works of Williston and Scott and Wigmore, to mention only a few And there are now some seventy-five law reviews, turning out altogether far more material than any person can possibly read or digest Why do I talk about more legal research when we already have so much?

That is an appropriate question, but I think it can be readily answered We need much legal research of a sort far different from most that has been carried on heretofore Much of the legal research of the past has been largely solitary work, a library task done by individual scholars-occasionally with some help, but usually not much Out of this work has come great benefits Through the great treatises and similar work, much of the common law has been systematized Many reforms and improvements have resulted, as well as a better understanding of the law for practitioners, judges and students It has been a fine job But it is not enough

We have become accustomed to our scientific schools and our medical schools being great centers of research In many of these schools, teaching as such has become a secondary activity Far more of the personnel are engaged in research activities than in teaching But, interestingly enough and important for our purposes, the research activities contribute directly and inevitably to the teaching The findings of the research become available for teaching The students can often engage directly in the research activities, especially the more advanced students, and can derive great educational benefits from such work We should not think of a medical school or a physics department as great unless it was carrying on extensive research activities Why should the situation be any different at a law school? Can it be said

that the problems of the adjustment of human relations, with which the law deals, are any less important or any less difficult than those which are dealt with in the natural sciences?

The job that has been done so far by the natural scientists is one of the easier jobs to be done in the field of human knowledge I do not for a moment want to minimize the achievements of the great scholars and doers in these fields They have been magnificent But I do want to suggest that these achievements have been made in what is probably, on a relative basis, a rather simple area of human knowledge Natural science deals with phenomena that are observable and measurable with reasonable accuracy It deals with a finite number of variables, usually a very small number Its hypotheses lend themselves to ready mathematical statement and to verification by experiment that can be conducted in a relatively short interval of time with practically every element closely controlled

By contrast, the problems of the so-called social sciences, the problems of the adjustment of human relations in society, are vastly more complex There are an almost unlimited number of variables Many of them are difficult, or, so far, impossible to isolate, observe and measure Little mathematics has yet been developed that is adapted to stating and analyzing these problems Yet, the problems seem clearly more important to mankind, at this stage of its history, than anything which remains on the agenda of natural science The basic problem now confronting society is whether it will be able to control the forces that science has developed This involves baffling questions of human nature, psychology, economics, political science, law and other fields which we have hardly begun to explore We have been working at these questions long and hard, but before you smile at our relatively small achievement, let me assert again that they are more difficult, or have so far seemed to be more difficult, than those of the natural sciences

The results of our efforts to date are surely rather slight and disappointing But here, even as in the natural sciences, we must not expect perfection and we can and must do much with less while we are developing our knowledge toward a greater understanding and control of human relationships

The social sciences are now in some ways at about the point where the natural sciences were a century or so ago I the seventeenth and eighteenth centuries, the social sciences, particularly government and law, made great progress, relatively speaking That was the age of the rise of Parliament, of the Bill of Rights, of the American Revolution, of Rousseau and Paine and Jefferson During this period men in the English-speaking world progressed far on the path to freedom

Until about a century ago, the natural sciences were largely developed by men acting alone and with little in the way of equipment or support Benjamin Franklin, Boyle, Lavoisier were not financed by endowments or grants from industrial firms A few colleges had professors of physics or chemistry They worked by themselves, occasionally making a bit of progress They were on the threshold of great discoveries, but they could hardly know this fact Galvani did not foresee radio, and Farraday had no conception of a 50,000 kilowatt generator As the discoveries of scientists accumulated, their support increased and their numbers multiplied The natural result was great production in the field, with consequent great increase in the facilities and the problems of mankind

Of course, I cannot foresee the next hundred years, any more than the men of a hundred years ago could discern the developments of the past century I cannot tell you in what direction developments may come, nor the means by which they will be produced I cannot even tell you, except in the most general terms, what are the problems to be solved Surely the analogy to the natural sciences should not be pushed too far, for progress in the problems of human relations will require the development of new approaches and methods This much does seem clear We shall not make progress in this supremely important field of

adjusting human relations unless we work at it intensively And I have the feeling that we can and shall make significant progress if we devote to these problems the same sort of intellectual energy and talent and resources which has been devoted to the natural sciences in the past hundred years We should not forget that there were many centuries when men must have looked at the plague and smallpox, at slow communication and difficult transport, at heavy manual labor and household drudgery with the same feeling of resignation and inevitability with which they may now sometimes regard the problems of crime and civil controversy, or international relations and war

The attack on these problems is a complicated and difficult assignment Significant progress in the field may well require support and stimulus and encouragement far greater than have been devoted to the natural sciences in the past century We shall have to be vouchsafed some geniuses But experience gives room to hope that they will come if we can prepare the ground for them, just as Maxwell and Gibbs and others appeared on the scientific scene Results can be no more guaranteed than they could be in science a hundred years ago But there can be no doubt of the world's need and little doubt that the need cannot be met unless we pour tremendous energy and resources into the task

Perhaps I speak from a biased point of view, but it seems to me that the time has come when we should greatly extend our efforts in this area We should have more extensive and better organized support which will make it possible to accumulate knowledge in many fields of human relations such as anthropology, social psychology, economics and law Difficult as the problems in these areas surely are, can it be said with any positiveness that they are any more remote, any more unsolvable, than was the problem of the structure of the atom a century ago? Is there any reason to think that they will not yield significantly to the properly directed efforts of many human minds?

One of the things that will have to be understood is that this task will require large sums of money There is little conception yet of the inevitable high costs of research in this field Many of the tasks that need doing require extensive work in the field They require teamwork, often involving the collaborative effort of persons trained in many different fields of endeavor They cannot be done effectively on a part-time basis or in a short period of time We think little of putting $10,000,000 or more into a cyclotron, while my school has for years had extreme difficulty in raising $25,000 a year to cover the costs of a remarkable and Productive basic research into the causes of juvenile delinquency and the effectiveness of present methods of dealing with that vastly important problem

There is another figure which I rather enjoy quoting The school with which I am associated is perhaps as well financed as any law school in the country Yet the Law School's portion of the total endowment of Harvard University is about 3 per cent And at the present time the Harvard Medical School spends seven times as much per student each year as the Harvard Law School I expect that a very similar relation exists elsewhere I mention this fact without any thought at all that the expenditure for medical education and research is excessive-far from it My point is that up to now it seems to me very clear that legal education and research in the fields of law and related social sciences have been starved financially We cannot expect to achieve the results we need until greater support for this work is provided And, of course, we cannot hope for such support unless and until we in the law schools initiate worth-while projects that will command the interest of the profession and the community Out of such research activities will come many developments of direct use in teaching The medical school with extensive research activities is clearly a better teaching medical school In addition, research activities of the sort I have in mind will necessarily contribute greatly to the practicing members of the legal profession, just as the research

activities of the medical schools today contribute constantly to the effectiveness and the knowledge of the members of the medical profession

Already many law schools are recognizing that they have a great obligation to the practicing members of the Bar and a great opportunity in contributing to them The development of forums and institutes for practicing lawyers has done much to keep the Bar informed and alert to new problems and developments I hope that this work will continue and increase It should be an essential and important part of any program of effective legal research in a law school

Among the subjects on which I hope that we will devote great time and effort in the field of legal research is that of the legal problems involved in international relations This would cover such things as the private law problems encountered in foreign trade and investment, on the one hand, and the public law problems involved in world organization, on the other Even in this crucially important field, our basic knowledge today can hardly be regarded as more than rudimentary

If we are enabled to carry out these tasks of effective legal research, we must not expect too much and too soon We are going to have to develop new techniques of research—methods that will enable the investigator to get at the real heart of the problems and not simply to multiply strata of footnotes or heap up mountains of statistics Moreover, in this field of human relations, even more than in the natural sciences, we shall not find final answers to all questions But final answers are not necessary to progress, as the development of natural science clearly shows Effective results may be produced with knowledge that is incomplete The telephone was in daily use while Hertzian waves were still equations in Maxwell's book

There is a challenge to our law schools Nowhere has more been done to recognize that challenge than at the Southwestern Legal Foundation I salute Dean Storey and all of those who have had the vision here and have helped to make this development possible But this, and all that you have done, is only a start For the sake of all of us, I hope that you, and many others, can go on much farther

*****

ABOUT THE AUTHOR

Erwin N Griswold (1904-1994) was an appellate attorney before US Supreme Court and served as Solicitor General of US (1967-1973), 6th Dean of Harvard Law School(1946-1967) for 21 years, member of US commission on Civil Rights and President of America Bar Foundation He completed his LLB from in Harvard Law School (1925-1929) He was an expert in tax laws and in 1926-compiled the "Blue Book," a uniform system of legal citation As a student in 1934 he joined Harvard Law School and served as Assistant Law Professor from 1935-1946 as Professor from 1946-1967 and later as Dean

As Dean, he saw the first female students in 1950 He introduced specialized topics such as Labour Relation, Family Law and Copyright law He strengthened the faculty, library and financial requirement In 1979, Harvard dedicated Griswold hall, Dean's office, Faculty offices and classrooms as a gesture of his impact on Harvard community From 1961-1967 he served as Member of US Civil Rights Commission in 1967 President Johnson appointed him as Solicitor - General on the same date of his retirement as dean In 1973, he resigned as Solicitor General and joined a law firm Trustee His alma mater, Oberlite College in 2014, created the Erwin N Griswold 25 Chairl in Politics and law

ERWIN N. GRISWOLD

The Books He Wrote Was

1) Spend thrift Trusts (1936)

2) Cases on Federal, Taxation (1940)

3) Cases on Conflict laws (1942)

4) The Fifth Amendment Today, Law and Lawyers in the United States (1992)

LESSON ANALYSIS

The author Erwin N Griswold in this essay "Educating Lawyers for a Changing World" stresses on two aspects for bettering the quality of legal education and the legal system so as to enable it to serve society's needs effectively He first discusses about how law has widened its horizon and its positive effects on growth and opening of new job avenues for law professionals apart from the regular teaching and judicial service

The role of law schools in strengthening not only education but also the legal system and the urgency to concentrate on legal research to solve social issues are the two major points discussed elaborately by Erwin N Griswold

The concept of law schools offering in depth law courses was introduced in America after the II World War The institutions do not stop with offering torts and contracts, like in the traditional system, but ventures to offer newer subjects that are evolving But the newer subjects are mostly statutory and they change and develop rapidly Teaching such subjects are difficulty and case methods too cannot be followed The newer subjects are most demanding Despite the difficulty, the law schools are doing a great job They have made great progress in their work and method But, the author feels that the law schools can and should contribute even more to the legal profession

There are many legislative enactments which are piecemeal and haphazard There are also many procedural aspects which are out moded and require comprehensive examination Even the criminal law and penal system, law relating to legal service etc , are to be revived This work can be effectively taken up by the lawyers who are in touch with the

problems faced by litigants in every case Due to paucity of time, lawyers cannot undertake to do this task as they have their clients to serve The law schools can effectively do this work wherein the teachers and the students can collect the relevant data analyse it and develop a body of research findings. The law schools can be centres for carrying on research in law, its development and its application to solve problems in the society Whatever research the law schools are presently carrying on is the work of interested individuals That is not enough

The author then puts forth his views on the importance of legal research He points out that research in natural science especially in medical schools contribute a lot towards teaching that subject In fact teaching is secondary and medical research is primary Just like how medical research is of prime importance, legal research too should strive for that Funding for scientific research is done not only by government and its agencies, but also followed by private individuals and concerns, whereas legal research has few takers and fewer sponsors

Erwin points out that social science saw good development in the 17th century and that point of time physical science was struggling The present scenario has been reversed Natural science deals with phenomena that are observable and measurable whereas social science deals with human relations and adjustments Concrete solutions may not be possible in legal research Yet it is more important to pursue legal research and not be bothered about solutions Hard work and sincere work will definitely lead to solution through social science research

Natural sciences are progressing at a fast pace and social sciences including law are lagging behind This gives rise to many of social issues cropping up Hence research in law and social science only can give apt solutions to the existing social problems not only at the national level but at the international level also Since research in social sciences depends on human nature, results cannot be exact and accurate as can be found in natural science research, but that should not deter from doing research Thus Erwin N Griswold stresses on two aspects namely legal research and more responsibilities for law schools for taking legal education and legal institutions to great heights in their service to society

9. DUE PROCESS OF LAW

Lord Denning

FULL TEXT OF THE LESSON[1]

1 In my own presence

It is an old phrase - 'contempt in the face of the Court' It means a contempt which the Judge sees with his own eyes so that he needs no evidence of witnesses He can deal with it himself at once

The most quoted case goes back to the year 1631 It was at Salisbury on the Western Circuit A prisoner threw a brickbat at the Judge of Assize It was originally reported in Norman-French That was the language which was commonly in use by lawyers and reporters at that time But put into English, the translation is given in 3 Dyer at 188b

'Richardson Chief Justice of C B at the assizes at Salisbury in the summer of 1631 was assaulted by a prisoner condemned there for felony, who after his condemnation threw a brickbat at the said Judge which narrowly missed, and for this an indictment was immediately drawn by Noy against the prisoner, and his right hand cut off and fixed to the gibbet, upon which he was immediately hanged in the presence of the Court'

I have often told of that case to the students with the apocryphal addition

'The Judge had his head on one side on his hand as the brickbat whizzed past Straightening himself up, he said, "If I'd been an upright judge, I should no longer be a judge"'

Leaving reported cases I can give evidence of what I have seen with my own eyes I was a junior waiting in the Court of Appeal for my case to be reached It was in the Court next to Carey Street Just before the midday adjournment, a man got up from the row behind me He threw a tomato at the Judges It was not a good shot It passed between Lords Justices Clauson and Goddard It hit the panelling with a loud squish They were taken aback They adjourned for a few minutes Then they returned, had him brought up, and sentenced him straightaway to six weeks' imprisonment

Later on, when I was sitting as a Lord Justice in the same Court with Lord Justice Bucknill, it was similar but not the same It was a hot day Counsel were talking a lot of hot air A man got up with his stick and smashed the glass window To let in some fresh air, I suppose At any rate we did not commit him for contempt of court We sent him off to Bow Street to be dealt with for malicious damage

Still later, when I was presiding, we became more lenient On every Monday morning we hear litigants in person Miss Stone was often there She made an application before us We refused it She was sitting in the front row with a bookcase within her reach She picked up one of Butterworth's 'Workmen's Compensation Cases' and threw it at us It passed between Lord Justice Diplock and me She picked up another That went wide too She said, 'I am running out of ammunition' We took little notice She had hoped we would commit her for contempt of court — just to draw more attention to herself As we took no notice, she went towards the door She left saying 'I congratulate your Lordships on your coolness under fire'

2 The Welsh students invade the Court

It was a dramatic case Students of Wales were very enthusiastic about the Welsh language and they were very upset because the programmes to Wales were being broadcast in English and not in Welsh They demonstrated to make a protest They came up to London

[1] Denning, Lord, **The Due Process of Law**, Oxford University Press, New York, 2008, pp 1-55

They invaded the Court I could see their point of view for I have a special relationship with Wales During the First World War I was a second lieutenant in the Royal Engineers I myself am, of course, English on both sides, from time without memory But I was posted to the 151st Field Coy of the Royal Engineers which was attached to the 38th (Welsh) Division. I wore on my arm-flash the Red Dragon of Wales I served with them in France One of my proudest records (I was just 19) is an entry in the history of the Welsh Division recording the night of 23/24 August 1918 when we advanced across the river Ancre under heavy shell and rifle fire

'Meanwhile two battalions of the 115th Brigade had crossed the Ancre at Aveley over a bridge made by the 151st Field Company RE under the supervision of Lieutenants Denning and Butler and formed up on a one battalion frontage on the left of 113th Brigade'

A simple entry of a brave occasion But I record it now because of some comments I received after the case of the Welsh students, *Morris v Crown Office*[1]

It was the first case in which the Court of Appeal had to consider 'contempt in the face of the Court' Eleven young students had been sentenced to prison Each for three months They were all from the University of Aberystwyth They were imbued with Welsh fervour They had been sentenced on Wednesday, 4 February 1970 I always see that urgent cases are dealt with expeditiously We started their appeal on Monday, 9 February and decided it on Wednesday, 11 February I also have some say in the constitution of the Court So I arranged for one of the Welsh Lords Justices to sit Lord Justice Arthian Davies was well qualified He was not only Welsh He could speak Welsh He sat with Lord Justice Salmon and me We heard the argument on the Monday and Tuesday We discussed the case on Wednesday morning and delivered judgment on the Wednesday afternoon We had to do it so quickly that I hope you will excuse its imperfections But these are some extracts from it[2]
'Last Wednesday, just a week ago, Lawton J, a judge of the High Court here in London, was sitting to hear a case It was a libel case between a naval officer and some publishers He was trying it with a jury It was no doubt an important case, but for the purposes of today it could have been the least important It matters not For what happened was serious indeed A group of students, young men and young women, invaded the court It was clearly prearranged They had come all the way from their University of Aberystwyth They strode into the well of the court They flocked into the public gallery They shouted slogans They scattered pamphlets They sang songs They broke up the hearing The judge had to adjourn They were removed Order was restored

'When the judge returned to the court, three of them were brought before him He sentenced each of them to three months' imprisonment for contempt of court The others were kept in custody until the rising of the court Nineteen were then brought before him The judge asked each of them whether he or she was prepared to apologise Eight of them did so The judge imposed a fine of £50 on each of them and required them to enter into recognisances to keep the peace Eleven of them did not apologise They did it, they said, as a matter of principle and so did not feel able to apologise The judge sentenced each of them to imprisonment for three months for contempt of court

'In sentencing these young people in this way the judge was exercising a jurisdiction which goes back for centuries It was well described over 200 years ago by Wilmot J in an opinion which he prepared but never delivered "It is a necessary incident", he said, "to every court of justice to fine and imprison for a contempt of the court acted in the face of it" That is *R v Almon* (1765) Wilm 243, 254 The phrase "contempt in the face of the court" has a

[1] [1970] 2 QB 114
[2] Ibid at 121 and 125

quaint old-fashioned ring about it, but the importance of it is this of all the places where law and order must be maintained, it is here in these courts The course of justice must not be deflected or interfered with Those who strike at it strike at the very foundations of our society To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it It is a great power - a power instantly to imprison a person without trial - but it is a necessary power So necessary, indeed, that until recently the judges exercised it without any appeal There were previously no safeguards against a judge exercising his jurisdiction wrongly or unwisely This was remedied in the year 1960 An appeal now lies to this court, and, in a suitable case, from this court to the House of Lords With these safeguards this jurisdiction can and should be maintained

'Eleven of these young people have exercised this right to appeal and we have put all other cases aside to hear it For we are here concerned with their liberty and our law puts the liberty of the subject before all else

'At this point I would pay a tribute to the way in which Mr Watkin Powell conducted this appeal on their behalf He did as well as any advocate I ever heard We have been much assisted too by the Attorney-General, who came here, not as prosecutor, but as a friend of the court He put all the relevant considerations before us to our grateful benefit

'I hold, therefore, that a judge of the High Court still has power at common law to commit instantly to prison for criminal contempt, and this power is not affected in the least by the provisions of the Act of 1967 The powers at common law remain intact It is a power to fine or imprison, to give an immediate sentence or to postpone it, to commit to prison pending his consideration of the sentence, to bind over to be of good behaviour and keep the peace, and to bind over to come for judgment if called upon These powers enable the judge to give what is, in effect, a suspended sentence I have often heard a judge say at common law, for ordinary offences, before these modern statutes were passed

"I will bind you over to come up for judgment if called upon to do so Mark you, if you do get into trouble again, you will then be sentenced for this offence I will make a note that it deserves six months' imprisonment So that is what you may get if you do not accept this chance"

'That is the common law way of giving a suspended sentence It can be done also for contempt of court

'I come now to Mr Watkin Powell's third point He says that the sentences were excessive I do not think they were excessive, at the time they were given and in the circumstances then existing Here was a deliberate interference with the course of justice in a case which was no concern of theirs It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated Let students demonstrate, if they please, for the causes in which they believe Let them make their protests as they will But they must do it by lawful means and not by unlawful If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace So let them support the law and not strike it down

'But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week He has shown that law and order must be maintained, and will be maintained But on this appeal, things are changed These students here no longer defy the law They have appealed to this court and shown respect for it They have already served a week in prison I do not think it necessary to keep them inside it any longer These young people are no ordinary criminals There is no violence, dishonesty or vice in them On the contrary, there was much that we should applaud They wish to do all

they can to preserve the Welsh language Well may they be proud of it It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue On high authority, it should be equal in Wales with English They have done wrong - very wrong - in going to the extreme they did But, that having been shown, I think we can, and should, show mercy on them We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed

'There must be security for the future They must be of good behaviour They must keep the peace I would add, finally, that there is power in this court, in case of need, to recall them If it should become necessary, this court would not hesitate to call them back and commit them to prison for the rest of the sentence which Lawton J passed on them

'Subject to what my brethren will say in a few moments, I would propose that they be released from prison today, but that they be bound over to be of good behaviour, to keep the peace and to come up for judgment if called upon within the next 12 months'

Now I return to the commentators The reaction from England was expressed in two anonymous postcards that I received One said 'You lousy coward' The other said 'You ought to resign' But the reaction from Wales was one of entire satisfaction The newspapers applauded us A Dean of Divinity wrote simply, 'Thank you for doing justice by our young people'

3 The Official Solicitor comes in with the Devil

That contempt was done 'in the face of the Court' The Judge saw it with his very eyes He witnessed it So he needed no evidence to prove it Is this kind of contempt limited to what the Judge himself sees? Suppose he sees nothing himself, but he has to have witnesses to prove it Can the Judge then try it summarily? Is the offender entitled to legal representation? Is he entitled to claim trial by jury? Those important questions came up for decision in another case It is *Balogh v St Albans Crown Court*[1] Mr Balogh was a young man of whom the newspapers took some notice for he was the son of the distinguished economist Lord Balogh He played a practical joke and found himself sentenced to prison Melford Stevenson J sentenced him to six months' imprisonment As Mr Balogh wished to appeal he wrote to the Official Solicitor

Now the Official Solicitor is a most useful person He looks after the interests of those who cannot, or will not, look after themselves Such as infants and persons in need of care and protection He takes a special interest in persons committed for contempt of court because people are sometimes a bit obstinate Quite often a wife gets an order against her husband for the sale of the house - he disobeys it and is committed for contempt He would rather stay in prison indefinitely than give up the house to his wife In such a case the Official Solicitor takes up the case for him and gets him released, as in *Danchevsky v Danchevsky*[2] Such persons often refuse to do anything to purge their contempts They take no steps to appeal They sit sullenly aggrieved in their prison cells They may sit there indefinitely unless somebody does something to bring their case before the Court So the Official Solicitor does it

The Official Solicitor took up the case of Mr Balogh He lodged notice of appeal But who was to be respondent to the appeal? It could not be the Judge No judge can be sued, served or summoned for anything he does as a judge So we invited the Attorney-General to appoint a counsel as *amicus curiae* - that is, as a friend of the Court - to help us That is the practice The Attorney-General appointed the Treasury 'Devil', Mr Gordon Slynn A 'devil', in the eyes of the law, is an unpaid hack When I started at the Bar, I often looked up cases

[1] [1975] 1 QB 73
[2] [1975] Fam 17

and even wrote opinions for a barrister senior to me - and was not paid a penny I 'devilled' for him I did it to get experience It is different now A 'devil' is always paid for his work The Treasury 'Devil' is the best of devils He is the pick of the juniors at the Bar with a reversion to a judgeship Mr Gordon Slynn was outstanding The best I have ever known He will go far

4 The 'laughing gas' does not escape

Mr Balogh's practical joke is so entertaining - and the Judge's handling of it so instructive - that I would simply quote from it and let my judgment speak for itself[1]

'There is a new Court House at St Albans It is air-conditioned In May of this year the Crown Court was sitting there A case was being tried about pornographic films and books Stephen Balogh was there each day He was a casual hand employed by solicitors for the defence, just as a clerk at £5 a day, knowing no law The case dragged on and on He got exceedingly bored He made a plan to liven it up He knew something about a gas called nitrous oxide (N_2O) It gives an exhilarating effect when inhaled It is called "laughing gas" He had learned all about it at Oxford During the trial he took a half cylinder of it from the hospital car park He carried it about with him in his brief case His plan was to put the cylinder at the inlet to the ventilating system and to release the gas into the court It would emerge from the outlets which were just in front of counsel's row So the gas, he thought, would enliven their speeches It would be diverting for the others A relief from the tedium of pornography So one night when it was dark he got on to the roof of the court house He did it by going up from the public gallery He found the ventilating ducts and decided where to put the cylinder Next morning, soon after the court sat, at 11 15, he took his brief case, with the cylinder in it, into court no 1 That was not the pornography court It was the next door court It was the only court which had a door leading up to the roof He put the brief case on a seat at the back of the public gallery Then he left for a little while He was waiting for a moment when he could slip up to the roof without anyone seeing him But the moment never came He had been seen on the night before The officers of the court had watched him go up to the roof So in the morning they kept an eye on him They saw him put down his brief case When he left for a moment, they took it up They were careful There might be a bomb in it They opened it They took out the cylinder They examined it and found out what it was They got hold of Balogh They cautioned him He told them frankly just what he had done They charged him with stealing a bottle of nitrous oxide He admitted it They kept him in custody and reported the matter to Melford Stevenson J who was presiding in court no 1 (not the pornogaphy court) At the end of the day's hearing, at 4 15 p m , the judge had Balogh brought before him The police inspector gave evidence Balogh admitted it was all true He meant it as a joke A practical joke But the judge thought differently He was not amused To him it was no laughing matter It was a very serious contempt of court Balogh said "I am actually in the wrong court at the moment The proceedings which I intended to subvert are next door Therefore, it is not contempt against your court for which I should be tried" The judge replied

"You were obviously intending at least to disturb the proceedings going on in courts in this building, of which this is one You will remain in custody tonight and I will consider what penalty I impose on you in the morning"

'Next morning Balogh was brought again before the judge The inspector gave evidence of his background Balogh was asked if he had anything to say He said

[1] [1975] 1 QB 7 at 81, 84 and 86

"I do not feel competent to conduct it myself I am not represented in court I have committed no contempt I was arrested for the theft of the bottle No further charges have been preferred"

The judge gave sentence

"It is difficult to imagine a more serious contempt of court and the consequences might have been very grave if you had carried out your express intention I am not going to overlook this and you will go to prison for six months I am not dealing with any charge for theft I am exercising the jurisdiction to deal with the contempt of court which has been vested in this court for hundreds of years

That is the basis on which you will now go to prison for six months"

Balogh made an uncouth insult "You are a humourless automaton Why don't you self-destruct?" He was taken away to serve his sentence

'Eleven days later he wrote from prison to the Official Solicitor In it he acknowledged that his behaviour had been contemptible, and that he was now thoroughly humbled He asked to be allowed to apologise in the hope that his contempt would be purged The Official Solicitor arranged at once for counsel to be instructed, with the result that the appeal has come to this court

'But I find nothing to tell us what is meant by "committed in the face of the court" It has never been defined Its meaning is, I think, to be ascertained from the practice of the judges over the centuries It was never confined to conduct which a judge saw with his own eyes It covered all contempts for which a judge of his own motion could punish a man on the spot So "contempt in the face of the court" is the same thing as "contempt which the court can punish of its own motion" It really means "contempt in the cognisance of the court"

'Gathering together the experience of the past, then, whatever expression is used, a judge of one of the superior courts or a judge of Assize could always punish summarily of his own motion for contempt of court whenever there was a gross interference with the course of justice in a case that was being tried, or about to be tried, or just over - no matter whether the judge saw it with his own eyes or it was reported to him by the officers of the court, or by others -whenever it was urgent and imperative to act at once This power has been inherited by the judges of the High Court and in turn by the judges of the Crown Court

'This power of summary punishment is a great power, but it is a necessary power It is given so as to maintain the dignity and authority of the court and to ensure a fair trial It is to be exercised by the judge of his own motion only when it is urgent and imperative to act immediately - so as to maintain the authority of the court - to prevent disorder - to enable witnesses to be free from fear - and jurors from being improperly influenced - and the like It is, of course, to be exercised with scrupulous care, and only when the case is clear and beyond reasonable doubt see *R v Gray* [1900] 2 QB 36, 41 by Lord Russell of Killowen CJ But properly exercised it is a power of the utmost value and importance which should not be curtailed

'Over 100 years ago Erle CJ said that " these powers, as far as my experience goes, have always been exercised for the advancement of justice and the good of the public" see *Ex parte Fernandez* (1861) 10 CBNS 3, 38 I would say the same today From time to time anxieties have been expressed lest these powers might be abused But these have been set at rest by section 13 of the Administration of Justice Act 1960, which gives a right of appeal to a higher court

'As I have said, a judge should act of his own motion only when it is urgent and imperative to act immediately In all other cases he should not take it upon himself to move He should leave it to the Attorney-General or to the party aggrieved to make a motion in accordance with the rules in R S C , Ord 52 The reason is so that he should not appear to be both prosecutor and judge for that is a role which does not become him well

'Returning to the present case, it seems to me that up to a point, the judge was absolutely right to act of his own motion The intention of Mr Balogh was to disrupt the proceedings in a trial then taking place His conduct was reported to the senior judge then in the court building It was very proper for him to take immediate action, and to have Mr Balogh brought before him But once he was there, it was not a case for summary punishment There was not sufficient urgency to warrant it Nor was it imperative He was already in custody on a charge of stealing The judge would have done well to have remanded him in custody and invited counsel to represent him If he had done so counsel would, I expect, have taken the point to which I now turn

'When this case was opened, it occurred to each one of us Was Mr Balogh guilty of the offence of contempt of court? He was undoubtedly guilty of stealing the cylinder of gas, but was he guilty of contempt of court? No proceedings were disturbed No trial was upset Nothing untoward took place No gas was released A lot more had to be done by Mr Balogh He had to get his brief case He had to go up to the roof He had to place the cylinder in position He had to open the valve Even if he had done all this, it is very doubtful whether it would have had any effect at all The gas would have been so diluted by air that it would not have been noticeable So here Mr, Balogh had the criminal intent to disrupt the court, but that is not enough He was guilty of stealing the cylinder, but no more

'On this short ground we think the judge was in error We have already allowed the appeal on this ground But, even if there had not been this ground, I should have thought that the sentence of six months was excessive Balogh spent 14 days in prison and he has now apologised That is enough to purge his contempt, if contempt it was

'Conclusion

'There is a lesson to be learned from the recent cases on this subject It is particularly appropriate at the present time The new Crown Courts are in being The judges of them have not yet acquired the prestige of the Red Judge when he went on Assize His robes and bearing made everyone alike stand in awe of him Rarely did he need to exercise his great power of summary punishment Yet there is just as much need for the Crown Court to maintain its dignity and authority The judges of it should not hesitate to exercise the authority they inherit from the past Insults are best treated with disdain – save when they are gross and scandalous Refusal to answer with admonishment – save where it is vital to know the answer But disruption of the court or threats to witnesses or to jurors should be visited with immediate arrest Then a remand in custody and, if it can be arranged, representation by counsel If it comes to a sentence, let it be such as the offence deserves - with the comforting reflection that, if it is in error, there is an appeal to this court We always hear these appeals within a day or two The present case is a good instance The judge acted with a firmness which became him As it happened, he went too far That is no reproach to him It only shows the wisdom of having an appeal'

2 The victimization of wiwtness

1 The trade union member is deprived of his office

Now I turn to a closely related topic Every Court has to depend on witnesses It is vital to the administration of justice that they should give their evidence freely and without

fear Yet everyone knows that witnesses may be suborned to commit perjury - they may be threatened with dire consequences if they tell the truth - they may be punished afterwards for telling the truth You might think it obvious that it was a gross contempt of court for anyone to intimidate or victimise a witness Yet it was not until 1962 that this was fully debated and considered It was in *Attorney-General v Butterworth*[1] Mr Butterworth and others were on the committee of the branch of a trade union One of the members had given evidence which they disliked He had given it before the Restrictive Practices Court Mr Butterworth and others determined to punish him for it They deprived him of his office as branch delegate and treasurer It was reported to the Attorney-General because he has a public duty to prosecute for contempt of court He considered that the action of Mr Butterworth and the others was a contempt He applied to the Restrictive Practices Court They held it was not a contempt The Attorney-General appealed to our Court

Now I remember this case for a particular reason It was argued for three days on Wednesday, Thursday and Friday, 11, 12 and 13 July 1962 It was the 'night of the long knives' The Prime Minister, Mr Harold Macmillan, dispensed with most of his ministers, at a minute's notice, they included the Lord Chancellor, Lord Kilmuir That left him very sore Now one of the duties of the Master of the Rolls is that he has to swear in any new Lord Chancellor One day I was warned that I would have to swear in a new Lord Chancellor I was not told who he was But during that morning the Attorney-General, Sir Reginald Manningham-Buller (who was arguing the case himself), asked to be excused for an hour or two We guessed the reason He was arguing before us as Attorney-General The next day he was Lord Chancellor above us We decided in his favour - but on the merit of his argument - not because he had become Lord Chancellor Things like that make no impact on us As in all these cases we do not delay We prepared our judgments over the weekend and gave them on the Monday morning He was sworn in before us on the Tuesday In the judgment we sought to enunciate the relevant principles[2]

'In the case of Butterworth, Bailey and Etherton, the predominant motive in the minds of each of those gentlemen was to punish Greenlees for having given evidence in the R E N A case

'I cannot agree with the decision of the Restrictive Practices Court It may be that there is no authority to be found in the books, but if this be so, all I can say is that the sooner we make one the better For there can be no greater contempt than to intimidate a witness before he gives his evidence or to victimise him afterwards for having given it How can we expect a witness to give his employment, or to be expelled from his trade union, or to be deprived of his office, or to be sent to Coventry, simply because of that evidence which he has given? I decline to believe that the law of England permits him to be so treated If this sort of thing could be done in a single case with impunity, the news of it would soon get round Witnesses in other cases would be unwilling to come forward to give evidence, or, if they did come forward, they would hesitate to speak the truth, for fear of the consequences To those who say that there is no authority on the point, I would say that the authority of Lord Langdale MR in *Littler v Thomson*[3] is good enough for me

"If witnesses are in this way deterred from coming forward in aid of legal proceedings, it will be impossible that justice can be administered It would be better that the doors of the courts of justice were at once closed"

---

[1] [1963] 1 QB 696

[2] [1963] 1 QB 696 at 717

[3] [1839] 2 Beav 129 at 139

I have no hesitation in declaring that the victimisation of a witness is a contempt of court, whether done whilst the proceedings are still pending or after they have finished Such a contempt can be punished by the court itself before which he has given evidence, and, so that those who think of doing such things may be warned where they stand, I would add that if the witness has been damnified by it he may well have redress in a civil court for damages

'Whilst I agree that there is no authority directly on the point, I beg leave to say that there are many pointers to be found in the books in favour of the view which I have expressed

'In most of the cases which I have mentioned the witness had finished his evidence but the case itself was not concluded at the time when the step was taken against him Nevertheless the principle was laid down, as I have shown, in terms wide enough to cover cases where the proceedings were concluded And I must say that I can see no sense in limiting this species of contempt to punishment inflicted on a witness while the case is still going on Victimisation is as great an interference with justice when it is done after a witness gets home as before he gets there No such distinction is drawn in the case of interference with a juror Nor should it be drawn in the case of a witness In *R v Martin*[1] the jury convicted one John Martin, the foreman of the jury had scarcely reached home and gone upstairs when the prisoner's brother, James Martin, called and challenged the foreman to mortal combat for having bullied the jury This was held by the court in Ireland to be a contempt of court, as indeed it surely was It does not matter whether the challenge was before or after he got home Nor could it matter in the case of a judge Nor in the case of a witness

'But when the act is done with mixed motives, as indeed the acts here were done, what is the position? If it is done with the predominant motive of punishing a witness, there can be no doubt that it is a contempt of court But even though it is not the predominant motive, yet nevertheless if it is an actuating motive influencing the step taken, it is, in my judgment, a contempt of court I do not think the court is able to, or should, enter into a nice assessment of the weight of the various motives which, mixed together, result in the victimisation of a witness If one of the purposes actuating the step is the purpose of punishment, then it is a contempt of court in everyone so actuated

'We take into account the apology which has been offered by the members of the union who have been brought here, and, as it is a case of considerable importance which the Attorney-General has thought right to bring to this court, we do not think it necessary to impose the whole burden of costs on these gentlemen

' In the result, therefore, three will pay £200 apiece and the other three will pay £100 apiece, making £900 in all payable by them towards the Attorney-General's costs'

2 The tenant is evicted from his home

Now there is an important point which arises when a witness is victimised - and suffers loss on account of it The contemnor can be punished by the Courts by fine or imprisonment But can the sufferer sue the contemnor for damages? I should have thought he could, or at least, should be able to do so The victimisation is not finished his evidence only a criminal offence It is, to my mind, a civil wrong - a tort as lawyers call it This point was much discussed a few months later and I regret to say that I found myself in a minority It

[1] [1848] 5 Cox CC 356

was to my mind a shocking case A house was let out by a landlord in tenement flats The landlord forcibly evicted one tenant called Harrand That tenant sued the landlord for damages for wrongful eviction Chapman, the next floor tenant, had seen what had happened Then these were the facts reported in *Chapman v Honig*[1]

' Chapman had been tenant since 1959 He had seen something of what happened on the second floor, and Harrand wanted him to give evidence in his action against the landlord described above Chapman, fearing what might befall him if he gave evidence against his landlord, did not go voluntarily to the court He was subpoenaed to do so, and only gave evidence in obedience to the subpoena He gave evidence on 21 June 1962, at the hearing before Judge Baxter On the very next day, 23 June 1962, the landlord served on Chapman notice to quit his first-floor flat on 28 July 1962 The reason he did that was simply because Chapman had given evidence for Harrand The object of the landlord was, the judge found, "to punish or victimise Mr Chapman for having given evidence"

' The judge gave judgment for the plaintiff for £50 damages for contempt of court

' On the judge's findings the landlord gave this notice to quit and attempted to evict the tenant vindictively in order to punish Chapman for having given evidence against him That is in itself a contempt of court - a criminal offence - and punishable accordingly (*see Attorney-General v Butterworth*[2]), and, being done by father and son in a combination to injure, it may also have been a conspiracy see *Crofter Hand Woven Harris Tweed Co Ltd v Veitch*[3] It was in any case unlawful My brother Pearson LJ has, however, some doubt about it He thinks that the victimisation of a witness is not a contempt of court in itself It is only a contempt if other people are likely to get to know of it and be deterred from giving evidence in other actions If that is right, it would mean this, that if the tenant proclaims his grievance upon the housetops, telling everyone about it, the landlord is guilty of contempt But if the tenant should keep his suffering to himself, without telling his neighbours why he is evicted, the landlord does no wrong That cannot be right

tenant should keep his suffering to himself, without telling This neighbours why he is evicted, the landlord does no wrong That cannot be right

'The principle upon which this case falls to be decided is simply this No system of law can justly compel a witness to give evidence and then, on finding him victimised for doing it, refuse to give him redress It is the duty of the court to protect the witness by every means at its command Else the whole process of the law will be set at naught If a landlord intimidates a tenant by threatening him with notice to quit, the court must be able to protect the tenant by granting an injunction to restrain the landlord from carrying out his threat If the landlord victimises a tenant by actually giving him notice to quit, the court must be able to protect the tenant by holding the notice to quit to be invalid Nothing else will serve to vindicate the authority of the law Nothing else will enable a witness to give his evidence freely as he ought to do Nothing else will empower the judge to say to him "Do not fear The arm of the law is strong enough to protect you"

[1] [1963] 2 QB 502 at 504
[2] [1963] 1 QB 696 [1963] LR 3 RP 327 [1962] 3 ALL ER 326, [1952] 3 WLR 819, CA
[3] [1942] AC 435, [1942] 1 ALL ER 142, 58 TLR 125, HL

'It is said, however, that to hold the notice invalid is a pointless exercise, because the landlord can give another notice next day or next week or next month and that notice will be valid I do not agree If the landlord has been guilty of such a gross contempt as to victimise a tenant, should have thought that any court would hold that a subsequent notice to quit was invalid unless he could show that it was free from the taint The landlord can at least be required to purge his contempt before being allowed to enforce the contractual rights which he has so greatly abused The tenant, of course, has to pay his rent and perform his covenants so there is no course, has to pay his rent and perform his covenants so there is no injustice in requiring the landlord to clear his conscience

'The case was put of the valet why gives evidence against his master in a divorce suit Next day the master, out of spite, dismisses him by a month's notice Clearly the notice is unlawful But the servant cannot stay on against the master's will The law never enforces specifically a contract for personal service But what are the damages? They would, I think, be such damages as a jury might assess to recompense him for the loss of the chance of being kept on longer, if he had not been victimised Thus only can the law give adequate redress, as it should, to an innocent person who has been damnified for obeying its commands

'The truth is, however, that this is a new case None like it has ever come before the courts so far as I know But that is no reason for us to do nothing We have the choice before us Either to redress a grievous wrong, or to leave it unremedied Either to protect the victim of oppression, or to let him suffer under it Either to uphold the authority of the law, or to watch it being flouted Faced with this choice I have no doubt what the answer should be We cannot stand idly by The law which compels a witness to give evidence is in duty bound to protect him from being punished for doing it That was the view of Judge Sir Alun Pugh when he granted an injunction It was the view of Judge Baxter when he gave damages of £50 It is my view too I would not turn the tenant away without remedy I would dismiss this appeal

That was not the view of my two colleagues, They held that the notice to quit was valid and that the tenant had no remedy in damages They overruled Judge Sir Alun Pugh and Judge Baxter who I know are very good and experienced judges They also overruled me though that does not matter so much They even suggested that as a general proposition there can never be a right of action for damages for contempt of court, Pearson LJ said significantly (at page 522)

'The general proposition (that there can never be a right of action) might well be correct, but in the present case it is enough to say that there can be no such right of action in respect of an act which, as between the plaintiff and the defendant, has been done in exercise of a right under a contract or other instrument and in accordance with its provisions The same act as between the same parties cannot reasonably be supposed to be both lawful and unlawful - in the sphere of contract, valid and effective to achieve its object, and in the sphere of tort, wrongful and imposing a tortious liability'

That decision went no further My two colleagues went so far as to refuse the tenant leave to appeal to the Lords No doubt because only £50 was involved The tenant was legally aided and the landlord was not and it would be hard on the landlord to have him taken to the Lords over such a small sum The case is a disturbing reflection on our doctrine of precedent as recently proclaimed by the Lords, The majority decision in *Chapman v Honig* is binding on all Courts for the future unless someone comes along with the time and money - and I may add the courage - to take it to the Lords I would venture to ask my lawyer readers Would you advise your client to take it to the Lords?

3 Refusing to answer questions

1 Two journalists are sent to prison

Next there came a case of intense public interest Two journalists refused to answer questions asked of them in the witness-box They were sent to prison Were they guilty of contempt of court?

Newspapers had been saying there was a spy in the Admiralty Parliament ordered an inquiry Lord Radcliffe presided over it One of the journalists had written that 'it was the sponsorship of two high ranking officials which led to Vassall avoiding the strictest part of the Admiralty's security vetting' Lord Radcliffe asked the journalist 'What was the source of your information? Where did you get it from?' The journalist said 'I decline to answer' Lord Radcliffe asked 'Will you inquire from the source whether he is willing for it to be divulged?' The journalist still declined to answer

Lord Radcliffe informed the Attorney-General He moved the Court to punish the journalist for contempt of court Mr Justice Gorman sentenced him to six months The journalist appealed to our Court It raised the question whether a journalist has any privilege in the matter

A preliminary point arose as to the relevancy of the question A witness is only bound to answer a relevant question, not an irrelevant one The cases, heard together, were *Attorney-General v Mulholland Attorney-General v Foster*[1] I dealt with the point in this way

'Was the question relevant to the inquiry? Was it one that the journalist ought to answer? It seems to me that if the inquiry was to be as thorough as the circumstances demanded, it was incumbent on Mulholland to disclose to the tribunal the source of his information The newspapers had made these allegations If they made them with a due sense of responsibility (as befits a press which enjoys such freedom as ours) then they must have based them on a trustworthy source Heaven forbid that they should invent them! And if they did get them from a trustworthy source, then the tribunal must be told of it How otherwise can the tribunal discover whether the allegations are well founded or not? The tribunal cannot tell unless they see for themselves this trustworthy source, this witness who is the foundation of it all The tribunal must, therefore, be entitled to ask what was the source from which the information came

Next I dealt with the question of privilege[2]

'But then it is said (and this is the second point) that however relevant these questions were and however proper to be answered for the purpose of the inquiry, a journalist has a privilege by law entitling him to refuse to give his sources of information The journalist puts forward as his justification the pursuit of truth It is in the public interest, he says, that he should obtain information in confidence and publish it to the world at large, for by so doing he brings to the public notice that which they should know He can expose wrongdoing and neglect of duty which would otherwise go unremedied He cannot get this information, he says, unless he keeps the source of it secret The mouths of his informants will be closed to him if it is known that their identity will be disclosed So he claims to be entitled to publish all his information without ever being under any obligation, even when directed by the court or a judge, to disclose whence he got it It seems to me that the journalists put the matter much too high The only profession that I know which is given a privilege from disclosing information to a court of law is the legal profession, and then it is not the privilege of the

[1] [1963] 2 QB 477 at 487

[2] Ibid at 489

lawyer but of his client Take the clergyman, the banker or the medical man None of these is entitled to refuse to answer when directed to by a judge Let me not be mistaken The judge will respect the confidences which each member of these honourable professions receives in the course of it, and will not direct him to answer unless not only it is relevant but also it is a proper and, indeed, necessary question in the course of justice to be put and answered A judge is the person entrusted, on behalf of the community, to weigh these conflicting interests - to weigh on the one hand the respect due to confidence in the profession and on the other hand the ultimate interest of the community in justice being done or, in the case of a tribunal such as this, in a proper investigation being made into these serious allegations If the judge determines that the journalist must answer, then no privilege will avail him to refuse

'It seems to me, therefore, that the authorities are all one way There is no privilege known to the law by which a journalist can refuse to answer a question which is relevant to the inquiry and is one which, in the opinion of the judge, it is proper for him to be asked I think it plain that in this particular case it is in the public interest for the tribunal to inquire as to the sources of information How is anyone to know that this story was not a pure invention, if the journalist will not tell the tribunal its source? Even if it was not invention, how is anyone to know it was not the gossip of some idler seeking to impress? It may be mere rumour unless the journalist shows he got it from a trustworthy source And if he has got it from a trustworthy source (as I take it on his statement he has, which I fully accept), then however much he may desire to keep it secret, he must remember that he has been directed by the tribunal to disclose it as a matter of public duty, and that is justification enough

' We have anxiously considered the sentences of six months and three months respectively which Gorman J passed on Mulholland and Foster, and after full consideration we have felt unable to adopt the view that the sentences are disproportionate to the serious nature of the offence'

2 The New Statesman is angry

That case made some journalists very angry The New Statesman published an article by one of them against us Judges in which he suggested that the press would retaliate

'Any judge who gets involved in a scandal during the next year or so, must expect the full treatment'

To which the Daily Mirror retorted with a nice piece of satire

'Is it likely that Lord Denning will be copped in a call-girl's boudoir, or Lord Justice Danckwerts be caught napping flogging stolen cigarettes, or Lord Justice Donovan be caught pinching a Goya from the National Gallery? Is Mr Justice Gorman, who sentenced the two silent journalists, likely to be discovered running a Soho strip-tease club when the Courts are in recess?

The possibility is laughably remote

The Mirror recognises that it is the duty of a judge to administer the law as the law stands, and not as some would like it to be'

Thanks be to the *Daily Mirror*!

4 Scandalising the Court

1 Lord Mansfield is criticised

When the Judges of a Court are criticised or defamed - or as it is put 'scandalised' - they can punish the offender They do it, they say, not to protect themselves as individuals but to preserve the authority of the Court It was so stated in one of the most eloquent

passages in our law books - in a judgment which was prepared but never delivered The Judge who was criticised was one of our greatest It was Lord Mansfield himself in 1765 He had made an amendment to an information against John Wilkes Now Mr Almon had a shop in Piccadilly He published a pamphlet entitled 'A Letter concerning Libels, Warrants, Seizure of Papers, &c ' He sold it in his shop for 1s 6d In it he said that Lord Mansfield had made the amendment 'officiously, arbitrarily, and illegally' Nowadays we are used to criticisms of that kind but in those days the Attorney-General moved to commit Mr Almon for contempt of court The case was argued and Mr Justice Wilmot prepared a judgment of 28 pages in length ready to punish Mr Almon But Mr Almon apologised The Attorney-General resigned The proceedings were dropped So Mr Justice Wilmot's judgment was never delivered Forty years later it was published in a volume of Wilmot's cases under the title *R v Almon*[1] In it he said (at page 259)

'If their authority (i e of the Judges) is to be trampled upon by pamphleteers and news-writers, and the people are to be told that the power, given to the Judges for their protection, is prostituted to their destruction, the Court may retain its power some little time, but I am sure it will instantly lose all its authority, and the power of the Court will not long survive the authority of it is it possible to stab that authority more fatally than by charging the Court, and more particularly the Chief Justice, with having introduced a rule to subvert the constitutional liberty of the people? A greater scandal could not be published'

2 Mr Justice Avory comes under fire

We have travelled far since that time In the 1920's the offence of 'scandalising the Court' was regarded as virtually obsolete But it was revived in a case in 1928 when I was four years called to the Bar I was in chambers at No 4 Brick Court I had few briefs I spent much of my time editing - or helping edit - a new edition of *Smith's Leading Cases* But I did find time to go across the Strand to listen to this cause *celebre* The New Statesman had published an article criticising Mr Justice Avory Now he was a Judge held by the profession with respect, almost with awe He was a small man but resolute and stern It showed in his face with his firm mouth and piercing grey eyes He had tried a libel action with a jury They had awarded £200 damages against Dr Marie Stopes, the advocate of birth control - then much frowned upon - see *Sutherland v Slopes*[2] The *New Statesman* denounced the case and added these words

'The serious point in this case, however, is that an individual owning to such views as those of Dr Stopes cannot apparently hope for a fair hearing in a Court presided over by Mr Justice Avory -and there are so many Avorys'

Proceedings were taken against the editor of the New Statesman for contempt of court They are reported in *R v New Statesman*[3] On the one side was the Attorney-General, Sir Douglas Hogg KC On the other, Mr William Jowitt KC Each was a brilliant advocate Each was afterwards Lord Chancellor But how different Jowitt -tall, handsome and distinguished with a resonant voice and clear diction Hogg looked like Mr Pickwick and spoke like Demosthenes Jowitt put it well for the New Statesman He quoted a judgment by a strong Board of the Privy Council in 1899 saying

'Committals for contempt of Court by scandalising the Court itself have become obsolete in this country Courts are contented to leave to public opinion attacks or comments derogatory or scandalous to them' (*McLeod v St Aubyn*[4])

---

[1] (1765) Wilm 243-271
[2] [1925] AC 47
[3] [1928] 44 TLR 301
[4] [1899] AC 549 at 561

Hogg replied by quoting a passage from Wilmot's undelivered judgment upholding the offence on the ground that 'to be impartial, and to be universally thought so, are both absolutely necessary'

Jowitt saw that the Court were against him So he handled them tactfully Whilst he submitted there was no contempt, he excused the article by reason of the haste in which it was written and apologised humbly if it were held to be a contempt That pleased the Court They did not send the editor to prison They adjudged that he was guilty of contempt but they did not fine him They only ordered him to pay the costs

3 We ourselves are told to be silent

Oddly enough, the last case on this subject concerned Sir Douglas Hogg's son, Mr Quintin Hogg, as he then was In his full title, the Rt Hon Quintin Hogg QC, MP Now Lord Hailsham of St Marylebone, the Lord Chancellor, he is the most gifted man of our time Statesman, Orator, Philosopher - he has no compare Whilst out of office, he is by turns author, journalist, and television personality In his exuberance he wrote for Punch and in 1968 found himself brought up by Mr Raymond Blackburn on the charge that he was guilty of contempt of court He criticised the Court of Appeal in words which were quite as strong as those in which Mr Almon criticised Lord Mansfield His words are set out fully in the report of the case, *R v Commissioner of Police of the Metropolis*[1] He said

'The legislation of 1960 and thereafter has been rendered virtually unworkable by the unrealistic, contradictory and, in the leading case, erroneous, decisions of the courts, including the Court of Appeal it is to be hoped that the courts will remember the golden rule for judges in the matter of obiter dicta Silence is always an option'

The case came before us on a Monday morning, 26 February 1968 Mr Blackburn applied in person Mr Hogg was in Court but was represented by the most graceful advocate of our time, Sir Peter Rawlinson QC, now Lord Rawlinson He told us that Mr Hogg in no way intended to scandalise the Court or the Lords Justices -whom he held in the highest personal and professional regard - but he maintained that the article constituted a criticism which he had a right to state publicly We accepted the submission We delivered judgment straightaway, as we usually do We did not write twenty eight pages as Mr Justice Wilmot did This is what I said (at page 154)

'This is the first case, so far as I know, where this court has been called on to consider an allegation of contempt against itself It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise more particularly as we ourselves have an interest in the matter

'Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity That must rest on surer foundations Nor will we use it to suppress those who speak against us We do not fear criticism, nor do we resent it For there is something far more important at stake It is no less than freedom of speech itself

'It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest Those who comment can deal faithfully with all that is done in a court of justice They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms We cannot enter into public controversy Still less into political controversy We must rely on our conduct itself to be its own vindication

[1] [1968] 2 QB 150 at 154

'Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what the occasion requires, provided that it is pertinent to the matter in hand Silence is not an option when things are ill done

So it comes to this Mr Quintin Hogg has criticised the court, but in so doing he is exercising his undoubted right The article contains an error, no doubt, but errors do not make it a contempt of court We must uphold his right to the uttermost

'I hold this not to be a contempt of court, and would dismiss the application'

5 Disobedience to an order of the Court

1 Strict proof

One of the most important powers of a court of law is its power to give orders Very often it has to make an order commanding a person to do something - or restraining him in some way If he disobeys, the Court has one weapon in its armoury which it can use It can punish him for contempt of court Either by fine or by imprisonment This kind of contempt has the characteristics which are common to all contempts of court It is a criminal offence It must be proved beyond reasonable doubt We laid that down in *Re Bramblevale Ltd*[1] But in addition the Court insists on several requirements being strictly observed

2 The three dockers

This strictness was very much in evidence in the case of the three dockers, *Churchman v Shop Stewards*[2] It arose out of the Industrial Relations Act 1971 which set up a new court, the Industrial Relations Court It was bitterly opposed by the trade unions and their members So much so that they refused to recognise the new court or to obey the orders issued by it A crisis arose when the dockers in the East End of London picketed a depot The Court issued an order commanding them to stop the picketing The dockers did not appear before the Court nor were they represented They continued the picketing The Industrial Relations Court gave judgment on Wednesday, 14 June 1972 (which is quoted at page 1097)

'The conduct of these men, as it appears at present, has gone far beyond anything which could appropriately be disposed of by the imposition of a fine Unless we receive some explanation we have no alternative but to make orders committing them to prison But we wish to give them every opportunity to explain their conduct, if it can be explained'

The Court then set a dead-line for an explanation to be given

'If they have not appeared before us tomorrow morning or applied to the Court of Appeal before 2 p m on Friday, 16 June, the warrants will issue'

Now everyone knew that the dockers would take no notice of the Court They would continue to disobey They would continue their picketing They would not appear before the Industrial Court to give an explanation They would not apply to the Court of Appeal The warrants would issue They would go to prison They would be martyrs The trade union movement would call a general strike which would paralyse the country

It was averted But how was it done? The Official Solicitor appeared from nowhere He applied to us in the Court of Appeal asking us to quash the order of the Industrial Court We did so The dockers were very disappointed They were at the gates of the depot expecting to be arrested Instead there were no warrants, no arrests, no prison, no martyrdom, no strike

Everyone asked at once Who is the Official Solicitor? Who put him up to this? What right had he to represent the men when they wished for no representation and what right had

[1] [1970] 1 Ch 128
[2] [1972] 1 WLR 1094

he to come to the Court and ask for the committal order to be quashed? On what ground was it quashed? I gave the reasons in my judgment on the fateful Friday (at page 1097)

'The Industrial Court gave them until 2 p m today, Friday, in which to apply to the Court of Appeal The three dockers have not applied themselves, nor have they instructed anyone to apply on their behalf But the Official Solicitor has done so He has authority to apply on behalf of any person in the land who is committed to prison and does not move the court on his own behalf Likewise, on behalf of any person against whom an order for committal is made, he is authorised to come to this court and draw the matter to its attention He has instructed Mr Pain, and Mr Pain has submitted to us that the evidence before the Industrial Court was not sufficient to warrant the orders of committal'

I pause here to say that Mr Pain was very conversant with trade union matters He was a very effective advocate He used to assume a disarming air of diffidence as if to say, 'Please help me' And of course we did

I went on

' In exercising those powers, and particularly those which concern the liberty of the subject, I would hold, and this court would hold, that any breach giving rise to punishment must be proved in the Industrial Court with the same strictness as would be required in the High Court here in this building So we have to see whether the orders were properly proved, and the breaches of them proved, according to that degree or strictness

'It seems to me that the evidence before the Industrial Court was quite insufficient to prove - with all the strictness that is necessary in such a proceeding as this, when you are going to deprive people of their liberty - a breach of the court's order

' It may be that in some circumstances the court may be entitled, on sufficient information being brought before it, to act on its own initiative in sending a contemnor to prison But, if it does so think fit to act, it seems to me that all the safeguards required by the High Court must still be satisfied The notice which is given to the accused must give with it the charges against him with all the particularity which this court or the High Court here ordinarily requires before depriving a person of his liberty The accused must be given notice of any new charge and the opportunity of meeting it Even if he does not appear to answer it, it must be proved with all the sufficiency which we habitually require before depriving a man of his liberty

'Having analysed the evidence as it has been put before us in this case, I must say that it falls far short of that which we would require for such a purpose In my opinion, therefore, the orders of committal should be set aside and the warrants should not be executed'

3 The five dockers

Just over five weeks later, 26 July 1972, that story almost repeated itself But this time it was five dockers, not three They picketed the container depot The Industrial Court ordered that they were to be imprisoned for contempt Again there was the threat of a general strike Again we were ready to hear an immediate appeal by the Official Solicitor But he was told by someone to hold his hand The reason was because the House of Lords rushed through a decision which was said to affect the matter It was *Heaton's Case*[1] They were busy amending their drafts - in typescript - right up to the last moment Their decision was telephoned at once to the President of the Industrial Court It gave him sufficient reason to revoke the order for committal He revoked it The general strike was averted Another emergency was over

[1] [1973] AC 15

The lesson to be learned from the dockers' cases is that the weapon of imprisonment should never be used - for contempt of court - in the case of industrial disputes Some better means must be found Can anyone suggest one?

4 The ward of court

Under this head of disobedience there are cases where a newspaper publishes a report of proceedings which are held in private Most cases are - and are bound to be - heard in public and there is no bar to a fair and accurate report of them But some cases are held in private and a newspaper is guilty of a contempt of court if it publishes a report of what took place Particularly is this the case in wardship proceedings which are usually held in private The point arose in 1976 in a case reported as Re F1 A girl of 15 ran away with a man of 28 He gave her drugs and had sexual intercourse with her, knowing that she was only 15 Her parents were so worried that they applied for her to be made a ward of court The girl was placed in a hostel A social worker advised that the man of 28 should be allowed to visit her there The *Daily Telegraph* got to know of this and published an article headed, 'Jailed lover "should visit hostel girl, 16"'

The Official Solicitor thought that this article disclosed some of the proceedings which had taken place in private He moved to commit the Daily Telegraph for contempt The Judge held that it was a contempt We reversed it I said (at page 88)

'There are cases to show that it was a contempt of court of publish information relating to the proceedings in court about a ward The court was entitled to - and habitually did - hear the case in private It could keep the proceedings away from the public gaze The public were not admitted Nor even the newspaper reporters Only the parties, their legal advisers, and those immediately concerned were allowed in When the court thus sat in private to hear wardship proceedings, the very sitting in private carried with it a prohibition forbidding publication of anything that took place, save only for the formal order made by the judge or an accurate summary of it

'A breach of that prohibition was considered a contempt of court It was a criminal offence punishable by imprisonment But what were the constituents of the offence?

'This kind of contempt is akin to the contempt which is committed by a person who disobeys an order of the court Such as occurs where a party breaks an injunction ordering him to do something or to refrain from doing it But there are differences between them When one party breaks an injunction, it is the other party - the aggrieved person - who seeks to commit him for contempt It is for his benefit that the injunction was granted, and for his benefit that it is enforced The offender is not to be committed unless he has had proper notice of the terms of the injunction and it is proved, beyond reasonable doubt, that he has broken it But when a newspaper editor - or anyone else for that matter - publishes information which relates to wardship proceedings, it is very different He is no party to the proceedings No order has been made against him No notice has been given to him of any order made by the courts He may - or may not - know whether the proceedings were in private or in open court He may -or may not - be aware that there is a prohibition against publication On what ground, therefore, is he to be found guilty? On what ground is he to be punished and sent to prison? What are the constituents of the offence?

'On principle, it seems to me that, in order to be found guilty the accused must have had a guilty mind - some guilty knowledge or intent - mens rea, as it is called This question of mens rea often comes up Much depends on the nature "The mental elements of different crimes differ widely" What then is the mental element here? In considering it, it must be remembered that the offence is not restricted to newspaper editors or reporters Anyone who publishes information relating to wardship proceedings may be found guilty The girl herself, or her parents, or the lawyers in the case, may find themselves charged with the offence

Even if they only tell the story by word of mouth to a friend, they may be guilty of an offence for that would be a publication of it Seeing that the offence is of such wide scope, it seems to me that a person is only to be found guilty of it if he has published information relating to wardship proceedings in circumstances in which he knows that publication is prohibited by law, or recklessly in circumstances in which he knows that the publication may be prohibited by law, but nevertheless goes on and publishes it, not caring whether it is prohibited, or not As if he said "I don't care whether it is forbidden, or not I am not going to make any inquiries I am going to publish it" Proof of this state of mind must be up to the standard required by the criminal law It must be such as to leave no reasonable doubt outstanding

'This test affords reasonable protection to ordinary folk, while, at the same time, it does not give a newspaper any freedom to publish information to the world at large If a newspaper reporter knew that there were, or had recently been, wardship proceedings, he would be expected to know that they would be held in private and would know - or as good as know - that there was a prohibition against publication Once he did know that there were, or had been, wardship proceedings, the prohibition would, I think, apply, not only to information given to the judge, at the actual hearing, but also to confidential reports submitted beforehand by the Official Solicitor, or social workers, or the like

'It remains to apply those principles to the newspapers in this case The parents told the "Daily Telegraph" that the wardship order had been a temporary one and that it had expired The newspaper thought that there was no longer any prohibition on publication They made inquiry at the local council without getting any enlightenment The "Evening Mail" made inquiries all round, including the Official Solicitor, and no one told them that the girl was a ward of court Furthermore, both newspapers took the view that the matter was of such public interest that it should be brought to the notice of people in general - unless it was clearly prohibited by law That was a legitimate view to take They made inquiries Finding no such prohibition, they published the information In the circumstances, I do not think there was any guilty knowledge or intent on their part such as to warrant a finding that they were in contempt of court'

6 Prejudicing a fair trial

1 'Vampire Arrested'

The freedom of the press is fundamental in our constitution Newspapers have - and should have - the right to make fair comment on matters of public interest But this is subject to the law of libel and of contempt of court The newspapers must not make any comment which would tend to prejudice a fair trial If they do, they will find themselves in trouble The most spectacular case is one that is not reported in the Law Reports but which I remember well Not that I usually read the newspapers much Only *The Times* when it happens to appear Its reports of legal decisions are unique No other newspaper in the world has anything like it They are written by barristers and are quoted in the Courts But on this occasion the *Daily Mirror* went beyond all bounds It came out with a banner headline - after a man called Haigh had been arrested and before he was charged –

'VAMPIRE ARRESTED'

It said that Haigh had been charged with one murder and had committed others and gave the names of persons who, it was said, he had murdered

Lord Goddard was the Chief Justice He said 'There has been no more scandalous case It is worthy of condign punishment' He fined the newspaper £10,000 He sent the editor to prison for three months He added 'Let the directors beware If this sort of thing

should happen again, they may find that the arm of the law is strong enough to reach them too'

2 The Thalidomide case

--By far the most important case in recent years is the Thalidomide case It is reported in the Court of Appeal in *AG v Times Newspapers Ltd* [1973] 1 QB 710 and in the House of Lords in [1974] AC 273 Mothers when pregnant had taken the drug thalidomide Their children has been born deformed That was in 1962 Actions were started at once for damages Distillers, who distributed the drug, tried to settle the actions All parents agreed to a settlement except five An application was made to our Court to remove those five parents - as next friends - so as to get the children represented by the Official Solicitor It was known that he would agree to a settlement If that move had succeeded, all the cases would have been settled There would have been no reported case anywhere But we refused to remove those five parents Our refusal is reported in *Re Taylor's Application*[1] It was the turning point of the case The rest is best told by what I said in the Court of Appeal[2] (at page 736)

'The editor of the "Sunday Times" tells us that the report of that case caused him great anxiety Over 10 years had passed since the children were born with these deformities, and still no compensation had been paid by Distillers He determined to investigate the matter In depth and to do all he could, through his newspaper, to persuade Distillers to take a fresh look at their moral responsibilities to all the thalidomide children, both those where writs had been issued and those where they had not He had investigations made and launched a campaign against Distillers

'On 12 October 1972, the Attorney-General issued a writ against the "Sunday Times" claiming an injunction to restrain them from publishing the draft article

'It is undoubted law that, when litigation is pending and actively in suit before the court, no one shall comment on it in such a way that there is a real and substantial danger of prejudice to the trial of the action, as for instance by influencing the judge, the jurors, or the witnesses, or even by prejudicing mankind in general against a party to the cause That appears from the case before Lord Hardwicke LC in 1742 of In *re Read and Huggonson* (St James' Evening Post Case) (1742) 2 Atk 469, and by many other cases to which the Attorney-General drew our attention Even if the person making the comment honestly believes it to be true, still it is a contempt of court if he prejudges the truth before it is ascertained in the proceedings *see Skipworth's Case* (1873) LR 9 QB 230, 234, by Blackburn J To that rule about a fair trial, there is this further rule about bringing pressure to bear on a party None shall, by misrepresentation or otherwise, bring unfair pressure to bear on one of the parties to a cause so as to force him to drop his complaint, or to give up his defence, or to come to a settlement on terms which he would not otherwise have been prepared to entertain That appears from In *re William Thomas Shipping Co Ltd* [1930J 2 Ch 368 and Vine Products Ltd v Green [1966] Ch 484, to which I would add an Article by Professor Goodhart on "Newspapers and Contempt of Court in English Law" in (1935) 48 *Harward Law Review*, pp 895,896

'I regard it as of the first importance that the law which I have just stated should be maintained in its full integrity We must not allow "trial by newspaper" or "trial by television" or trial by any medium other than the courts of law

[1] [1972] 2 QB 369
[2] [1973] 1 QB 710

'But in so stating the law, I would emphasise that it applies only "when litigation is pending and is actively in suit before the court" To which I would add that there must appear to be "a real and substantial danger of prejudice" to the trial of the case or to the settlement of it And when considering the question, it must always be remembered that besides the interest of the parties in a fair trial or a fair settlement of the case there is another important interest to be considered It is the interest of the public in matters of national concern, and the freedom of the press to make fair comment on such matters The one interest must be balanced against the other There may be cases where the subject matter is such that the public interest counterbalance the private interest of the parties In such cases the public interest prevails Fair comment is to be allowed It has been so stated in Australia in regard to the courts of law see Exparte Bread Manufacturers Ltd (1937) 37 SR (NSW) 242 and Exparte Dawson [1961] SR (NSW) 573 It was so recommended by a committee presided over by Lord Salmon on The Law of Contempt in Relation to *Tribunals of Inquiry* see (1969) Cmnd 4078, para 26

'Take this present case Here we have a matter of the greatest public interest The thalidomide children are the living reminders of a national tragedy there has been no public inquiry as to how it came about Such inquiry as there has been has been done in confidence in the course of private litigation between the parties The compensation offered is believed by many to be too small Nearly 12 years have passed and still no settlement has been reached On such a matter the law can and does authorise the newspapers to make fair comment So long as they get their facts right, and keep their comments fair, they are without reproach They do not offend against the law as to contempt of court unless there is real and substantial prejudice to pending litigation which is actively in suit before the court Our law of contempt does not prevent comment before the litigation is started, nor after it has ended Nor does it prevent it when the litigation is dormant and is not being actively pursued If the pending action is one which, as a matter of public interest, ought to have been brought to trial long ago, or ought to have been settled long ago, the newspapers can fairly comment on the failure to bring it to trial or to reach a settlement No person can stop comment by serving a writ and letting it lie ideal nor can he stop it by entering an appearance and doing nothing more It is active litigation which is protected by law of contempt, not the absence of it

'Apply these consideration to the present case Take the first 62 actions which were settled in February 1968 The newspapers can fairly comment on those settlements, saying that in making them the Distillers company did not measure up to their moral responsibilities Take the last 123 children in regard to whom writs have never been issued The newspapers can fairly press for compensation on the ground that Distillers were morally responsible That leaves only the 266 actions in which writs were issued four years ago but have never been brought to trial Does the existence of those writs prevent the newspapers from drawing attention to the moral responsibilities of Distillers? If they can comment on the first 62 or the last 123, I do not see why they cannot comment on these intervening 266 There is no way of distinguishing between them The draft article comments on all the thalidomide children together It is clearly lawful in respect of the first 62 and the last 123 So also it should be in respect of the middle 266

'I have said enough to show that this case is unique So much so that in my opinion the public interest in having it discussed outweighs the prejudice which might thereby be occasioned to a party to the dispute At any rate, the High Court of Parliament has allowed it to be discussed So why should not we in these courts also permit it'? There is no possible reason why Parliament should permit it and we refuse it'

Our decision was reversed by the House of Lords I hope that I will be forgiven for not quoting from their judgments They stated a new principle It was that newspapers should

not publish comments or articles which 'prejudged the issue in pending proceedings' This new principle was criticised by the Committee over which our dear friend Lord Justice Phillimore presided [1] It was a very good Committee 'Harry' Phillimore, as we knew him affectionately, devoted his last years to it They heard much evidence and disposed of the House of Lords by saying (at page 48)

'The simple test of prejudgment therefore seems to go too far in some respects and not far enough in others We conclude that no satisfactory definition can be found which does not have direct reference to the mischief which the law of contempt is and always has been designed to suppress That mischief is the risk of prejudice to the due administration of justice'

Hitherto we have always expected a decision of the House of Lords to be final and conclusive But the *Thalidomide case* showed the contrary The *Sunday Times* took it to the European court of Human Rights They relied on Article 10 of the European convention to which the United Kingdom has adhered It says that

'Everyone has the right to freedom of expression This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers'

The European Court of Human Rights, by a majority of 11 to 9, upheld the claim of the *Sunday Times* It had a right to impart information about the *Thalidomide case* Inferentially they thought that the House of Lords were wrong and that the Court of Appeal were right Three cheers for the European Court But what will the House of Lords do now? Will they still regard themselves as infallible? They have Francis Mann on their side, see *The Law Quarterly Review* for July 1979, pp 348 - 354

3 A 'gagging writ'

Let us hope too that the public interest will prevail so as to stop what has been called a 'gagging writ' There was a company director called Wallersteiner He tried to stop criticism of him at a shareholders' meeting He issued a writ against the complaining shareholder and then sought to shut him up by saying the matter was 'sub judice' I dealt with this once and for all, I hope, in *Wallersteiner v Moir* 'I know that it is commonly supposed that once a writ is issued, it puts a stop to discussion If anyone wishes to canvass the matter in the press or in public, it cannot be permitted It is said to be "sub judice" I venture to suggest that is a complete misconception The sooner it is corrected, the better If it is a matter of public interest, it can be discussed at large without fear of thereby being in contempt of court Criticisms can continue to be made and can be repeated Fair comment does not prejudice a fair trial That was well pointed out by Salmon J in *Thomson v Times Newspapers Ltd* [1969] 1 WLR 1236, 1239 - 1240 The law says - and says emphatically - that the issue of a writ is not to be used so as to be a muzzle to prevent discussion Jacob Factor tried to suppress the "Daily Mail" on that score, but failed *see R v Daily Mail (Editor), ex parte Factor* (1928) 44 TLR 303 And Lord Reid has said that a "gagging writ" ought to have no effect see *Attorney - General v Times Newspapers Ltd* [1974] AC 273, 301 Matters of public interest should be, and are, open to discussion, notwithstanding the issue of a writ

'So here I would hold that a discussion of company affairs at a company meeting is not a contempt of court Even if a writ has been issued and those affairs are the subject of litigation, the discussion of them cannot be stopped by the magic words "sub judice" It may be there are newspaper reporters present - so that the words will be published at large next day Nevertheless, the shareholders can discuss the company affairs quite freely without fear of offending the court The reason is simple Such discussion does not prejudice fair trial of

[1] (1974) Cmnd 5794

the action No judge is likely to read the newspaper reports, let alone be influenced by them Nor are the members of a jury, if there should be a jury They do not read the reports of company meetings In any case, they would not remember them by the time of the trial Mr Lincoln suggested that someone at the meeting might use words such as to bring improper pressure to bear on the litigants or on witnesses If that were so, I have no doubt the court could intervene But that suggestion cannot be admitted as an excuse for stifling discussion And Lord Reid said in *Attorney-General v Times Newspapers Ltd* [1974] AC 273, 296 "there must be a balancing of relevant considerations" The most weighty consideration is the public interest The shareholders of a public company should be free to discuss the company affairs at the company meetings If a shareholder feels that there have been, or may be, abuses by those in control of the company, he should be at liberty to give voice to them

'I can well see, of course, that this freedom of discussion must not be carried too far It must not deteriorate into disorder The chairman must control the meeting He must keep order After time enough has been allowed, he can bring the discussion to a close If his own conduct is under fire, he could vacate the chair, and allow it to be taken by another If these rules are observed, there should be no trouble'

4 The Exclusive Brethren

There remains one last point Which are the courts to be protected by the law of contempt? Hitherto the question has arisen in regard to the superior courts But do the same principles apply to the inferior courts? We had to consider it recently when a case was pending in a local valuation court about rates It is *Attorney-General v British Broadcasting Corporation* A religious sect sought to stop a television broadcast which was disparaging of them It all depended if the Local Valuation Court was a 'court' which the law would protect My colleagues thought it was I thought it was not I ventured to summarise the principles in these words

'How far do these principles apply to the inferior courts? I pause to say that the word "inferior is a misdescription They are not inferior in the doing of justice nor in the judges who man them nor in the advocates who plead in them They are called "inferior" only because they try cases of a lesser order of importance - as it is thought But the cases which they try are often of equal concern to the parties and the public I see no reason whatever why the principles which have been evolved for the superior courts should not apply equally to the inferior courts The stream of justice should be kept pure and clear in all the courts, superior and inferior, alike That is the way in which the law seems to be developing, as is shown by the cases on contempt of court and the cases on the liability of judges and privilege of advocate and witness The only qualification is in the manner of enforcing those principles Where there is contempt of court, if it comes to granting injunctions or inflicting penalties, this is left to the superior courts But otherwise the principles should be the same for all

'But the principles - which confer immunity and protection - have hitherto been confined to the well-recognised courts, in which I include, of course, not only the High Court, but also the Crown Court, the county courts, the magistrates' courts, the consistory courts and courts-martial The principles have not hitherto been extended to the newly established courts, of which we have so many The answer cannot depend on whether the word "court" appears in the title There are many newly formed bodies which go by the name of "tribunal" but which have all the characteristics of the recognised courts, such as the industrial tribunals, and the solicitors' disciplinary tribunal To my mind, the immunities and protections which are accorded to the recognised courts of the land should be extended to all tribunals or bodies which have equivalent characteristics After all, if the principles are good for the old, so they should be good for the new I would, therefore, be venturesome I would suggest that the immunities and protections should be extended to all tribunals setup by or under the authority

of Parliament or of the Crown which exercise equivalent functions by equivalent procedures and are manned by equivalent personnel as those of the recognised courts of the land

'Applying this test, I would suggest that commercial arbitrations are excluded because they are not set up by or under the authority of Parliament or of the Crown Planning inquiries are excluded because their function is not to hear and determine, but only to inquire and report Licensing bodies are excluded because they exercise administrative functions and not judicial Assessment committees are excluded because they are manned by laymen and not by lawyers And so on

'What then about a local valuation court? It is the successor of the old assessment committees, which are certainly not courts

'In any case, to my mind this body lacks one important characteristic of a court It has no one on it or connected with it who is legally qualified or experienced To constitute a court there should be a chairman who is a lawyer or at any rate who has at his elbow a clerk or assistant who is a lawyer qualified by examination or by experience, as a justices' clerk is The reason is that a lawyer is, or should be, by his training and experience better able than others to keep to the relevant and exclude the irrelevant, to decide according to the evidence adduced and not be influenced by outside information, to interpret the words of statutes or regulations as Parliament intended, to have recourse to legal books of reference and be able to consult them, and generally to know how the proceedings of a court should be conducted

'It is for this reason that it is my opinion that the local valuation court is not a court properly so called '

My two colleagues differed from me They held it was a court but they agreed with me on a more important matter In the case of a civil action which is to be tried by a judge, it is very rare indeed that a newspaper would be guilty of contempt by making comments on it As I said (at page 319)

'No professionally trained judge would be influenced by anything he read in the newspapers or saw on television'

*****

ABOUT THE AUTHOR

LORD DENNING

Early life

Lord Alfred Thompson Denning, was an English judge whose career spanned 37 years He was the youngest child of five born to Charles Denning and Clara Thompson After his early schooling he joined Magdalene College, Oxford In 1917, he had to stop his education to serve in the military and after a year and a half came back to college In 1920 he graduated with First class in mathematics He came back to Oxford, got a scholarship and graduated First class in the Oxford Law School in 1922

His career

In 1923 Denning enrolled in the Bar and started his practice His writing career also commenced simultaneously with his practice After 15 years of private practice, Denning became King's counsel in 1938 During the II World War, he voluntarily served as legal adviser to the Regional Commissioner of the North East Region After the war, he was appointed Judge to the Probate, Divorce and Admiralty Division at the age of 45 In 1945, he was transferred to the King's Bench Division and became the Chairman of the Committee on Procedure in Matrimonial Causes In 1948, he was promoted to the Court of Appeals and he focused mainly on civil matters

Dennings was a prolific writer and authored many books In the book "The Discipline of Law," published in 1979 when he was 80 years, he said that judges have to shape and fit law to contemporary needs as it is out dated He impacted the language of the law through simple sentences to convey complicated legal issues He communicated his paints in a clear, direct manner so that the layman can also understand laws Most of his decisions were of historic importance

Denning fought for the property rights of deserted wives and unmarried women He retired from his position as Master of the Rolls on September 30, 1982 citing "advanced age "

He continued to write and publish books even after retirement In 1997, Denning was appointed by the Queen of England to the elite order of Merit He died on March 5, 1999 at the age of 100 A prolific writer and an influential judge, he hugely impacted the legal system during his tenure Despite the controversy he generated with his legal rulings, personal style and sometimes inappropriate remarks, Dennings was a well respected lawyer and one of the best known judges of his time

LESSON ANALYSIS

INTRODUCTION

Lord Denning in his book "Due process of Law" discusses many aspects of Court functions In the first part he discusses the contempt of court concept in the backdrop of cases which occurred during his tenure as a Lawyer and also as a Judge He discusses various aspects of contempt of court including direct ones like contempt in the face of the court and indirect ones like Victimisation of witnesses and also certain cases which purely do not qualify as contempt of court cases

A CONTEMPT IN THE FACE OF THE COURT

Lord Denning starts the first chapter of part one by explaining the phrase "Contempt in the face of the court" which means a contempt which the judges see with their own eyes and witnesses evidence is dispensed with Tracing the recorded cases in this aspect he quotes the 1631 case at Salisbury on the Western Circuit where a prisoner who threw a bat at the Judge Richardson, C J of Assize, was indicted, right hand cutoff and fixed to a gibbet from which he was immediately hanged to death in the court Lord Denning with his flair for writing breezily explains some contempt of court cases which he witnessed both as a Lawyer and as a Judge As a Junior, he saw a man throwing a tomato at the judges, which missed them by a whisker and hit the window panelling Taken aback the judges adjourned the court, brought him back and sentenced him to 6 weeks imprisonment After becoming a Judge one day a man took a stick and broke the windows on his courtroom Lord Denning did not commit him for contempt of court But he was ordered to pay damages for the broken window pane Yet another case is narrated by Lord Denning Every monday morning the petitions are directly heard by the judges and Miss Stone was also there Since her application was rejected by the judges, she picked up books from from the bookcase and started hurling them at the judges who tried to protect themselves Finally when there was no book left to throw she yelled "I am running out of ammunition" and her parting shot was " I congratulate your Lordship's coolness under fire" Here the judges took a lenient stand and let her off Another change bringing Appellate provision was also introduced for contempt cases and Lord Denning sat in the Appeals Court and dealt with many cases of contempt which he relates along with the case history

WELSH STUDENTS CASE

Some students from Wales studying in the University of Aberystwyth stormed a court when it was in session They were upset about the cancellation of Welsh language radio programmes and having English language programmes at that time Love of their mother tongue made them come to court to protest this move The case was Morris Vs Crown Office This was the first case to go to the Court of Appeal from amongst the contempt of court cases The students had stormed the well of the court, shouted slogans, distributed pamphlets and sung songs in Welsh As a result the court was adjourned and on 4th February, 1970 the 19 students were brought before the judge who asked them to apologise for their actions Eight of them apologised to the judge for their actions and they were letoff with a fine of 50 pounds each and the remaining 11 students who refused to budge were sentenced to prison As appeals for contempt cases had to come up quickly, this case was taken up on the 9th of February and was decided on the 11th of February Lord Denning and Lord Justice Arthian

Davis sat on the bench for this case Lord Denning said that though these students had a right to express their opinions yet they should not have entered the court hall and interrupted the Justice system as those who strike at it, strike at the very foundations of our society So the Judges can take recourse to punish the offenders Earlier there was no safeguard for the people against contempt judgements, but in 1960 it was remedied and appeals against contempt was allowed All the 11 people appealed to Appellate Court to consider their case sympathetically as their liberty was affected Considering the judgement, Lord Denning noted that it was excessive But the actions of the students at that time warranted it They interfered with the course of justice deliberately He further observed that if students strike at the course of justice they strike at the roots of justice and they bring down that which protects them So he said that students must support law and not hurt it These 11 students have shown remorse to the court to bail them out after serving a week in prison Since students are not ordinary criminals and as there is no violence and dishonesty in their behaviour We have to consider their request and that the love of their mother tongue has made them do this wrong But they have realised their mistake and moreover 3 months in jail would hurt their studies and future Showing mercy at them, the students were letoff with a condition that they have to be in touch with the law authorities for the next 12 months and their behaviour must be good Lord Denning had to receive different reactions from the press for his judgement Some ProWelsh journals praised him and while he had to receive the ire of the English Journals for letting the students free

LAUGHING GAS CASE (BALLOUGH VS ST. ALBINS CROWN COURT)

Ballough was the son of a distinguished economist Lord Ballough played a practical joke while working in a court complex for which he was sentenced to 6 months imprisonment He appealed against it and it came to the appellate court He was employed as a clerk by the solicitors for 5 pounds a day It was an airconditioned hall and a pornographic case was going on The young man was bored and he wanted to liven up the atmosphere by introducing Nitrous Oxide (N_2O) or Laughing Gas He stole half a cylinder from a hospital car park, carried it in his briefcase, for putting it in the inlet to the ventilating system, so that the gas is released into the court hall So one day after the office hours he went to the roof of the courthouse and found the ventilating ducts to his courtroom The next day he came with a cylinder of gas to the court and he went to the court hall which had the staircase and not to his assigned courtroom He waited in the gallery for the case to end He left the room for a while and in the meantime the officers of the court were watching his suspicious activities investigated the contents of his briefcase after he left They found the cylinder and when Ballough entered the hall he was confronted and he blurted out the truth He was charged with stealing a bottle of N_2O The matter was reported to the judge in that particular courthall At the end of the day Ballough was produced before the court He admitted to whatever he did saying that it was just a joke But the judge was not amused and sentenced him to six months in prison Ballough protested that he had not committed any contempt and this judge cannot charge him under that When the sentence was given Ballough insulted the judge by calling him a humourless automaton and asked him to destroy himself After 11 days in prison he returned to normalcy and wrote to the solicitor seeking an appeal of pardon The Appellate Court discussed this matter and said that over the years the punishment for contempt of court has been reduced and in this case summary punishment was not warranted He was already in custody for stealing the cylinder and the judge could have concentrated on that aspect alone Ballough was guilty of stealing the gas cylinder and he was guilty of contempt of court as no gas was released, as no proceedings was disturbed and no trail upset The criminal intent to disrupt the court was there which has not taken pace actually He had

to spend 14 days in prison and that was considered as punishment and he was letoff as contempt had not occurred

PRESS FREEDOM AND CONTEMPT OF COURT

A. THALIDOMIDE CASE

Under the heading prejudicing a fair trial the thalidomide case is discussed by Lord Denning It has been reported in the Court of Appeal in A G Vs Time Newspaper Ltd (1973) Thalidomide drug was supposed to cure morning sickness in pregnant ladies and it was tested on a few mothers Their children were born deformed a year later in 1962 All the parents excepting 5 parents agreed to a settlement So the distillers moved an application to the Appellate court to remove those 5 parentsas next friends so that the children could be represented by the Official Solicitor General If that move was accepted the case would not reported as the official solicitor would agree to a settlement The Appellate Court's refusal is represented in the Re Taylor's application The Sunday Times decided to investigate into the matter as it felt that the distillers were also morally and legally responsible for the thalidomide children Ten years had elapsed since the children were born On October 12, 1972, the Attorney General issued a writ against the Sunday Times seeking an injunction to restrain them from publishing the draft article, since in this pending litigation there is the danger of prejudicing a fair trial in some way or the other It was taken to the Appellate Court where the question whether 'litigation is pending and actively is in suit' was questioned The Appellate Court held that this case is a matter of public interest and national concern so the press has the right to make fair comment on it As 12 years have passed and no settlement has been reached, if the papers report their facts right they do not commit contempt of court It was held that it was not actively in suit before the court In this case only 62 actions were settled in February, 1968 and for the last 123 children no writs have been issued and in 266 actions only writs were issued 4 years back But they have not been brought to trial The Appeals Court further noted that the Parliament also discussed it and so the press cannot be denied the freedom of expression When the case went against the distillers they took it to the house of the Lords where the distillers won The Sunday Times took it to the European Court of Human Rights which relied on Article 10 of the European Convention on Civil and Political Rights (Right to freedom of expression) and upheld the claim of the Sunday Times by a majority of 11 9 stating that the press has the right to impart information on the thalidomide case

B. WARD OF THE COURT

In this case a newspaper, the Daily Telegraph was held to be guilty of contempt of court as it published a report of proceedings which was held in private It published an article titled, 'Jailed labour "should visit hostel girl 16"' It related to wardship proceedings of a girl aged 16 years In 1976, this girl who was 15 ran away with a man who was 28 years age old man He administered drugs to her and had physical relations with her Her parents came to the court requesting their daughter to be made as the ward of the court She was placed in a hostel The Daily Telegraph got information about the visit of the man to the hostel They made enquiries with the parents and the court officials about the status of the case No one told them that the girl was the ward of the court and the parents told the press that the wardship order was a temporary one and the period had expired Assuming that the case is no longer sub judice, the Daily Telegraph and the Evening Mail published this information to warn parents having young girls to be vigilant and they published these articles The case Re F (1977) came up for hearing, the consent newspapers apologized for publishing this article which was sub judice They explained that it was done with no intention to go against the court and also because they did not get any information about the status of the case They

thought that the case was over and published this The court did not file them for contempt since it accepted their genuine explanations

DECLINING TO ANSWER THE COURT

Lord Denning discusses the right of the press to maintain secrecy about the source of information and whether it can be considered as contempt if it is not divulged in the court of law He discusses two case in this regard namely, Attorney General Vs Mulholland and Attorney General Vs Foster These cases involved two journalists one of whom had written an article about the presence of a spy in the admiralty Immediately a Committee of Inquiry under the chairmanship of Lord Radcliffe was set up to look into the matter The Journalist vehemently refused to entertain any question posed by the committee on the source of information Thus he was charged with contempt of court and sentenced to six months imprisonment He later filed an appeal in this regard The other Journalist was sentenced to three months imprisonment It raised the question whether a journalist has any privilege in the matter Lord Denning observes that in view of the peculiar facts of the case in hand it was imperative on the part of the Journalist to reveal the source of information or else it could be a baseless allegation Lord Denning further states that Journalists cannot claim any privilege for refusing to answer the Judges and that ClientAttorney privilege is the only legally recognised privilege whereby one can refuse to answer Public Interest takes priority in this case and the court held that the sentences of six months and three months respectively passed on Mulholland and Foster, was not disproportionate to the serious nature of the offence and hence cannot be set aside

DOCKERS CASE

Contempt arising due to disobedience to the order of the court The Courts have come the powers to issue orders commanding a person to do or not to do something If he disobeys he can be punished for contempt with fine or imprisonment A contempt of court is a criminal offence

THE 3 DOCKERS (CHURCHMAN VS SHOP STEWARDS)

This case discusses the above stated form of contempt The Industrial Relations Act, 1971 setup a new court, the Industrial Relations Court which was opposed by the trade union and their members Three dockers in the east end of London picketed a depot on which the court issued an order commanding them to stop the picketing However, they continued to defy the order of the court which on 14th June, 1972 gave an ultimatum to the three men to appear before on or before 16th June by 2 p m They were waiting for this order and expecting to be arrested and continued to picket the depot They were waiting to be arrested to be hailed as martyrs and the trade union would paralyse the enter nation by calling a national strike The Official Solicitor applied on behalf of these persons and made them withdraw the order The power of the court was affected and more importantly the trade union could not capitalize on the issue

THE 5 DOCKERS

Five weeks later on the 26th of July, 1972 the same drama unfolded once again when 5 dockers picketed a depot Again the industrial court gave orders threatening to imprison them The Official Solicitor was also about to intervene But by then the House of Lords gave a decision in the Heaton's case, which was said to affect the matter Their decision was communicated to the President of the Industrial Court who had to revoke the order of committal once again The general strike was once again averted and the nation was saved An analysis of these 2 cases reveal that the weapon of imprisonment should never be used in the case of industrial disputes

VICTIMISATION OF WITNESSES

Witnesses are vital for efficient working of courts and also for the administration of justice. If witnesses refuse to testify the doors of the court has to be closed Intimidating or Victimizing the witnesses for testifying in the court may also considered as contempt of court

THE TRADE UNION MEMBER IS EXPELLED FROM HIS OFFICE (ATTORNEY GENERAL VS BUTTERWORTH)

This case was debated and considered in the year 1962 Mr Butterworth and others were on the committee of the branch of a trade union Mr Greenlees had to go to the restrictive practices court and give evidence, it was not liked by the others and in order to punish him he was deprived of his post as Branch delegate and Treasurer It was reported to the Attorney General who considered the action of Mr Butterworth and the others as contempt of court The Attorney General appealed to Appellate Court The Court concurred with the Attorney General's views and held that victimisation of witnesses is also a contempt of court and it interferes with justice and of the concerned Union Members, three had to pay 200 pounds each and three had to pay 300 pounds each which went toward the Attorney General's cause Further apologies were also tendered by them

THE TENANT IS EVICTED FROM HOME (CHAPMAN VS HONIG)

If a witness is victimised and suffers on account of being a witness then he can sue for damages as contempt is considered a criminal offence Differing views were expressed in the case of Chapman Vs Honig Since 1959 Chapman was a tenant in a landlord's tenement flats The landlord had forcibly evicted one Harrand from his tenement Chapman was a witness to this incident and so Harrand requested him to give evidence against the landlord Later the court ordered him to give evidence which he did on the 22nd of June, 1962 The next day Chapman was served with a notice to quit the tenement by 28th July, 1962 The reason was to punish Chapman for having given the evidence The Judge gave judgement to the plaintiff and he was was awarded 50 pounds as damages Immediately the landlord tried to evict Chapman from his house forcibly Lord Denning felt that the courts have to empower the witnesses by protecting the tenant and by holding the notice as invalid Here the opinion of the two judges to give compensation was overruled and the tenant was refused permission to even appeal to the Lords as the compensation sum was too meagre Thus this case ended without protecting the rights of the witnesses who were being victimised

10. ETHICS – ON VIRTUES & VICES

Aristotle

FULL TEXT OF THE LESSON[1]

CONTENTS

This essay is of interest an example of the way in which Aristotle's reduction to scientific form of the ethical system adumbrated by Plato was later systematized and stereotyped by smaller minds It classifies, It starts from the ethical psychology of Plato, dividing the soul of personality of man into three parts, the reason the passions and the appetites Then turning to conduct, it ranges the various actions and emotions under the virtues and vices which they exemplify

AFFINITIES

The list of Virtues or forms of Goodness is Aristotelian, as in addition to the four cardinal virtues of Plato, wisdom or prudence, courage or manliness, Temperance or sobriety of mind, and Justice or righteousness, it includes Gentleness, Self – control , Liberality or generosity, and Magnanimity or greatness of spirit But the analysis of these virtues adopted is not Aristotle's He exhibited lying midway between vicious extremes of excess and deficiency, but here each virtue is merely contrasted with a single vice as its opposite And near the end of the easy (c viii,) there is an allusion to the comparison draw by Plato in the Republic between the well – ordered Soul and the well constituted State

It is true that the rigorously systematic arrange – meant of the matter and the concise fullness of detail (in cc, vii , viii, three of the Vices are neatly sub – divided into three species each) are more characteristic of the Peripatetic school than of the Academy , the formal exposition of a subject already fully explored has replaced the tentative heuristic method which Plato in his dialogues inherited from Socrates The descriptive treatment of the virtues and vices (a method that had been first foreshadowed in the nicomachean Ethics, in for instance the portrait of the magnanimous Man) Links the work with the characters of Theophrastus, and seems to have been customary in the peripatetic school from his time onward Zeller points out that the recognition of an order of beings between gods and men, the daimones, in the passages dealing with piety and god – lines (cc, v , vii) also indicates a late period A faint trace of store influence may be seen in the formal antithesis of praiseworthy and blameworthy actions at the beginning and the end of the treatise

DATE

Susemihl agrees with Zeller that the book probably belongs to the eclectic period, he dates it not earlier than the first century a c and perhaps in the ability, apparently a Peripatetic, attempting to reconcile the moral philosophy of Aristotle with that of palto

The earlier data suggested brings it within range of Andonicus of Rhodes, who was head of the Peripatetic school at Athens in Cicero's student days. Andronicus edited and commentated on the Master's works, making some modifications of his own in logic and psychology Under his name, though scholars usually assign it to a later date, there has come down to us a treatise , and appended to this trentise is an essay on virtues and vices which is a copy of the one before us, though the order of the contents has been rearranged This book serves as additional evidence for present essay forms c, xviii of Book I

MANUSCRIPTS AND TEXTS

The text of this edition is based on that of Bekker in the Berlin Aristotle, 1833, where occupies pp 1249 – 1251 in the second volume , Bekker gives no critical notes The Berlin page – numbers, columns (a and b) and lines are printed in the margin here The only

[1] Reeve C D C (Translator) , Aristotle Nicomachean Ethics, Hackett Publishing Company, e-book

considerable later work on the text is that so susemihl, who included this essay in the volume containing the Eudemian Ethics (Tenbner, Leipzing , 1884) , his text has full critical notes, a few selections from which are given here Susemihl uses chiefly four mss. , L, the twelth - century paris ms, of the *Nicomachean Ethics* which Has *Of virtues and vices* appended, in a hand dating probably at the beginning of the thirteenth century, F, the fourteenth – century Laurentian ms , and two at Madrid, one grouping with F and the other with L, as do six others of the fifteenth and sixteenth centuries (one in the Bodleian) which he has collated, and oldest, extant edition, published at Basel in 1589 an older edition has now disappeared

In the brief critical notes beneath the present text the variants of L and F are sometimes quoted, and the reading of one or more other mss Are denoted by v l , The sources of conjectural emendations are indicated by the following abbreviations

And = Andronicus
Rac = Rackham
St = Stobaeus
Sus = Susemihl

A few conjectures of Bussemaker and of Sylburg are quoted from susemihl

Part I

- Fine things are the objects of praise, bass things of blame and at the head of the fine stand the
- Virtues, at the head of the base the vices , con – sequently the virtues are objects of praise, and also the causes of the virtues are objects of praise, and the things that accompany the virtues and that result from them, and their works, while the opposite are the objects of blame
- If in accordance with Plato the spirit is takes as having three parts, wisdom is goodness of the rational part, gentleness and courage of the passionate, of the appetitive sobriety of mind and self – control and of the spirit as a whole righteousness, liberality and
- Great – spiritedness , while badness of the rational part is folly, of the passionate ill - temper and cowardice, of the appetitive profligacy and uncontrol, and of the spirit as a whole unrighteousness, meanness, and smallmindedness

Part II

- Wisdom is goodness of the rational part that is applied to productive of the things contributing to happiness
- Gentleness is goodness of the passionate part that
- Makes people difficult to move to anger Courage is goodness of the passionate part that makes them un –
- Dismayed by fear of death Sobriety of mind is good – ness of the appetitive part that makes them not desirous of the base pleasures of sensual enjoyment
- Self – control is goodness of the appetitive part that enables men by means of reason to restrain their
- Appetite when it is set on base pleasures Righteous – ness is goodness of the spirit shown n distributing
- What is according to desert Liberality is goodness of spirit shown in spending rightly on fine objects Great spiritedness is goodness of spirit that enables men to bear good fortune and bad, honour and dishonor

Part III

- On the other hand folly is badness of the and to the vices

- Rational part that causes bad living Ill - temper is badness of the passionate part that makes men easy
- To provoke to anger Cowardice is badness of the passionate part that causes men to be dismayed by
- Fear, and especially by fear of death Profligacy is badness of the base pleasures of sensual enjoyment
- Uncontrol is badness of the appetitive part that makes men choose base pleasures when reason tries
- To hinder Unrighteousness is badness of spirit that makes men covetous of what is contrary to them
- Desert Meanness is badness of spirit that makes
- Men try to get profit from all sources Smallmindedness is badness of spirit that makes men unable to bear good fortune and bad, honour and dishonor

Part IV

- It belongs to wisdom to take counsel, to judge virtuous actions and feelings classified the goods and evils and all the things in life that are

Part V

- To self – control belongs ability to restrain desire by reason when it is set on bass enjoyments and pleasures, and to be resolute, abd readiness to endure natural want and pain
- To righteousness it belongs to be ready to distribute according to desert, and to preserve ancestral customs and institutions and the established laws And to tell truth when interest is at stake, and to keep agreements First among the claims of righteousness are our duties to the gods, then our duties to the spirits then those to country and parents, then those to the departed , then those to country and parents, then those to the departed , and among these claims is piety, which is either a part of righteousness or a
- Concomitant of it righteousness is also accompanied by holiness and truth and loyalty and hatred of wickedness
- To liberality it belongs to be profuse of money on praiseworthy objects and lavish in a spending on what is necessary, and to be helpful in a matter of dispute, and not to take from wrong sources The liberal man is cleanly in his dress and dwelling, and fond of providing himself with things that are above the ordinary and fine and that afford entertainment without being profitable , and he is fond of keeping animals that have something special or remarkable
- about them Liberality is accompanied by elasticity and ductility of character, and kindness, and a compassionate and affectionate and hospitable and honourable nature
- Deities of a minor order, in some cases the souls of dead men of the I heroic age , often the object of only local worship
- To greatness of spirit it belongs to bear finely both good fortune and bad honour and disgrace, and not to think highly of luxury or attention or power or victories in contests, and to possess a certain depth and magnitude of spirit He who values life highly and who is fond if life is not great spirited The great spirited man is simple and noble in character,
- Able to bear injustice and not revengeful Greatness of counsel, bad fellowship, bad use of one's resources, false opinions about what is fine and good in life

PART VI

- To folly belongs bad judgement of affairs, bad vicious actions and feelings classified Counsel bad fellowship, bad use one's resources, false opinions about what is fine and good in life — ——— —
- Folly is accompanied by unskilfulness, igborabnce , uncontrol, awkwardness, forgelfulness
- Of ill- sullenness It belongs to the ill-tempered man to be unable to bear either small slights or defeats but to be given to refaliation and revenge, easily moved to anger by aby chance deed or
- Word Ill-temper is accompanied by excitability of character, instability, better speech, and liability to take offence at trifles and to feel these feelings quickly and on slight occasions
- To cowardice it belongs to be easily excited by chance alarms, and especially by fear of death or of bodily injuries, and to think it better to save oneself
- By any means than to meet a fine end Cowardice is accompanied by softness, unmanliness, faint-heartedness fondness of life , and it also has an element of cautiousness and submissiveness of character
- To profligacy belongs choosing haemful and base pleasures and enjoyments, and thinking that the happiest people are those who pass their lives in pleasures of that rind, and levity in words and deeds
- Profligacy is accompanied by disorder, shamelessness, irregularity, luxury, slackness, carelessness, negligence, remissness
- To uncontrol it belongs to choose the enjoyment of pleasures when reason would restrain, and although one believes that it would be better not participate in them, to participate in them all the same, and while thinking one ought to do fine and expedient things yet to abstain from them for the sake of one's
- Pleasures The concomitants of uncontrolled are softness and negligence and in general the same as those of profligacy

PART VII

- Of unrighteousness there are three kinds,
- Impiety, greet, outrage Transgression in regard to goods and sprits, or even in regard to the departed
- And to parents and country, is impiety Transgression in regard to contracts, taking what is in dispute
- Contrary to one's desert, is greed outrage is the unrighteousness that makes men procure pleasures for themselves while leading others into disgrace , in consequence of which even us says about outrage ,
    - She that wrongs others even when she gained naught
- And it belongs to unrighteousness to transgress ancestral customs and regulations, to disobey the laws and the rules, to lie, to perjure, to transgress
- Covenants and pledges Unrighteousness is accompanied by slander, imposture, pretence of kindness, malignity, unscrupulousness
- Of meanness there are three kinds Love of base
- Gain, parsimony, niggardliness Love of base gain makes men seek profit from all sources and pay more
- Regard to the profit than to the disgrace, parsimony makes them unwilling to spend money on a necessary
- Object, niggardliness causes them only to spend in dribilets and in a bad way, and to lose more than they gain by not at the proper moment letting go

- The difference, it belongs to meanness to set a very high value on money and to think nothing that brings profit a disgrace-a menial and servile and squalid mode of life, alien to ambition and to
- Liberality Meanness is accompanied by pettiness, sulkiness, self-abasement, lack of proportion, ignobleness, misanthropy
- It belongs to small-mindedness to be unable to bear either humor or dishonor, either good fortune or bad, but to be filled with conceit when honored and purled up by trifling good fortune, and to be unable to bear even the smallest dishonor and to deem any chance failure a great misfortune, and to be distressed and annoyed at everything Moreover the small-minded man is the sort of person to call all slights an insult and dishonor, even those that are
- Due to ignorance or forgetfulness Small-mindedness is accompanied by pettiness, querulousness, pessimism, self-abasement
- VIII
- In general it belongs to goodness to make the spirit's disposition virtuous, experiencing tranquil and ordered emotions and in harmony throughout all its parts, this is the cause of the opinion that the disposition of good spirit is a pattern of a good constitution of the state It also belongs to goodness to do good to the deserving and love the good and hate the wicked, and not be eager to inflict punishment or take vengeance, but gracious and kindly and forgiving Goodness is accompanied by honesty, reasonableness, kindness, hopefulness, and also by such caritas as love of home and of friends and comrades find guests, and of one's fellow-men, and love of what is noble-all of which qualities are among those that are praised
- To badness belong the opposite qualities, and it has the opposite concomitants all the qualities and concomitants of badness are among the things that are blamed

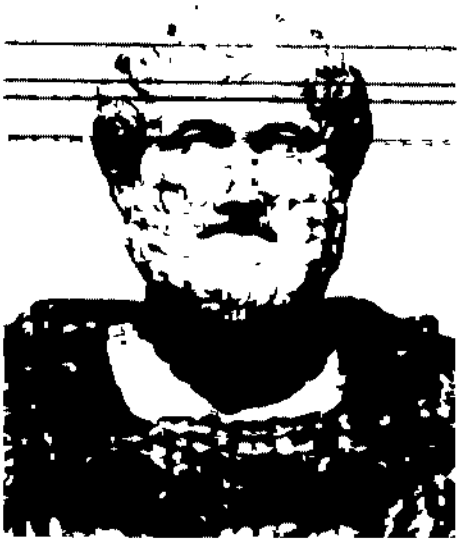
ABOUT THE AUTHOR

Aristotle [C 384 BCE to C 322 BCE]

The ancient Greek philosopher was born in Circa 384 B C in Stagira, Greece He was a student of Plato and was a tutor to Alexander the Great His father Nicomachus, was a court physician to the Macedonian King Amyntas II Aristotle enrolled in Plato's 'Academy' in Greece, a premier educational institution

Teaching: In 338B C , Aristotle went to Macedonia to teach Alexander the Great, King Phillip II's son In 335 B C , after Alexander became the King Aristotle started his own school in Athens called the ' Lyceum' with Alexander's permission He used to walk round the school grounds while teaching and hence they were termed as the "Peripatetics", meaning "people who travel about" Members of the Lyceum researched subjects ranging from science, metaphysics, philosophy, politics, art, etc and wrote their findings in manuscripts Thus they built the schools massive collection of written materials making it one of the first great libraries

Aristotle researched sciences mainly biology including marine biology where is classifications are more accurate than in biology He also dabbled in earth sciences, meteorology, where he identified the water cycle, discussed issues like natural disasters, astrological events etc



ARISTOTLE

Aristotle focused mainly on philosophy, especially logic In his book 'Prior Analytics', he explains syllogism, the main components of reasoning, deductive and inductive logic, inclusive and exclusive relationships in logical reasoning and, explained it using the Venn diagrams

Ethics was another favorite topic of Aristotle In Nichomachean Ethics, he prescribed a moral code of conduct for what he called "good living" He said that good living to some degree defied the more restrictive laws of logic Since the real world poses circumstances that can present a conflict of personal values, he cautioned the individual to reason every decision and to take steps

MAJOR WORKS:

Aristotle wrote an estimated 200 works in the form of notes and manuscripts, which consists of dialogues, records of scientific observations and systematic works His student Theophrastus and his student Neleus took care of his written works before they were taken to Rome Of the 200 works, 31 are still in circulation His major works on logic include Categories on Interpretation, Prior Analytics and Posterior Analysis Metaphysics, Nicomachean Ethics and Eudemian Ethics are Aristotle's major treatises on good behavior

In 321 B C after Alexander's death he fled from Athens to Chalcis to escape prosecution and died in 322 B C Aristotle's influence on Western thought in the humanities and social sciences is considered unparalleled, with the exception of Plato's contribution and Socrates' contribution

LESSON ANALYSIS

The essay ***On Virtues and Vices***, written by Aristotle, is a fine example of the reduction to the scientific form of the ethical system explained by Plato Aristotle systematizes and simplified it for smaller mind to understand He classifies different kinds of good and bad contact under the virtues and vices of which they are manifestations Plato divides the soul or personality of man into three parts- the reason, the passion, and the appetites Starting from the ethical psychology of Plato Aristotle categories the various actions and emotions of man under the virtues and vices which they exemplify Plato himself had stated four cordial virtues namely, wisdom or prudence, courage or manliness, temperance or sobriety of mind and justices are righteousness Aristotle added a list of virtuous are forms of goodness

In Aristotle's opinion if the state has to be good, the citizens of the state should also be good Man faced with choices and dilemma in doing or not doing an act Man with ability to exhibit rational behavior should analyze the consequences of every act before carrying it out He talks of the golden mean or the *Doctrine of the Mean* that exists as a mean state between the vicious extremes of excess and deficiency For example, the virtuous mean of *courage'* stands between the vices of rashness, which is the extreme of excess and cowardice, which is the extreme of deficiency Most activities of human beings aim at the higher end, which is happiness The goal of ethics or virtuous behavior is determined by how best happiness can be achieved Happiness depends on living in accordance in appropriate virtuous Virtue is a mean state between the extremes of excess and deficiency, it varies from person to person Virtuous person is naturally disposed to behave in the right way, for the right reasons and derives happiness rightly

Aristotle discusses the various moral virtues and corresponding vices Courage consists of confidence in the face of fear and temperance is in not giving too easily to physical pleasure Magnanimity's mean is in having the right disposition towards honor and understanding one's view Liberality and magnificence consists of distributing money to appropriate situations Patience is the appropriate disposition towards anger and in certain situations it is appropriate to show some degree of anger Modesty, though not a virtue is an appropriate disposition towards shame which is admirable in the young

The Golden Mean

Extremes or excesses in both direction (i e excess and deficiency of each virtue) are both fatal and morally wrong (i e they both result in unhappiness) Too much or too little exercise is not good for one's health Therefore, the excess and defeat are vicious or wrong, and the mean is virtuous, the virtue, or right Virtue is a state of deliberate moral purpose consisting in a mean that is relative to us, the mean being determined by reason, or as a prudent person would determine it Not every action or emotion has a mean

Aristotle says that fine things are the objects of praise and *virtue* stands at the head of fine things Base things are objects of blame and *vices* are at the head of the base Likewise, the causes of the virtues, the things that accompany virtue, the works and results of virtues are the objects of praise, while the opposites are the objects of blame Wisdom is goodness of rational part, gentleness is goodness of the passionate part and sobriety of mind is goodness of the appetitive part

Aristotle lists out various behavioral aspects of man and points out the virtues along with the vices The tabular column given below highlights the same

ARISTOTLE'S ETHICS

TABLE OF VIRTUES AND VICES

SPHERE OF ACTION FEEELING	EXCESS	MEAN	DEFICIENCY
Fear and Confidence	Rashness	Courage	Cowardice
Pleasure and Pain	Licentiousness 'Self-indulgence	Temperance	Insensibility
Getting and Spending (minor)	Prodigality	Liberality	Illiberality Meanness
Getting and Spending (major)	Vulgarity Tastelessness	Magnificence	Pettiness 'Stringiness
Honour and Dishonour (major)	Vanity	Magnanimity	Pusillanimity

Honour and dishonor (minor)	Ambition empty vanity	Proper ambition Pride	Unambitiousness undue humility
Anger	Irascibility	Patience Good temper	Lack of Sprit / Unirascibility
Self-expression	Boastfulness	Truthfulness	Understatement / mock modesty
Conversation	Buffoonery	Wittiness	Boorishness
Social Conduct	Obsequiousness	Friendliness	Cantankerousness
Shame	Shyness	Modesty	Shamelessness
Indignation	Envy	Righteous indignation	Malicious enjoyment Spitefulness

UNIT 3
LANGUAGE ACQUISITION AND USE OF LANGUAGE

LANGUAGE ACQISITION[1] How we acquire language is still one of the greatest biological accomplishments in human history Language is part of what makes us human no other species can develop language to represent actions, objects, feelings and ideas but most young children make it look easy! All of us have managed to acquire language, it is the reason why we can read the words in this passage and hopefully extract meaning from it Learning a second language is not easy

Language acquisition is one of the most passionately deliberated branches of linguistics, incorporating ideas from multiple fields including biology, psychology and philosophy

SPOKEN AND WRITING

- Language is the means which people use to express their thoughts, it is both oral and written
- Oral language is a combination of sounds used to express thought
- The sounds used to express thought are grouped in spoken words A spoken word may be a single sound or a group of sounds
- The sounds of oral language are represented by letters to form written language Words of oral language have their equivalent words in written language
- Single words, whether oral or written, express ideas Words must be properly grouped to express thought
- Written language is composed of written words, so combined as to express thought
- The sole purpose of language is to express thought
- English Grammar helps to make known the correct forms of our language

FOUR SKILLS OF LANGUAGE ACQUISITION

Language educators have long used the concepts of four basic language skills

1 Listening
2 Speaking
3 Reading
4 Writing

The four basic skills are related to each other by two parameters

- The mode of communication oral or written
- The direction of communication receiving or producing the message

We may represent the relationships among the skills in the following chart

[1] David Annoussamy, The Language Riddle, English Language Teaching Centre Pondicherry University, Pondicherry, 1995 Pp 10-39, 104-132

Skills		Oral	Written
Understanding	*Receptive*	Listening	Reading
Expression	*Productive*	Speaking	Writing

LISTENING

Listening comprehension is the receptive skill in the oral mode When we speak of listening what we really mean is listening and understanding what we hear

In our first language, we have all the skills and background knowledge we need to understand what we hear, so we probably aren't even aware of how complex a process it is Here we will briefly describe some of what is involved in learning to understand what we hear in a second language

Listening Situations: There are two kinds of listening situations in which we find ourselves

- Interactive, and
- Non-interactive

Interactive listening situations include face-to-face conversations and telephone calls, in which we are alternately listening and speaking, and in which we have a chance to ask for clarification, repetition, or slower speech from our conversation partner Some non-interactive listening situations are listening to the radio, TV, films, lectures, or sermons In such situations we usually do not have the opportunity to ask for clarification, slower speech or repetition

Micro-skills: The listener has to

- retain chunks of language in short-term memory
- discriminate among the distinctive sounds in the new language
- recognize stress and rhythm patterns, tone patterns, intonational contours
- recognize reduced forms of words
- distinguish word boundaries
- recognize typical word-order patterns
- recognize vocabulary
- detect key words, such as those identifying topics and ideas
- guess meaning from context
- recognize grammatical word classes
- recognize basic syntactic patterns
- recognize cohesive devices
- Detect sentence constituents, such as subject, verb, object and prepositions

SPEAKING SKILL

Speaking is the productive skill in the oral mode It, like the other skills, is more complicated than it seems at first and involves more than just pronouncing words

Speaking Situations: There are three kinds of speaking situations in which we find ourselves

- Interactive,
- partially interactive, and
- Non-interactive

Interactive speaking situations include face-to-face conversations and telephone calls, in which we are alternately listening and speaking, and in which we have a chance to ask for clarification, repetition, or slower speech from our conversation partner Some speaking situations are partially interactive, such as when giving a speech to a live audience, where the convention is that the audience does not interrupt the speech The speaker nevertheless can see the audience and judge from the expressions on their faces and body language whether or not he or she is being understood Some speaking situations may be totally non-interactive, such as when recording a speech for a radio broadcast

Micro-skills: Here are some of the micro-skills involved in speaking The speaker has to

- Pronounce the distinctive sounds of a language clearly enough so that people can distinguish them This includes making tonal distinctions
- Use stress and rhythmic patterns, and intonation patterns of the language clearly enough so that people can understand what is said
- Use the correct forms of words This may mean, for example, changes in the tense, case, or gender
- Put words together in correct word order
- Use vocabulary appropriately
- Use the register or language variety that is appropriate to the situation and the relationship to the conversation partner
- Make clear to the listener the main sentence constituents, such as subject, verb, object, by whatever means the language uses
- Make the main ideas stand out from supporting ideas or information
- Make the discourse hang together so that people can follow what you are saying

READING SKILL

Reading is the receptive skill in the written mode It can develop independently of listening and speaking skills, but often develops along with them, especially in societies with a highly-developed literary tradition Reading can help build vocabulary that helps listening comprehension at later stages, particularly

Micro-skills: Here are some of the micro-skills involved in reading The reader has to

- Decipher the script In an alphabetic system or a syllabary, this means establishing a relationship between sounds and symbols In a pictograph system, it means associating the meaning of the words with written symbols
- Recognize vocabulary
- Pick out key words, such as those identifying topics and main ideas
- Figure out the meaning of the words, including unfamiliar vocabulary, from the (written) context
- Recognize grammatical word classes noun, adjective, etc
- Detect sentence constituents, such as subject, verb, object, prepositions, etc
- Recognize basic syntactic patterns

- Reconstruct and infer situations, goals and participants
- Use both knowledge of the world and lexical and grammatical cohesive devices to make the foregoing inferences, predict outcomes, and infer links and connections among the parts of the text
- Get the main point or the most important information
- Distinguish the main idea from supporting details
- Adjust reading strategies to different reading purposes, such as skimming for main ideas or studying in-depth

WRITING SKILL

Writing is the productive skill in the written mode It, too, is more complicated than it seems at first, and often seems to be the hardest of the skills, even for native speakers of a language, since it involves not just a graphic representation of speech, but the development and presentation of thoughts in a structured way

Micro-skills: Here are some of the micro-skills involved in writing The writer needs to

- Use the orthography correctly, including the script, and spelling and punctuation conventions
- Use the correct forms of words This may mean using forms that express the right tense, or case or gender
- Put words together in correct word order
- Use vocabulary correctly
- Use the style appropriate to the genre and audience
- Make the main sentence constituents, such as subject, verb, and object, clear to the reader
- Make the main ideas distinct from supporting ideas or information
- Make the text coherent, so that other people can follow the development of the ideas
- Judge how much background knowledge the audience has on the subject and make clear what it is assumed they do not know

DIFFERENCES BETWEEN SPOKEN AND WRITTEN LANGUAGE

S.NO	SPOKEN LANGUAGE	WRITTEN LANGUAGE
1	**Extra lingual** information may be derived sex, age, class, etc Faster – spontaneous – off-the top of the head More ambiguous and immediate Can be planned	**Less extra-lingual** information can be clarified e g child's writing Slower – prepared Can refer back at random
2	**Feedback** i) Oral (sound) 'I see', giggles ii) Visual nods, smiles, clock-watching, gestures, bewildered expressions etc [Extra-Linguistic} body language, watching, gestures iii) Para-linguistic Mood more easily recognised	**Feedback** i) 'Delayed' feedback ii) All types of feedback in other column absent iii) Balance of different types of sentences depending on effect required

	iv) Special case telephone conversation – no visual feedback	
3	**Grammatical Features** i) incomplete structures ii) interrupted structures iii) altered structures iv) spoken (voiced) pauses v) Long meandering compound sentences using 'and'	**Grammatical Features** Features mentioned in opposite column are tidied up i) Time allows re-reading and correcting ii) Punctuation helps bring order
4	**4. Vocabulary** Tendency to use i) slang and more simple words eg doctor v medical practitioner ii) imprecise references – eg in time, soon, later, in a minute, refer to people as them/they iii) swear words iv) colloquial v) limited vocabulary vi) often more monosyllabic words vii) use of 'fillers' viii) dialect accent regional words	**Vocabulary** Tendency to use i) formal words – slang avoided ii) technical words, eg legal jargon iii) more precision eg former, latter, above iv) swear words usually avoided v) 'educated' language vi) time taken to select correct word vii) polysyllabic words
5	**Phonological Features** i) Intonation This can alter the meaning considerably ii) Pauses These can be used for stress, climax, or may occur prior to selection of a hard-to find word iii) Speed May provide information on the confidence/ nervousness/ urgency of the speaker	**Phonological Features:** i) Intonation Some direct speech can convey this (eg he said threateningly) and not always clearly ii) Pauses These can be conveyed by punctuation, but punctuation is only an approximation to pausing iii) Speed Not relevant
6	**Functions:** The purpose of spoken language involves more than just the communication of ideas Includes - getting things done - letting off steam - filling in embarrassing gaps Great amount of repetition saying the same Thing several times in different ways	**Functions:** The purpose of spoken language involves more than just the communication of ideas Includes - getting things done - letting off steam - filling in embarrassing gaps Great amount of repetition saying the same thing several times in different ways

	Argument has more logical development	Logical development of ideas Argument is easier to follow

STAGES OF ACQUISITION OF LANGUAGE[1]

1. Acquisition of Language by Children

a.) University of Acquisition

The largest group of those involved in the process of acquisition of language consists of children It is common knowledge that no human being fails in learning spontaneously a language with the exception of two categories the deaf and the dumb So universal is the phenomenon all over the world, whatever the language that one tends to believe that the ability to speak is innate It is only apparently so, language is actually acquired Acquisition of a language by children is achieved within a relatively short period between the ages of 1 and 3 in spite of the complexity of the task Those who get on best are those who are exposed well to good language however, there is an optimum exposure for each age and for each child When the child is exposed to too much of language there may be an adverse reaction Language is acquired successfully regardless of the level of general intelligence Children who later fail in other spheres like arithmetic , swimming, gymnastics acquire the mother tongue with the same ease like others and continue to improve their skill in language

The result is remarkable for its perfection, When learning is almost complete, there is not much difference among illiterate people, whatever be their social rank or avocation Only a faulty pronunciation of some words is occasionally noticed due to psychological problems In spite of the generality of success, one might have noticed that there is a variation indeed in volubility or extent of vocabulary In fact each one has got a ceiling in respect of expression But there is no such variation as regards the knowledge of the main features of the language and its sentence patterns So in respect of understanding, all are almost at the same level Of course, children do not acquire the skills in written language without teaching The level of performance is subject to great differences in that skill

---

[1] **David Annoussamy**

Justice David Annoussamy has held important positions in the educational field besides being a judge of the Madras High Court He has published over a hundred articles in English, French and Tamil He is also the author of the book *The French legal system*

This book, *The Language Riddle,* states in a nutshell how language is acquired, the pitfalls to be avoided and opportunities to be availed of for the overall improvement of language performance The author, with his wide experience as a teacher-trainer, lawyer and judge, has offered fresh insights into the riddle of language learning in India, many of which are in line with current thinking in the fields of language acquisition and language teaching

The book covers almost all the issues pertaining to the subject, namely how a language is acquired (first, second, or foreign), the factors that facilitate as well as hinder successful language learning, and the place of other languages in school or college curricula, besides the controversial issue of the medium of instruction, and language planning and policy

b.) No teaching

Since the acquisition of mother tongue by children is a universal success, it is of utmost interest to analyse how such acquisition takes place in order to devise methods of teaching other languages in the classroom Acquisition of language by children cannot be explained by learning theories Of course, parents are impatient to hear their child speak, especially for the first word

However, they do not proceed to teach the language and if any teaching were imparted it would be of no avail They want their child to understand what they say to him and they use for the purpose a simplified language known as caretaker's speech To help the child understand, they profusely use extra linguistic support like facial expressions, tone of the voice, and gestures Regarding the subject dealt with, they confine themselves to what is necessary at the moment, following the "here and now" principle The language used by the parents is also synthetically simple It becomes more and more complex as the legal maturity of the child increases The progression in the parents' language is unconscious and very slow The child picks up language simply by listening attentively to the language spoken to him or around him In the first stage he is interested only in what is spoken to him Later he shows interest in the talk going about him Similarly, in the beginning, he is interested only in communicating with the members of the family Later the circle of communication widens When the child gets out of the cocoon of the family and discovers other forms of expression, his interest to learn is triggered The impulse of the child to communicate is so strong that acquisition is almost an uninterrupted process for him Through such communication, acquisition takes place without any teaching

c.) Understanding precedes expression

The child, before he knows the meaning of words , even before he realizes that they could have a meaning, is interested in the sound combination of words Each word for him has life This special relation of the child with words explains his interest in poetry which is sought to be satisfied by lullabies, rhymes and various sorts of traditional poetical compositions accompanying children's plays However, in most of the children the enjoyment of sounds vanishes slowly as they start perceiving the meanings of words and become more and more interested in them This is subject to individual variations Those having a poetical bent of mind do not completely lose the phonal aspect of words and if they happen to start writing poetry, they try to recapture their first sensations, to enjoy again those first flavours It is often said that poets are like children or that children are poets This is true not only in their global vision of the world, but also in respect of their common enjoyment of sounds

The language heard is stored and remains latent in the brain and it takes time to put to actual use, first for understanding This starts from the 12^{th} month or even earlier, the child is able to recognise a known voice or familiar sounds indicating certain facts concerning him like the preparation of his food His hearing system gets sharper every day During 12 to 18 months the child is able to follow simple commands and he responds to interdiction, 90% of the comprehension ability at the age of 3

Though parents are aware that the child understands what he is told or what is going on around him, they do not press him to speak except on rare occasion like greeting visitors or thanking them for the present offered, or when the child weeps and the parents are anxious to know the reason for that Understanding is possible without speaking, but not reverse Understanding is a less active process than speaking The latter requires a better knowledge of the language Understanding amounts only to guessing the meaning of what is stated Speaking requires the mental framing of a sentence and its utterance in clear and accepted

sound, which is a more complex operation It is to be borne in mind that speaking takes place only several months after understanding

d) PHASES IN EXPRESSION

Speaking requires in the first place the preparation of the vocal organs Between the age of 2 and 3 while storing the language, the child has at its command an innate hypothesis forming faculty which enables him to devise grammatical rules unconsciously in respect of the language This explain the discontinuity in learning which is observed

In the process of learning there are certain backward steps The child who initially was saying 'did','told',all of a sudden stats saying 'doed', 'telled',but reverts after a certain time to the correct form The learning of a language by the child is not like the addition of bricks Each time there is a structuration of the language by the child with the help of memory and logic, placing reliance on one or the other Logic, being more economic in terms of efforts than memorising, the child starts placing reliance on it as soon as he acquires this second faculty When he discover that verbs end with 'ed' in the preterit, he makes use of the logic Afterwards, when he finds that logic has failed in some cases, he takes note of the exceptions and stores them with the help of memory

Before attaining perfection, the language of the child, though it comes out only after sufficient maturation, is faulty as compared to the standard language, in pronounciation as well as sentence patterns Except by some perverted parents, the child is not scolded nor is he laughed at The product of the child is very much appreciated Out of affection and for the novelty it brings to the language, some of his modification becomes part of the language of the family, especially the surname of elder children remain as modified by the younger ones Though parents do not correct the faulty language immediately, they instinctively repeat in the correct way what the child has said It is thus found that the child in his attempt to learn a language resorts to the trial and error method, the error being inevitable in the process and ultimately, in course of time, errors disappears and the learning of language by the child is always a success

F) EFFORTS INVOLVED

On account of the apparent ease with which the child acquires a language, one is tempted to think that there is no effort In reality, it is otherwise With some attention one can perceive the amount of effort spent by the child in uttering the first words, the first sentence, and even thereafter in saying certain unusual words The apparent ease gets explained by the total involvement of the child in the process Speaking is vital for him to satisfy all his needs which are varied, including the urge to participate in the family life, to understand it, to be a full partner and play his role His whole energy is harnessed It is accompanied by the pleasure arising out of the success in his new experience of those factors Language learning without efforts by the child is nothing but a myth due to lack of close observation

G) STIMULTANEOUS ACQUISATION OF MORE THAN A LANGUAGE

A child can pick up more than a language at a time, if placed in a multi-lingual environment Only two conditions are required, the child should be normal and a particular person should always speak the same language A child who is very eager to get what he wants uses different registers of language according to the nature of his links with the person concerned, even when only one language is practiced When he has to communicate with persons speaking different languages, he acquires all of them Between 3 and 4 the child is able to speak to each of his interlocutors the language of the latter When a word is not known, the child does not use the word of another language, he resorts instead to a periphrasis in the language of the interlocutor, so keen is he to get understood He acquires in

the process a very high skill of distinguishing languages and can serve occasionally as an interpreter

If exposure to two languages is equal, the progress achieved is also equal and the child has two mother tongues But rarely exposure is equal Even if each of the parents speaks a different language to the child, they have usually a common language between them, which would be one of the two languages The influence of the language of other members of the family, servants, media, children in the street and parks may also tilt the balance in favour of one language which therefore takes the lead But the other can override it if circumstances change This often happens when the language of the school is the other one

People sometimes wonder whether it is not harmful to expose the child to more than a language The observations so far made have not indicated any harmful effect in the case of children having mental defects or linguistic difficulties Such children should not be subjected to such an effort If the child is normal or above normal, the fact of learning simultaneously two languages entails a better development of his mind Parents cannot transmit to their children their knowledge, but they can transmit easily a language, which, even if it is not very useful in his life, will render easy the acquisition of any other language later

Though the process of learning by children is laborious, they all succeed in learning one or more languages The process is therefore worth emulating, or at least lessons may be drawn there from

LAWS OF LANGUAGE LEARNING

1 Law of Communication

In the present-day teaching the quantity of language to which the learner is exposed is scanty, whereas his main effort is diverted to the task of learning the elements of the language The process should be reversed Students should be exposed to a large input and not engaged in analysing threadbare a limited amount of language Questions should be limited to ascertain the extent of understanding Knowing the words even without knowing the syntax provides a listener enough information and a great deal is understood Even if one or two words are unknown to him, it does not matter The classroom should provide input in an informal environment Formal linguistic principles should be restored to sparingly They are helpful only to consolidate the acquisition made, they do not lead to acquisition itself Representing language as a set of formal elements to be learnt in the absence of any real communication alters its very nature and language appears as something imposed upon the pupils artificially and arbitrarily

Teachers and pupils should be engaged in communication activities The teacher is expected to speak only in the target language He may resort to extraverbal media In this way, the learner is placed from the beginning in a communicative context Communication involves more than talking to students, the latter should be actively involved by answering and executing the orders given What the teacher says should be of interest to the pupil so as to make him listen eagerly Students, at the beginning, may be allowed to respond in any manner gestures, single words, faulty language, broken language, or even occasionally mother tongue Teaching would consist of tasks leading to simulate a situation, to expose the pupil to living language, and to provoke communication There is no escape from this way What remains is the amount of living language he came across accidentally in the course of the "methodical" teaching In other words, only the side effects of the teaching contribute to some durable acquisition

Real acquisition occurs ultimately more or less in the same manner as picking up Among all the school activities, only exposure to living language would lead to acquisition

The amount of success would depend on the quality of exposure, the interest it evokes, and the familiarity which the learner has with the speaker Mastering a language is a lifelong process If exposure to the language continues, the learner will come across all the niceties of the language

A language should be a tool of communication from the start

2 Law of Intensity

When language is picked up in normal life, the exposure to the language is throughout the day That cannot be matched Something approaching such exposure is artificially realized in intensive courses for adult professionals, 6 – 8 hours per day, when they can afford to devote a few months solely for the purpose That can be done at any age when the need is felt That can be done also after the completion of a course, in order to secure employment One year for the purpose is worth spending instead of remaining idle That can be resorted to also between two courses of education Such a bridge course is the most economical and efficient way in terms of the total time spent in studying a language If however, it is desired to incorporate language learning in the curriculum of the school or college course, there is a minimum below which there will be no good progress

To supplement the classroom input, the learner has to resort to personal exposure For oral language he should not miss any opportunity of hearing the target language in radio, T V , cinema, political, religious and cultural discourses, church sermons, court arguments, etc For written language the exposure is easier One has to read, as much as possible, books, magazines, and newspapers There exists a large variety of them and each learner should be able to find something corresponding to his interest and his level in language

If the exposure is not intense enough, there will be no result

3 Law of Exercise

The same word, the same sentence pattern has to be met several times for acquisition to take place Words and patterns have to be used several times in different contexts before they become familiar and form part of one's language stock Learning by heart and reciting several times is an easy and fruitful exercise which everyone can resort to Instead of providing one short text on each topic, it is preferable to provide several texts on the same topic and long texts from the same book so that the same words are met several times The learner who has reached adequate level would be well advised to read again and again the same book, if found interesting The understanding will become faster and more accurate, and the acquisition of vocabulary and sentence patterns will be ensured A film or a video programme has to be seen several times to yield results

For the purpose of speaking, one has to train considerably the vocal apparatus by reading aloud To get better results one can resort to reading the same text, the correct pronunciation of which is known, in loud voice, in low voice, very fast, and very slowly To get the proper intonation, one should choose for the exercise, sentences of interrogative, negative and strongly affirmative types To better refine intonation one should read with proper volume and speed texts expressing various feelings like anger, sorrow, humour, irony To put to test one's acquisition, one should seize every opportunity of communication one come across, provided one feels himself ready for the same

A word becomes yours when you have met it several times

4 Law of Continuity

Interruption in language is harmful What is learnt is forgotten if it is not put to continuous use It has been observed that children who are out of touch with the mother tongue for a few months forget it Foreign missionaries working in villages without any

contact with their mother tongue, using Latin for prayer and an Indian language for all other purposes, were found after some time unable to converse in their own mother tongue

Therefore, it would be extremely useful for beginners to have language classes or any other form of exposure during the vacation time The occasion may also be availed of for the intensive exposure

However, there should not be insistence by school authorities that pupils should speak the target language during recess time First, recess is meant for relaxation needed for better output in the next periods and there should not be any forced activity during that time Secondly, making such a rule will generate hatred for language, which will prove counter – productive However, after acquisition of the language to a desired level, one should keep on reading, listening, and communicating in all other possible ways

One should also think twice before starting the study of a language and not hesitate to abandon it as soon as the study is found not desirable Otherwise, he should continue till the stage of relative fluency enabling him to keep in contact with the language by himself in one form or other The easiest way to keep in contact is the habit of reading So, when actual use after learning is not in sight, acquiring reading habits should be given importance in the process of learning

The oblivion is variable according to age, the level obtained, and the way in which the language was acquired Children forget more easily than adults The easier you learn, the quicker you forget But when studies are resumed, the acquisition is found easy Language units remain hidden in the brain, available for use, quick progress is noticed as compared to the normal beginners The sooner the resumption, the better the result

Avoid gaps during learning period

5 Law of Maturation

Language acquisition being a complex process, result cannot be immediate One has to listen and read a lot before attempting to speak or to write Short answers and simple exercises are possible and desirable, but for real speaking and writing one has to wait Interstitial rest is necessary for the maturation process Sometimes, language is used by the learner in silent form when he thinks or dreams But compelling to express orally or in writing a fact to an idea too early will prove counter – productive Understanding would suffice for some time This may be accompanied by a large amount of preparatory exercises with slow progression and easy enough to be done always with success

Even in the mother tongue, understanding by precedes far the expression, for the child First the learner will be able to speak with single words The first word uttered for a real purpose not as an exercise is an important moment Then he will venture to utter phrases and sentences, then a succession of sentences One has to wait till what is sought to be learnt is assimilated perfectly and becomes readily available for natural use Expression will spring in due course if the intake is looked after The take – off comes all of a sudden on a fine day One gets the impression that he has crossed the border, that he has jumped into a new world

Expression will come, don't force it

6 Law of Selection

The speed of acquisition is not the same in respect of all words, sentence patterns, and phrases Some of them one has been in need of are apprehended at first appearance and even stored But words not at all related to one's experience, past and present, are hard to store Even if stored by way of special effort, they get out of memory quite easily Some words are stored for their musical value, even if the meaning is not well known Even when a large portion of a language is stored, there is for each one of us a preference vis-a-vis some words and patterns, which surface readily for the purpose of expression Others are not at our

command, even though encountered several times, but for the purpose of understanding they are familiar

So, each one of us has got an active and passive vocabulary, the latter being larger The gap between passive and active vocabulary varies between individuals subjected to the same exposure The gap is greater in a foreign language than in mother tongue It is greater in late learners than in young learners It varies according to the way of learning, according to the degree of active communication in process of learning the circumstances of use, informal conversation, personal letters, official letters, speech, judgement, etc But active vocabulary never coincides with passive vocabulary in any individual If by special effort the gap between them is attempted to be narrowed down, the language used is not natural, looks pedantic, pretentious, because the circumstances do not warrant the use of words pressed into service

Give the learner the input he is interested in

7 Law of Trial and Error

From the data available, the learner formulates hypotheses regarding the rules of the language That operation forms part of the strategy of learning Elaboration of rules by way of generalization of a pattern, recourse to analogy, shaping the corresponding verb, substantive, adjective, adverb when one of them is known, is something that everyone is tempted to do In that process the learner unavoidably commits mistake in pronunciation, in the form of the words, or in respect of grammar, on account of the ignorance of irregularities and exceptions in the language Those mistakes are manifestations of the learning activity They are normal and unavoidable in the process of learning At no cost the teacher should allow the classmates to laugh at a mistake, of course, no mockery by the teacher himself If mockery is resorted to, nothing can be obtained thereafter from the pupil who would remain decidedly silent Mockery by the teacher is not advisable in the other subjects as well But it will have a disastrous effect in the language class A climate of confidence is essential for the acquisition of a language, which is a delicate process in which the whole being is involved

One of the most cherished ways of evaluation consists in counting the mistakes Questions hardly impel the pupil to communicate They are rather meant to control, evaluate the standards of pupils in school exercises The pupil's reaction is to produce a simplified language with the aim of avoiding mistakes We are then far off from the real process of learning Certain teachers even resort to vicious and trap questions Solving puzzles is of no use in the acquisition of language They are totally to be banned because they mar the acquisition of natural language In judging the language produced by the learner one has to substitute the criterion of acceptability for that of correctness of language

There is an understandable apprehension for the teacher that defective forms may become habits and would then become hard to eradicate So, teachers react violently to mistakes But that is not a good strategy Censuring of mistakes in one way or the other will only cause inhibition and no positive results On the other hand, initially defective forms do not necessarily become habits, if some precautionary measures are taken The pupil has to be made aware that his expression has not reached perfection in form, that it is provisional If he remains alert enough to apprehend the correct pronunciation or the idiomatic way of expression, his language will become more and more correct Mistakes will diminish in course of time If the pupil does not have such an attitude, he will not make much progress in language, punishment notwithstanding

Error is normal, accept it for the time being

8 Law of Motivation

The word 'motivation' is quite commonly used, but its nature is only confusingly perceived It arises out of need or interest, it is sustained by external factors, and is easily subject to variations In its manifestation it is the will to learn Its presence is necessary for the acquisition of any knowledge, it is absolutely indispensable for the acquisition of language When one starts the study of language motivation can be presumed If the learner is an adult he has taken a free decision, if a youngster, he has espoused the desire of his parents and is keen to please them So, at the beginning there is motivation

There are three phases in the process of learning a language, which are

- Early Exciting Phase (listening and learning to read etc)
- Middle Trial Phase (starting to speak and write)
- Final victory Phase (familiarity with the language)

Novelty kindles the motivation in the early phase Experience of success and the enjoyment of the language may also sustain motivation in the last Phase But motivation will be at the lowest ebb in the course of the unrewarding middle phase At that time, the role of the teacher is crucial By his lack of understanding he can totally kill the motivation, by his resourcefulness he can keep motivation alive till the third period is reached

One of the secrets of nurturing motivation is the effort feeding success Success releases more energy and sustains the effort Since the real intake, which is the amount of input that is absorbed, depends on motivation, the teacher should carefully avoid creating a failure complex One makes progress in the language when one comes into contact with the language that is a little beyond his current level of competence His ability to absorb cannot be stretched beyond his linguistic knowledge and the range of his acquired experience in life

Language difficulties should be limited in words and patterns Stumbling through a difficult text does not yield any result Too many difficulties discourage the learner The progression should be slow Language learning is not a matter of understanding alone like a Maths lesson, but it is a process of slow impregnation Till the learner has not crossed the middle phase, there should be no difficulty in the content of the texts offered to him It is difficult for him to conceptualize in a second language something altogether new and difficult Novelty there should be, but an accessible one

It is necessary to link language lessons with the personal experience of the learner instead of selecting beforehand a series of concepts in order to cover the whole gamut of the language To facilitate understanding, the teacher can take the help of non – verbal aspect of communication like pictures, formulae, diagrams, gestures, and facial expressions to accompany the oral language

Good results can be obtained by selecting topics from classroom experience and from among what the pupil has already learnt in other subjects Language lessons would then act as a repetition of a lesson in another subject Pupils will realize that the new language is another manner of expressing but altogether a new subject to be learnt for itself When one has to teach adult professionals, the best way is to make use only of texts drawn from the concerned professional literature

Nurture motivation by successful activities

9 Law of Interference

The target language used to be taught formerly through the mother tongue or another language already known This created several difficulties which had been perceived long ago Educators have even gone to the extent of saying that one has to forget one's language to acquire another There is some truth in this On account of the natural laziness of mind, one

has some repugnance to search for another way of expression when one is already available That form is first to appear in the mind at least till such period as the second language is mastered sufficiently At any rate, one has to take stock of the fact that the known language acts as a screen We have to study how it exactly operates in order to evolve a strategy

The ability to express in a known language, life experience and intellectual development are present when the acquisition of a new language is attempted There is no need of acquisition of a new capacity but only transfer of the capacity of communication in another language One has to disassociate the capacity of communication linked to one language and use it for expression in the target language

Advantages and difficulties arising out of another language known would depend on differences between the two languages in respect of script, sounds, sentence patterns, and vocabulary When the script is different it has to be learnt, but mistakes in pronunciation are less For a second language learner, who usually has already a good intellectual development, learning a new alphabet is quite an easy task On the contrary, if the script is the same, the learner will be tempted to read the target language in the same way as his mother tongue In such a case, it is imperative to start reading only after a long exposure to oral language Otherwise, words met with for the first time in written form and not heard earlier will not be well pronounced

Similarity in vocabulary makes acquisition easy, but there are pitfalls For instance, the current meaning of the word 'sensible' in French is sensitive and not sensible Those false resemblances occur in English words derived from French Since those words were used only by a limited circle in England, they continue to have the same meaning as they had in France originally, whereas in France those words used constantly by the people have lost their original meaning This false resemblance leads to mistakes

The difference in sentence pattern is the most difficult to overcome It will be learnt only by getting familiarized with the sentence patterns in the target language It is however to be noted that interference of the mother tongue would be less if expression in the target language is avoided till it has been mastered sufficiently In the classroom, the pupil will be tempted to resort to the known language till he achieves a sufficient mastery of the second language This may be allowed sparingly, at the initial stage, at least in order not to break the communicative aspect of acquisition The teacher also may occasionally use a word from the mother tongue to facilitate understanding of a new word otherwise difficult to explain When that process is used with care and circumspection, there is no harm

A word about translation Translation is not a way of learning All things taken into account, it is better to avoid translation It is a wasteful exercise in the process of learning a language It may be resorted to when one wants to develop the skill of translation But the learner cannot help resorting to translation atleast in his mind till reflexes in the target language have a form This is quite natural This process helps in understanding quickly and fully the words and patterns in the target language which otherwise would remain vague for a certain duration

The errors and resistance caused by the first language will give way over a period of time They are not to be frowned at since they form part of the process of language learning The learner has to be vigilant and alert to apprehend the correct form and the teacher should provide corrective exercises Some influence of the initial language will remain forever The initial stock cannot be totally erase unless the level of second language becomes far higher than the mother tongue Each person has got his own way of speaking English If the deviation is acceptable and does not prevent understanding, one has to rest satisfied with the result

After some time, some words of the second language are preferred by the learner to those of his mother tongue and are used while speaking in the mother tongue This is reverse interference

Beware the known language is jealous of the new one

FACTORS INFLUENCING RESULTS IN LANGUAGE LEARNING

A THE LANGUAGE STUDENT

1 Aptitude

The essentials of the process of language learning are fairly known, it is possible to determine how the learning can be attempted successfully In this connection, the greatest attention should obviously be paid to students All of them are not alike, far from it Individual differences do exist Such differences are also present in respect of mother tongue in its written form They are more pronounced in the case of L2 in respect of all skills It appears that even for sincere learners there is a ceiling which they cannot cross

This aptitude for L2 is different from the general aptitude for studies or even for mother tongue There are students having difficulties with L2, but not with other subjects So this difference is not connected with the general aptitude for studies

To succeed in L2, certain qualities appear useful and even necessary A good guesser succeeds easily in comprehension One who is alert to spot new patterns of language increases quickly his capacity for expression

2 Attitude

People are aware of the importance of aptitude, but fail to attach sufficient importance to it in actual practice In the case of the attitude of the student, it is altogether ignored Language acquisition is a process in which the whole personality is involved and no result can be achieved by way of compulsion

In the learning of L2, there should be at least to some extent a love for the target language Those who are extroverted, those having an out-going personality and a natural inclination to communicate, succeed much better A certain amount of hypothesizing is inherent in the process Therefore, the learner should not be repugnant to take risks nor should he get upset by failures The most important factor in the success of learning L2 is obviously motivation This is widely realised, but no action is actually taken either to kindle motivation or to stop the learning process when motivation has fallen to zero In case there is no motivation in some children for whatever reason it may be, teachers have the duty to report it to their parents The latter should hear the children, their complaints and difficulties Motivation can be kindled with adequate combined action by parents and teachers If that fails, the study of language should be stopped

B. THE LANGUAGE TEACHER

1. Qualities required

a) Sound knowledge of the target language

The language teacher should be a master of the language, be quite at home with it That requires a great deal of effort since the level of proficiency is much higher than for other purposes The teacher should be conversant with all aspects of the language, culture, civilization, grammar and linguistics He should have almost the ease of the native speaker If possible, he should have spent one full year in the country where the language is spoken

b) Other qualities

The language teacher should have suitable personality He should be generous, and should have love for the language, love for the pupils and commitment to teach the language He should be prepared to accept horizontal exchanges and to adopt an equalitarian attitude He will have to allow pupils to answer or not, or to answer by gestures or single words, and to ask questions whenever they want Much patience is needed to provide psychological security necessary for pupils to learn

2. Training

a) Necessity

A good knowledge of the language is a must training, however good it may be, cannot be a substitute for it But knowledge of the language alone is not sufficient to be a good language teacher For instance, a native, though he knows the language perfectly well, can prove a very bad teacher, unless he is trained for the purpose

b) Features

The art to be learnt during the training period is to expose pupils to the living, natural language, to keep them interested therein, to provide accessible input in as large a quantity as possible For that purpose it would not be enough to indicate to prospective teachers the norms of teaching, or to provide them information on methods, history, foundations of pedagogy They should be given practical training to handle classes, to prepare class activities, to put principles into actual practice, to note down the difficulties, the success zones and the failure zones so as to plan future lesson with a better chance of success

C WAYS AND MEANS

Learning a language, on the contrary, implies a conscious effort, not only on the part of the learner but also on the part of all those associated with the various tasks of the teaching activity selection of the nature of input, creation of corresponding materials, and putting the learner into contact with those materials according to a chosen method

- Grouping of students
- Methods
- Text-books
- Tools for self-improvement

  a) Exposure outside the classroom, b) Reading, c) Personal lexicon
- Tools for Self-correction

  a) Grammar, b) Dictionary

Grammars and dictionaries are precious tools for self-correction No benefit can be derived in using them as instruments for acquisition of language; for which the royal way is only attentive exposure to language

PLACE OF MOTHER TONGUE IN LANGUAGE LEARNING

A) Study of Mother Tongue

Purpose

The child learns the language which is spoken around him Among all the persons who speak to the child, the mother is the one who speaks the most So it is called the mother tongue, mother being a genitive where the flexion is absent by usage The mother speaks to the child before he can speak or understand It is the case with all living beings having one form of expression or another The mother tongue is learnt at home first, and then in the near

vicinity It is improved in the course of life through social contacts It can reach a fairly good level even if there is no schooling

The systematic study of mother tongue in its written form adds a new dimension to its knowledge It leads to the habit of reading, which provides for a good leisure and occasionally solace and peace of mind It is the best way of self-learning Through a great variety of reading, one can acquire the sense of relativity and balance of mind Reading refines the emotional self and enriches it

Reading literary works develops the aesthetic sense and leads to the enjoyment of poetry, which is full only in mother tongue It is the case of creators of poetry also All poets are at their best in the mother tongue It alone is capable of revealing the fullness of heart Tagore wrote both in English and Bengali but it is found that his writings in Bengali give fuller expression to his most delicate inner feelings Dante started writing his immortal *Divine Comedy* in Latin, then he was ashamed to abandon his mother tongue and wrote it in Italian and thus acquired celebrity Similarly, one is able to act in a drama in his mother tongue much better than in another language

Reading of masterpieces permits contact with great minds, past and present, and brings about clarity of thought, subtlety of expression, inculcates noble ideas, purifies the mind, gives moral courage and provides a code of conduct The process of learning through reading, once set in motion, usually lasts a lifetime

The language is in a way the repository of the cultural history of the people It is the living symbol of the identity of a nation and the treasure-house of its traditional values It ameliorates the people who in turn ameliorate the language The right to cultural identity is no longer a luxury It is a full-fledged human right

Mother tongue is a source of patriotism All thinkers of the Indian renaissance in the 19th century and leaders of Indian independence movement knew well their mother tongue and in addition they were fluent in English The failure to study the mother tongue de-Indianizes

Each language has got a specificity which differentiates it from all other languages It is in the interest of humanity as a whole to maintain intact the diversities of languages and the cultures embodied in those languages A step in the right direction was taken while constituting the Genes Bank for plants While so, one cannot allow any language to die Such a risk exists on account of non-use

An individual transplanted in another linguistic area with none to speak to in his mother tongue forget it slowly It has been reported that poor peasants of Bosento, a small remote village in Italy, can hardly speak They do not use the traditional idiom which has lost its prestige They are unable to use the idiom in vogue in the dominant class By the combined effect of misery and isolation, their speech left place to mumbling Such a fate may as well happen to many Indian languages spoken by a small segment of people Even important Indian languages are not in their best of health, children and even parents do not know the names of the birds and plants found in the locality

2 Up to what level

Some people will have their schooling only for a few years During that period they should acquire at least the skill of reading in their mother tongue Some parents, assuming that mother tongue is known, make their children start the study of another language In case of failure in that endeavour, after much effort and money spent, the children would be illiterate This course is to be avoided at all costs If only one language can be learnt, let it be the mother tongue from the start

In order to reap the full benefit of the study of mother tongue, those who continue their schooling should study it upto the end of Plus 2 level If any Indian language does not provide enough literary matter upto that level, its study can be discontinued from the stage where no appropriate written literature is available Pupils having such mother tongue should study another Indian language from the start and continue it upto Plus 2, in order to have a full-fledged Indian culture The reason for continuing the study of mother tongue upto the end of Plus two level is the fact that Plus 2 course is an important stage where skill is reasoned expression and aesthetic sense can be fully acquired

It is not necessary to continue the study of mother tongue compulsorily beyond that level except for specialists The time now spent in the degree course for mother tongue can be made available for English or other subjects But all pupils should compulsorily study the mother tongue from the first standard upto the end of Plus 2 level

Now we find in certain states that pupils can get through their higher secondary stage without any Indian language The choice is between the mother tongue and another language, even a foreign one This practise is obnoxious for two reasons First, by stopping the mother tongue at that stage the pupils lose the opportunity of getting sufficient Indian culture and having their character moulded and their mind refined by their contact with great Indian classics On the other end, they do no derive any permanent benefit, they do not acquire any valuable skill by the non-intensive study of a new language for two years

Secondly, it creates a discrimination between pupils, because the standard required at the examination in the mother tongue and another language is not the same What is assessed in the mother tongue is the study of the language for twelve years, at the level of ability of essay writing and appreciation of literature, which requires high intellectual abilities whereas paper in another language involve the assessment of two years of elementary study of the language requiring mostly memory power Naturally students having chosen another language score much higher marks which help them secure a higher grade in the examination This possibility tempts the pupils and parents alike to evade the mother tongue

Choice should never be given between the mother tongue and another. language They are in no manner comparable Further fabricating educated Indians not immersed sufficiently in Indian culture would be an educational blunder All pupils at the end of Plus 2 examination should be asked to answer a paper in mother tongue and the paper should be of the same standard for all the languages within a state, in case more than an Indian language is taught as mother tongue in that state

If at present pupils in some schools have not started the study of mother tongue from standard 1, transitional provisions should be made for them They may be taught the mother tongue from the stage where they are now and the examination in mother tongue for them should take into account the number of years of study and the stage of intellectual development at the time of starting Care should also be taken that other pupils are not put in the same predicament in future They should all start the mother tongue from standard 1 and from kindergarten wherever it exists

Efforts should be made by the teachers in the mother tongue to revise their criteria for allotment of marks First, for an educative reason, pupils have to be justly rewarded for their efforts and the knowledge acquired Secondly, for the sake of mother tongue everyone knows that the greater encouragement, the higher the progress

3 Approach in teaching

Mother tongue teaching is rather simple at the elementary stage when pupils learn how to read and write, except with problem children Thereafter, it becomes paradoxically rather a difficult subject to teach Even in advanced countries, teaching of mother tongue is not highly

satisfactory In India, on account of the low standard of education in general and the recent resort to mass teaching in which sufficient experience has not yet been acquired, the standard is lower

The present practice draws its features from the age-old methods on one side and the method of teaching English as mother tongue in classroom practice as handed over by the British educationalist on the other side The age-old methods were devised when the mother tongue was the sole subject of study, when the number of pupils was limited The stress was on didactic texts, which are hard to understand, without consideration of the age and interest of the pupils The attitude of the teacher was autocratic Learning was almost a religious obligation

However, there was one good aspect in the traditional method, viz that of memorization of the texts The present tendency to give up perhaps the only thing was good in the old method is unfortunate Pupils should be encouraged to memorize as much as possible of beautiful texts, each one according to his ability and desire from the early ages, the text being at each age adapted to it

From the method to teaching of English as the mother tongue we have inherited the divisions of texts into prose and poetry, giving equal importance to both This does not suit Indian languages Most of them have got rich literature in poetry, whereas the prose of high literary value is of quite recent origin and rather limited Therefore, equal importance cannot be given to both, the division of texts as prose and poetry should be given up Pupils should be initiated progressively to poetical language from early stage As soon as pupils have learnt to read fluently, they should be offered texts from good writers and not texts composed hastily by text-book writers which cannot match with beautiful texts selected from the existing literary pieces

Two kinds of texts should be offered to pupils

- Integral works of small size like ballads, short stories, dramas, etc , and large portions of big works like epics, novels, etc
- Short excerpts from any literary work

The short excerpts should be grouped according to themes Suitable themes to be studied in each standard prescribed according to the intellectual development of the children

Whatever is chosen should be adapted to the age, the level of instructions, the knowledge of the language, the experience of life and the emotional needs of the pupils They should be accessible to the pupils There should be slow but steady progression in the texts so that ultimately pupils are made able to read by themselves and to understand great classic of their language, which is the ultimate goal

The enjoyment of one's own literature is a lifelong process If the teacher takes care that the contact with literature is always a source of pleasure, pupils will continue to read even after leaving the school The strategy of the teacher should be just to lift the veil and allow pupils to have a glance at the treasure to be discovered It is therefore necessary to create among the pupils the desire to read The habit of personal reading should be developed from the time pupils have learnt reading fluently They should be trained to read by themselves the classics through a progressive initiation

At the beginning it was stated that the teaching of mother tongue is rather delicate The reason is that pupils know already the essentials of the language When it comes to improve upon it, formal teaching of language and grammar will not arouse interest It should be kept at the minimum On the contrary, personal reading by pupils of good pieces of literature would have a tremendous effect So a suitable curriculum has to be evolved and new methods devised to make the teaching of mother tongue purposeful and interesting

4 The Mother-tongue Teacher

Pupils when they enter the portals of the school have obscure notions It is the task of the teacher to help pupils transform them into clear ideas Pupils will also learn in school new concepts and corresponding words. They will come across concepts close to each other They should be made to perceive nuances, to acquire the ability of the proper use of synonyms and also the rigour in expression

The expression of the pupils will be mostly moulded by the language used by the teacher There is the dosage of expression corresponding to each standard which experienced and gifted teachers do possess instinctively and this skill is to be mastered by others through training and self-correction The language of the teacher should become richer and richer from standard 1 to the end of plus 2, but always remaining natural and accessible to the pupils

In a country like India, it is essential that the teacher, whose duty is to make pupils develop love for their mother tongue, does not develop scorn or hatred for other languages It is the attitude of the teacher which will shape that of the pupils He should himself shed dislike and contempt of any kind in respect of other languages

The teacher should be a bridge between the past and the present He should not leave the impression that the past was glorious but lost forever or that it is without link with the present The relevance of the old day writings to the present day problems has to be pointed out or pupils should be made to realize and discover it In some quarters, there is a belief that the study of the mother tongue is useless in the modern world the mother tongue teacher should dispel it through his teaching The teacher himself should not give the impression of being old-fashioned

The teacher of mother tongue should possess a good general knowledge and be aware of the recent trends of the society His erudition in mother tongue does not suffice His I Q should be equal to that of teachers of other subjects Pupils are very sensitive to that He should not be ignorant of what pupils are studying in other subjects The synthesis of knowledge acquired in different subjects is his responsibility

It is also his responsibility to mould the character of the pupils not by moralising, but by putting the pupils in contact with great minds, by presenting high models in life, and showing how man can cross the difficulties in life with the examples of real instances of life and those found in fictional literature The mother tongue teacher has to assume fully his role of master of humanities and be no longer a teacher of a vernacular He has to be given due recognition by the school administration as No 1 among equals in the world of teachers

Teachers of language in high school and higher secondary schools should get proper training which should not be clubbed with teaching other subjects Teaching of mother tongue is so delicate that one full year of training for the purpose is not too much

Facility should be afforded to existing language teachers to improve their general knowledge and method of teaching They can also improve to a large extent their general knowledge and keep themselves up-to-date by reading many books

To sum up, every pupil should study the mother tongue till the end of Plus-2 Learning should be made attractive Efforts should be liberally rewarded Pupils should be trained and motivated for further reading of classics The mother tongue may be made the guardian angel Hence there is a necessity to select and to train carefully the mother tongue teacher

B. Use of the Mother Tongue

Indian languages suffered a setback by centuries of alien rule and educational system The language of the dominant group took the lead. English acquired more and more importance in

national life Indian languages got depreciated Then came a time when English alone was given the status of language, Indian languages being called vernaculars officially People even started referring to English not by its name but by the word "language" Even after independence the prominence of English lingers on A large segment of the Indian elite seem to be interested in the continuance of English as a dominant language so much so the process of erosion of Indian, languages set in motion during the colonial period continues

Indian languages have to recover their due place and role in the society and to develop The process is not an easy one, because it is not easy to develop a language by any action through any agency, it develops only by way of use It becomes rich when used for a variety of purpose

- ***Private use***

We shall not proceed to review the extent of use of the mother tongue in various fields Its use in actual conversation by educated people in their friendly meetings is very important for the development of the language When cultured people express their ideas and feelings with delicacy, subtlety and depth the language gets refined

If the French prose acquired such a perfection as to be universally adopted by the elite in the whole of Europe in the 18th century, it is because it was used by the French elite in the 17th and 18th centuries in the polished circles called "salons" where men and women used to meet and spend time in conversation on a variety of subjects Such a process did not take place in English which did not have the benefit of such polishing of language on account of segregation of men and women at that time in England in social meetings

Now in India, the elite speaks preferably in English or switch over to English as soon as a serious subject is touched upon Sexual segregation in social life continues and even when it is attempted to be broken, women are not quite at ease and do not participate fully in group conversation

One may be interested to know why English is preferred by the elite in their private life There are various reasons for that There is a false notion of prestige attached to English There is a desire to be distinct from the common man, usually called "rustic" Even dogs are addressed to in English Sometimes English is resorted to in order to place the conversation out of the reach of servants While travelling in a car, they speak in English if they do not want the driver to know about their conversation It is also used when no such necessity exists in order not to lose touch with the language acquired at high cost

The continuance of English is also due to the force of habit When a person acquires good command over the English language and uses it more and more to improve fluency, he loses contact with the mother tongue and continues to speak in English This is the side effect of learning English Sometimes contact between two persons happen in a formal circumstance when English is used Once conversation has started between two persons in a language, it continues naturally in the same language It is difficult to change Language by its nature is spontaneous and almost a reflex

To avoid this large scale use of English, the grounding in the mother tongue should be very solid so as not to be affected by acquisition of fluency in English, thus one would be led to limit the use of the foreign language to the field where it is necessary as it is done in other countries

In employer-employee relation, there is a preference for English It is a good tool of assertion of superiority One may notice that even if a discussion was started in the mother tongue as soon as the superior officer has the impression of losing ground, he switches over to English English language is thus used as an instrument of authoritarianism Sometimes one gets the impression that the independence of the country does not appear to have

generated the sovereignty of the people but only has substituted for English masters Indian ones, who wish to continue the past practice and ape their old masters There should be a real common language for all sections of the population, otherwise the social cohesion will be missing with all its evil consequences

There is an evil far greater than the continuance of English in conversation It is the use of mixed language practically by all segments of population This is done spontaneously by men because they are more familiar with English In respect of words, and with the mother tongue in respect of sentence pattern Others deliberately take pride in garnishing the mother tongue in borrowal from the dominant language

This practice exists also in other countries Latin words were used by French people, French words were used by English people English words introduced by the then dominant group, the British, continue to corrupt Indian languages under the patronage of the present dominant English-speaking Indians It is to be noted that borrowing of the Latin and French words was resorted to only by the elite in France and England, but in India such borrowing is resorted to by all segments of population who want to imitate the elite

The virus has affected even the lower class When a peon is told in an Indian language to put off the fan, he will report action or get the order confirmed, using the English "put off" Fully uneducated persons use also English words often pronounced in Indian fashion Even scholars in Indian languages or not free in their speech from unnecessary borrowals from English Induction of a few foreign words is a natural process in all languages But when the number of such words becomes important, the language is disfigured One gets an unsavory mixture which is neither English nor Indian, and which is not acceptable

Mixed language is more dangerous for Indian languages than the fact of speaking English by a few It denies Indian languages opportunity to progress They become so polluted that there is a risk of losing their identity

Perhaps the love for the mother tongue may surge and help Indian languages in their recovery One need not be afraid of such a movement A national feeling takes its source in the love for the mother tongue There will be chauvinism only, if there is exclusive love for the mother tongue and hatred for the other languages Leaders in all walks of life and more especially cine and sports fields may play a big role by their examples The progress of universal instruction and a compulsory study of mother tongue by all may infuse a new life into Indian languages and help them reverse the trend of invasions by English and flourish with their own identity

2.Public Use

There is a controversy about the language to be used in temples The controversy was there in Europe too, till the Catholic Church agreed to switch over from Latin to mother tongue When we observe what is happening in respect of Hindu religion, which is the most important one in our country, the language used for recitations is Sanskrit, barring certain exceptions They are not understood by the devotees, the officials do not always give the impression that they understand them In some temples in Tamil Nadu there are parallel recitations in Tamil They are mostly verses of middle ages They are not also understood by the common man except a few words here and there There is a movement advocating recitations in Tamil and also a strong resistance to it

Three considerations are to be borne in mind in this connection Firstly, it would be offending God to think that he prefers one language to another Secondly, religion is related to the innermost part of the person, so he should enjoy full freedom to choose his language Intervention by the State or others is out of place Thirdly, for those for whom the element of mystery dominates in religion, understanding of recitations does not matter much, but those

who desire to establish a communication with God would of course like to understand the recitations

Religious heads should ensure that priests are able to perform in modern Indian Languages as well when it is desired and that they do it with the same seriousness, they should not leave the impression of a second-rate performance when done in modern languages Texts for recitations in the regional language should be carefully chosen, they should be understandable to devotees, with the little amount of effort is necessary They should be pronounced well and recited at slow speed to enable the devotees to follow

But there is another form of activity connected with religion, namely religious discourses, which have contributed much to the development of Indian languages and which continue to contribute more and more In this field, foreign missionaries have also made a large contribution The first important printed texts in Tamil language consisted of such discourses

Political life from the time of the struggle for independence has also made available to the masses new ideas in Indian languages and made considerable contribution to their development Some political parties have been conducting systematic training courses for platform orators

Literary discourses also play a non-negligible role, but there are not yet many talks and speeches on subjects relating to science, technology, business, finance, etc There are already many newspapers and magazines in Indian languages and more and more books are also produced But still serious subjects are not entirely covered and the quality of printing leaves much to be desired

Drama and cinema have been good media for the promotion of Indian languages in the expression of new ideas and feelings The role of these media in the enrichment of living languages cannot be overstated Much more is expected from them

There is not much which could be done by the state in respect of the use of the mother tongue in private media But those media, of their own, may play a decisive role in their long-term interest They should think twice before using mixed language Foreign words should be very sparingly used to produce a calculated effect, and not as a matter of routine The state can however induce the private media to make substantial contribution Preferential patronising of newspapers and magazines in Indian languages could be considered for its achievements Books and magazines in Indian languages on serious subjects should be encouraged by purchasing them for its libraries

But as regards official media, viz official publications, radio and television, the state can make a greater contribution by the proper and wide use of the mother tongue The aim should be to make available in the mother tongue as much information as possible in all subjects, thus bringing down the dependence on English

Quite often, in radio and T V , the language used is a mixed language Mixed language should be banned from the official media It is inadmissible that the station staff uses a mixed language even in respect of occasional speakers, it should be ensured that they are able to speak in an Indian language which is both vivid and acceptable Only those who are able to speak with fluency and appeal in Indian languages should be invited for talks

3 Use in administration

The mother tongue is already used to a greater extent Hindi-speaking states are much ahead The process remains to be completed everywhere in all state transactions One could have observed a constant decline in the standard of English language, which now creates complications and delay in administrative work without any hope of reversal of the trend Switching over to mother tongue is inevitable for that reason alone, even if the need of an

administration responsive to the request of the people, does not appear to be a sufficient reason to those who are at the helm of affairs The opinion which is sometimes put forth that the language is not fit enough for certain purposes is only a pretext to cover inertia

When the mother tongue is made compulsory for all purposes in a state, this is curiously resented in other linguistics areas, even by those who have made it compulsory in their own states This inconsistent attitude has to change New ways have to be devised for exchanges between states One way is that each state address the others in its own language, but there is a risk of the correspondence not being replied The other way is to address in the language of the addressee

Whatever way is chosen, recourse has to be made to translators which will involve expenditure But this cannot be helped in the interest of the normal popular governance A linguistic group will whole-heartedly become open to other languages only when it is satisfied with the status given to its own mother tongue

For effectively extending the use of the mother tongue in administration and for making it more effective in areas where it has already been introduced, some precautions are necessary

- At the time of recruitment of staff, it should be ensured that the candidates possess the knowledge of the mother tongue required for the post, that knowledge having been previously accurately determined, in respect of those who are already in service, if their knowledge of the mother tongue is insufficient, it is necessary to give them opportunity to brush up their knowledge while in service by way of incentives or time made available for improving their knowledge
- A comprehensive glossary of administrative terms has to be made available to all so that the same words are used by all the departments, which will make the understanding of administrative correspondence easy
- Those who are in the selection board should have perfect knowledge of the mother tongue and be able to assess the capacity of candidates in the mother tongue in respect of each post Obviously interviews should be conducted in the mother tongue and not in English The process should start from the top Candidates for I A S should be selected for each linguistic area on the basis of an excellent knowledge of the language of the area in addition to the knowledge required in other fields or other languages Instead of allotting, at the end of the training to an area, officers who do not know or have not mastered enough of the language of the people of that area If top officials are masters of the mother tongue and use it invariably, those who are below will imitate them

It is also to be remembered that the progress of Indian languages is hampered by two contradictory decisions of pre-independence days one is to have linguistics states and another to have Hindi, which is perceived as a regional language by non-Hindi-speaking people, as the official language for India as a whole The incompatibility between these two goals has generated misunderstanding and passion It is perhaps time to assess the experience gained in the post-independence days and to get rid of the imbroglio Linguistic states have become realities, the national language finds it difficult to emerge If all Indian languages are made use of to the extent possible as regional languages while keeping English only to the extent necessary, all of them will develop vigorously, and one of them may naturally become the *lingua franca* on its own strength by the development achieved

4 Use in courts

Though appreciable advances have been made in the administrative field, much remains to be done in court transactions Courts are places where language is abundantly

used, at a high level, with precision and subtlety Use in courts will therefore considerably promote the language

But courts have been traditionally strongholds of resistance for any innovation French was used as court language in England from the time of William the conqueror and English was then considered to be unfit for court purposes At the same time French was thought unfit in France where they instead used Latin This is a glaring example to show how the plea of unfitness of the language is not true

In England the advent of Edward III marks the beginning of reaction In 1362 Edward III prescribed the use of English in courts In the same year, parliament session was also opened in English language, however, the progress was slow At the time of Cromwell in the first part of the 17th century, it was found necessary to impose penalty to English judges delivering judgements in French and fine to advocates for each French word uttered

In India, judges have been already ordered to write their judgements in Indian languages up to the district level, except those who get an exemption on account of their proficiency in that language That exception meant to be a one-time measure is allowed unfortunately to continue It should not be available to new entrants who should prove their skill in the mother tongue before being appointed

Arguments are still mostly in English No doubt, switching over from one language to another implies additional effort But the litigant has a fundamental right to follow the course of his case and it is not too much to ask the lawyer to make an additional effort, which will disappear after some time The new entrants in the profession will not have to make any new effort of switching over if they start arguing in their mother tongue However, there is a hesitation on account of the false apprehension that it will bring down the "prestige" of the profession

The present situation cannot last and the lawyers should not defer the use of mother tongue till it is made compulsory They should do it willingly to earn the confidence of their clients There will be fall of standard at the beginning but progress thereafter If English is continued there will be continuous fall in standard At the beginning of the use of mother tongue there will be a risk of vulgarity Now, the mother tongue being used for restricted purposes mostly with friends and inferiors there will be a tendency to use the same register of language, whereas in English there is no such danger because only the high register is known to most of the Indian lawyers But lawyers are resourceful enough to adjust their register in the Indian language to the court decorum quite rapidly

There is also hesitation on the part of the authorities to introduce the mother tongue at the high court level, though it could be easier to the high court to dispose off some matter in the same language as the one used for recording evidence and in the judgment of the lower courts appealed against It is however objected that if judgments are rendered by high courts in the respective mother tongues, a decision of one high court will not be available to lawyers in the high courts But all judgments are not published It would be wiser to translate the few judgments which are published than to hand over to the litigant judgment in the language unknown to him

When a judgment of a high court is taken on appeal before the Supreme Court it will have to be translated in the language used in the Supreme Court There is no escape from it That is no reason for the High Courts working themselves in the language of the Supreme Court In fact, only a few judgments will go to the Supreme Court and for that reason the entire work in the High Court need not be turned out in the language of the Supreme Court

A person convicted is entitled to know why and how he is convicted Now the High Court sets aside an administrative order of preventive detention for one year, when one

document among hundred furnished to the detenu has not been translated into his mother tongue for the reason that the right of defence is curtailed But paradoxically, the same High Court, when it declines to set aside the order of detention, is compelled to write its judgment in English denying the detenu the opportunity to know why his pleas were rejected What is worse, the High Court, while confirming a death sentence against a person is compelled to use a language unknown to the accused! This anomaly has to cease

When the mother tongue is used, there will be automatically a greater sense of human consideration and co-citizenship in the heart of judges Their desire to speak to the litigant through the judgment will be satisfied It is widely accepted that the court language should be within the public comprehension to retain people's loyalty and support A great deal is therefore to be done in the respect of the use of the Indian languages in courts

But for making it easy all new enactments should be in the mother tongue The process in many states appears to be now as follows the substance of the new Act is conceived by the political leadership in the regional language it is cast in the form of an Act in English with the help of English models by draftsmen and then translated into the regional languages, this practice should change The Act should be drafted directly in the mother tongue Otherwise the political conception runs the risk of being altered and the substance of the Act will not be easily perceivable to the public

As far as old acts are concerned, instead of wasting time to translate them accurately in their archaic form, it is preferable to re-enact them with such modifications as are necessary in the substance or in the form to meet the present needs The best way to promote the wide use of mother tongue in courts would be to start right now the process of computerization of legal knowledge needs in Indian language

The process of Indianization of our high courts has been set in motion by the High Courts of Allahabad, Bihar, Madhya Pradesh and Rajasthan being permitted to deliver judgments in the regional language The other high courts should be permitted to do so without delay While making fresh appointments, the state should ascertain whether the nominees are able to write judgments in the regional language

5 Use in scientific sphere

The brightest minds in the country should be harnessed to develop the language Those engaged in research, in exploring new fields, in dealing with the knowledge at the germinal stage, should be given an opportunity to contribute to the development of their mother tongue Already a trend has started with writing theses for M Phil And Ph D in the mother tongue This has to be vigorously pursued However, some exceptions have to be accommodated in case of very specialized subject, where external examiners knowing the same language may not be available

There is a tendency among our scientists to publish in English either in India or abroad This is quite normal Any scholar may have legitimately the desire to publish in prestigious journals and reach a larger audience and recognition That will give him opportunity to attend seminars outside the state or the country and improve his knowledge That will be of benefit for him and the state as well Sometimes publication in English is the only course open In fact, the more specialized the subject, the more the necessity to write in a language known in a larger area to have sufficient readers and to have the matter published

The tendency to publish in English abroad should not be discouraged that gives an opportunity to the scientist to test his standard But the state should at the same time induce top scientists to develop the regional language For instance, for the purpose of appointment and promotion, publications in the mother tongue can be given due weightage For granting leave to proceed abroad to present papers in seminar, the government may give

preference to those who have already made publications of scientific value in the mother tongue They should undertake to give on return a version of their paper in the mother tongue

But all institutions of the state governments and financed by them should issue their publications in the regional languages English should be resorted to only when publication in the regional language is not possible All India institutions may continue to publish in English If works in the regional language worthy of publication remain unpublished, the same may be published at the cost of the government and made available to colleges and other interested institutions For that purpose, it would be desirable to find technical devices for publication of a limited number of copies at moderate cost The state can also obtain an abridged and simplified version in the mother tongue for a larger public and have it published

If top scientists are thus made to use the mother tongue they can be easily induced to cooperate with those engaged in the task of writing textbooks for use in colleges and schools This will contribute considerably to the improvement of standard of those text books Computers and high technology posed a threat to Indian languages There was a predominance of English to technological compulsion but the continuous advance of science has now made possible the use of Indian languages in high technology The use of the Indian scripts on the English computer is now possible A script processor has been evolved which allows word processing in all Indian languages and use of any combination of scripts

It is universally accepted and proved by experience that all languages are flexible enough to express any idea provided it is put into use with determination J C Bose wrote in Bengali about his experiments, when English alone was used in India for communication of knowledge We are told that he did it with great charm and precision Every scientific and technological work of the society should become available in an Indian language, in order to benefit all segments of the society The language on its side has to keep pace with the cultural growth of the people in order to be a proper instrument for all purposes The physiognomy of a language is determined by its use It is imperative to promote its use both by citizens and state in all spheres of activity

C. Improvement of the mother tongue

1. Vocabulary

A. Use of Indian words

Using the mother tongue in all spheres of life is the normal course and in that way all activities of public life will be understandable and accessible to the common man But it is not so in India Languages have been disturbed to such an extent to endanger They have been subjected to a trauma and remedial measures are necessary The first thing to be done is to restore the mother tongue to its due place in putting it to use Once the general health of mother tongue is restored the language is to be left to its natural life and evolution Now some efforts are necessary to make the language fit for the purpose of use in all spheres of life

The problem which preoccupies the mind of many is the question of vocabulary What can we do for getting words in the mother tongue for all concepts for which there are no words readily available But this is rather an easy problem for which solutions are available There will be no difficulty in getting new words for any concept now expressed in English The meaning of a word is what people buy tacit consensus attribute to it Since the number of users in the specialized fields is limited, such consensus is easier to achieve provided some precautions are taken The mother tongue will get adapted to the use of which the community puts it to Problems are only created by the quarrel between purists and non purists

Any word in any language which is used for the first time to mean something unknown causes surprise Take, for example, the word 'epistemology' When it is heard for the first time it is puzzling for the English people as well Even in England people do not know the meaning of words coined from Greek or Latin, unless they have been introduced to them by way of explanation In older times all British graduates knew Latin and Greek, whose study is encouraged in the school It is no longer so

In developed countries when a new concept emerges varieties of ways suitable to each circumstance are used to give a name to the concept We should proceed in the same way The thing should take it as a duty and make it a habit Scholars in the mother tongue can however play a role to avert the frequent, unnecessary recourse to foreign words in indicating at the very start, before the foreign word has taken root, the corresponding words in the mother tongue which are not entirely out of use altogether and which suit perfectly the purpose They may also prepare a glossary of foreign words with their equivalent in the Indian language for the benefit of those prepared to avoid foreign words

Even for already existing things and concepts, if the English word is unknown to the students it is important to introduce them directly in the mother tongue from the start At the stage the English word will not carry more meaning for the listener If that occasion is lost it will be difficult to replace the English word which has become familiar The word forms part of the person To ask him to dislodge it from his memory and to store the new word in mother tongue will be perceived as an unnecessary burden, if not an act of aggression Everyone concerned should take care that whenever a new concept or a new thing is introduced to the public, it is done in the regional language

If the English word is already known to the students and currently in use, the problem is of course delicate It is not necessary to lose one's energy in fighting against the use of foreign words They are not to be totally banned However, replacement is possible For that it is necessary to find a word in mother tongue which is expressive, evocative and appealing Then let both foreign words and the words in mother tongue have their chance

In official use including teaching, preference may be given to words in the regional language, so as to put it in a favourable position to compete Some words are in fashion for a few years and then disappear Some others resist successfully The efforts made to replace them by indigenous words do not always succeed For instance, the words hamburger (German), piano(Italian), curry(Indian) have become firmly established in the English language Similarly, the word beef-steak(English) is the word used France, there is no French equivalent, it is so commonly used that it has become to mean also food But the Russian word "sputnik" which was in vogue for a few years in all other languages has now disappeared from then

B) Elaboration of new words

To find new words in the mother tongue, several ways are open and they are used in advanced countries They are

a giving a new meaning to an existing word, usually its etymological meaning,

b revival of old words ,

c drawing from words used by craftsmen which are usually unknown to the educated persons, and

d coining new words

The latter process is a natural one in any language, poets, creative writers and scientists in order to express new facts, new feelings, new phenomena, new concepts, new

relations and new discoveries coin new words and phrases Some scholars are well versed in regional language, but not conversant with scientific subjects Others who are specialists in their respective fields do not have good grounding in the regional language It may be difficult to find people well versed in both But that new brand of people is emerging and it is prone to multiply

Specialists knowing well the regional language are better place than the scholars in the regional language, who cannot fully grasp the new concept Scientists knowing well the regional language find instinctively the correct word in other countries They do not seek the help of language specialist to find words for their newly discovered concepts They have joy and take pride in finding a name for their baby One cannot find an appropriate word without understanding fully the matter It is easier to scientists to learn better the language than for the regional language scholars to learn all the subjects

Switching over to Indian languages implies a lot of translation For that, knowledge of both languages may not suffice For instance, session courts which do no longer hold sessions and the collector whose main duty is no longer to collect revenue , should not be translated literally The word in the regional language should disclose the present nature of the Sessions Court which is a trial court for gravest offences and that the Collector who is the Chief Executive of the State at the district level

The problem is the same in the translation of a word from the regional language to English The word 'Takhar' in Tamil means a person who is the caretaker of a temple or an institution If translated literally, one gets the word 'fit person' Anyone who is not accustomed to the reality would wonder what a fit person would be The word'Takhar' in Tamil was chosen because, for appointing a caretaker for an important institution like a temple, one should select the right person, a person having all the required qualities

So when translating, one should not proceed literally, that will no convey the current meaning of the word At the initial stage the corresponding English word may be indicated within brackets

When new words are introduced in one way or the other, they are first to be tested in lectures, general conversations, talks, before making their use officials and entering them in the dictionary What corresponds to the spirit of a language as it evolves would only survive The word chosen should give some hint of the concept and with necessary explanation it should become fully intelligible for the student and help in memorising the concept It will reach the common man later when the concept gets popularized If the connection between the word and the concept is too remote, it will be hard to absorb the new concept The word itself should be to some extent self-explanatory

c) Accommodation of foreign words

In spite of the attempt to Indianize the vocabulary many English words would survive and would get citizenship in an Indianized form It is also to be noted that some of the English words used are not exact synonyms of the corresponding existing Indian words For instance, there are well known words in Indian languages for the words, "time", "wife", "doctor" – but the present use of the English word "time" instead of the corresponding word in the mother tongue is based on a more precise notion of time Similarly, a person who uses the word "wife" has a different notion of his relations with his spouse than the person who uses the corresponding Indian word A "doctor" and a man called by the corresponding word in the Indian language do not have the same qualifications and people do not expect from them the same services, they are two different categories, people go to one or the other according to their preferences and needs

In respect of some disciplines it may be wiser to adopt the international words with Indianization or not, instead of attempting to translate It is so in the case of Botany, Chemistry, Pharmacy, etc Even in other fields also, some words will continue to survive In European languages we notice the survival of French words too This is resorted to because those words are familiar or for the sake of originality in order to show off

Even when the process of adopting Indian words for all purposes is carried out relentlessly, some new foreign words will inevitably sneak into the language Words in respect of some feelings and concepts, when they are constantly put to use, become tasteless and one is on the lookout for a new word to give force, strength and glamour to what he wants to express In a search for substitution of worn-out words one may turn to foreign words In that way a word like "rascal" is easily adopted in Indian languages Conversely, the foreign words now in constant use may become obsolete in their turn and people may return to the old word in the mother tongue which may meet the need of the day This should be alertly exploited Words are living things This fate is unpredictable The society as a speaking body operates a selection without any preconceived principles and the survival of the fittest decides the fate of the words, whether Indian or foreign, and usage is the ultimate master in languages But in view of the trauma to which the Indian languages have been subjected, some cleansing operations and some enrichment should be attempted, the matter cannot be left to follow the present course

2 Other Improvements

There is in all languages a difference between written language and the oral language Different registers are bound to be, but there should not be too much of difference so as to make them two distinct languages Now there is an attempt by journals and magazines to use the people's language, but they are considered by purists not to be the correct language The languages used in periodicals on serious subjects are found to be difficult, artificial and lifeless by the common man, who therefore cannot have access to the knowledge conveyed by those periodicals

The older the language, the greater the gap between the literary language and the spoken language Clutching at what is ancient for antiquity's sake is an unrealistic attitude Protectionism and conservatism are bad for any development The enlightened public should have an open mind, be responsive to needs without undermining what is essential in what has been handed over through the ages

The literary language has to absorb all that is expressive in the popular language The popular language has to get enriched by the wider reading of the literary works Local words and professional words which are sometimes expressive have to be added to the common vocabulary

The media working to bridge the gap - the press, radio, telecommunications, theatre - use the language which is neither entirely popular nor entirely literary This work is laudable and has to continue Advertisements have a great impact on the common man They use new words or use existing words with a new meaning or a new combination of words to catch the imagination of people They revitalize the language Poets and writers promote the language and enrich it, not the grammarians or linguists It is the creative writing which gives the language its direction

A good way to enrich the language is to undertake translation on a large scale of foreign masterpieces in Indian languages Those who lack inspiration to write would do a great service in devoting themselves to the task of translation During the period of English renaissance, by about the beginning of the 17th century, almost all great works of ancient and modern European languages had been translated into English Some of those translations

formed current reading and some of them became as popular as the best writings of English authors

Since Indian languages are at the crucial point of development or revival, some steps are to be deliberately taken in the field which otherwise is to be left to the inexorable law of natural selection

The progress in literacy will have its own impact in two ways Now many people know only half of their mother tongue, its oral aspect Some do not even know that there is a written form and cannot form an idea of it Others 'use of language is confined to reading of newspapers, writing letters or accounts When a large group of the population starts reading the literary works for pleasure that will have a tremendous effect on the language Proper syllabus, methods of teaching, evaluation, training of teachers and more especially the continuation of the teaching of the regional language till the end of plus-2 will also have a deep effect on the development of the regional languages The latter will change slowly when a proper type of education giving then due place emerges Such a standard modern language would be heard everywhere and found in all writings and would be directly accessible to everyone Only reading old poetry will require a special initiation

The vocabulary of Indian languages may be enriched by tapping all sources, past literature, popular language, local words, professional terms Translations from the foreign languages should provide adequate literature in Indian languages in all fields Translation of foreign literary works will provide to our writers new models and news sources of inspiration At this stage when Indian languages need nursing, the central government should spend abundantly for all of them This will prove a good investment

FIGURES OF SPEECH

Introduction

A figure of speech differs from the ordinary form of expression It is used mainly to produce a greater effect by the speaker and is said to add sparkle to one's speech It makes conversations interesting and lively

Allegory— In Allegory abstract ideas and principles are described in terms of characters, figures and events Example

1 The Tortoise and the Hare from *Aesop's Fables* From this story, we learn that the strong and steady win the race

2 Plato in his "Allegory of Cave" tells a story of how some people are ignorant and at the same time, some people "see the light" – stands for an idea and does not tell a story

Alliteration— Alliteration is the repetition of beginning sounds Examples are

1 Sally sells seashells

2 Walter wondered where Winnie was

Assonance— Assonance is the repetition of vowel sounds to create internal rhyming within phrases or sentences, and together with alliteration and consonance serves as one of the building blocks of verse Examples are

1 The squeaky wheel gets the grease

2 The early bird catches the worm

Bathos— It is opposite to climax and can be called as anti-climax Example

1 "I am making a stand in this workplace for human decency, professional integrity, and free doughnuts at lunch-break "

2 The British radio series I'm Sorry I'll Read That Again also provides us with many Bathos examples John Cleese and Jo Kendall appeared in the roles of a couple whose relationship is on the brink of failure

MARY John – once we had something that was pure, and wonderful, and good What's happened to it?

JOHN You spent it all

When Mary says "something pure and wonderful", she is actually referring to the deep, sacred, noble form of love However, the description is vague enough for John to manipulate

Climax— Climax is the arrangement of a series of ideas in the order of increasing importance Example are

1 Simple, erect, severe, austere, sublime

2 What a piece of work is man ! How noble in reason, how infinite in faculties ! In action, how like an angel ! In apprehension, how like a god !

Epigram— An Epigram is a brief pointed saying frequently introducing antithetical ideas which excite surprise and arrest attention Examples are

1 The child is father of the man

2 Fools rush in where angels fear to tread

Euphemism— Euphemism is a word or phrase that replaces a word or phrase to make it more polite or pleasant Examples are

1 A little thin on top instead of bald

2 Homeless instead of bum

Hyperbole— Hyperbole uses exaggeration for emphasis or effect Examples are

1 I've told you a hundred times

2 It cost a billion dollars

Irony— Irony is using words where the meaning is the opposite of their usual meaning Examples are

1 After begging for a cat and finally getting one, she found out she was allergic

2 A traffic cop gets suspended for not paying his parking tickets

Metaphor— Metaphor compares two unlike things or ideas Examples are

1 Heart of stone

2 Time is money

Metonymy— In Metonymy (literally, a change of name) an object is designed by the name of something which is generally associated with it Examples are

1 The Bench, for the judges

2 The House, for the members of Lok Shaba

Personification— Personification is giving human qualities to non-living things or ideas Examples are

1 The flowers nodded

2 Snowflakes danced

Pun— A Pun consists in the use of a word in such a way that is capable of more than one application, the object being to produce a ludicrous effect Examples are

1 Is life worth living?—It depends upon the liver

2 An ambassador is an honest man who lies abroad for the good of the country

Simile— Simile is a comparison between two unlike things using the words "like" or "as " Examples are

1 As slippery as an eel

2 Like peas in a pod

Synecdoche— Synecdoche is when a part represents the whole or the whole is represented by a part Examples are

1 Wheels - a car

2 The police - one policeman

Tautology— Superfluous repetition of the same sense in different words Example

1 The children gathered in a round circle

2 "Your acting is completely devoid of emotion "

Devoid is defined as "completely empty" Thus, completely devoid is an example of Tautology

UNIT – IV
LOGIC

THE SCOPE OF LOGIC

The essential feature which distinguishes man from other creatures is his ability to reason This reasoning ability is revealed when men infer, argue or demand proofs Men sometimes reason well, and sometimes badly We use various expressions to indicate this The words 'correct', 'valid' and 'logical' stand for good reasoning, and the words 'incorrect', 'invalid' and 'illogical' stand for bad reasoning The science which enables us to draw these distinctions is logic Logic furnishes principles and methods for distinguishing between correct and incorrect reasoning

We are familiar with the process of drawing conclusion from the data The terms 'interference' and 'reasoning' are used for this process In an inference the thinker passes on from one or more given statements, accepted as true, to another statement, this follows from them The given statements are called the premises The statement which follows from them is called the conclusion Let us take an example

All honest men are trusted

All good men are honest

All good men are trusted

Here the statements "All honest men are trusted" and "All good men are honest" are the premises The statement "All good men are trusted" is the conclusion

DEFINITION OF LOGIC

The science of logic has developed along two different, though related, lines One line of development has been influenced by the doctrines of Aristotle The other line of development was due to certain advances in mathematics The logical doctrines of Aristotle, and those who followed him, are called *Traditional Logic*, while the doctrines of those logicians who were influenced by mathematics are called *Mathematical Logic* As the mathematical logicians make greater use of symbols, their treatment is also called *Symbolic Logic* Symbolic logic or mathematical logic developed in modern times Therefore, it is commonly called *Modern Logic* We should bear in mind that modern logic does not differ radically from traditional logic It is a development and extension of the principles of traditional logic

Traditionally, logic was defined as the science which investigates the general principles of valid thought It is a systematic inquiry into these principles It provides principles which will enable a person to distinguish between correct and incorrect arguments

The above definition regards thinking as the subject-matter of logic The term 'thinking' is too wide It applies to several mental processes *These include not only reasoning but also imagining, daydreaming and remembering* All these processes cannot be the concern of the logician Logic deals with reasonings alone Its task is to study the difference between good reasoning and bad

Moreover, thinking, being a mental process, is subjective It is something that occurs in the mind of the thinker We cannot consider this process from the point of view of its validity For instance, how can we determine whether our daydreams are valid or invalid? These objections show that the above definition is unacceptable

Logic and Psychology

Logic is not the only science whose subject-matter is thinking There are other sciences like Psychology which also study thought Both Logic and Psychology are interested in the mental process known as thinking But there is an important difference in their

approach to the subject matter We have already seen how Logic as a normative science is interested in studying the ideal or to their attainment Positive sciences are those which study things as they describe them All natural sciences like Physics, Chemistry, Botany etc , are positive sciences Normative sciences are those which study things as they ought to be with reference to an ideal Therefore, it follows, that the interest of Psychology is only in the processes of thought whereas the interest of Logic lies in the product of thought To the former what is important is the nature of thought and the meaning It is with this meaning side of thought that Logic is concerned

Logic differs from Psychology in another way also The subject matter of Logic is thinking alone It has no direct concern with the other aspects of the mind But Psychology, which is the science of behaviour, is interested not only in thinking but also in feeling and willing Psychology describes pleasure and pain, acts of will, as well as logical thinking All these are studied for their own sake, whereas Logic studies thinking alone, and that too with a definite ideal, viz , the attainment of truth Hence there is a two fold difference between Logic and Psychology In method Logic is normative and Psychology is positive, and with regard to subject-matter Logic deals with thinking alone, whereas Psychology has to cover the entire behaviour

Logic and Ethics

If Logic deals with thinking from a normative standpoint, ethics deals with the willed activity of man from a normative standpoint Man's actions are judged to be right or wrong, by referring them to a standard of goodness Just as in Logic, the reasonings of man are judged to be true or false by referring them to a standard form of reasoning, so also in Ethics, we judge man's willed behaviour to be good or bad by referring it to the ideal of goodness Ethics gives us the norm for willing and Logic gives us the norm for thinking Both are concerned with what ought to be Both Logic and Ethics agree in method, but the subject-matter is different

Logic, as a normative science of thought, has set for itself a difficult problem It has to think about thought and discover laws which govern thought in its search for truth But how is this done ? Whose thoughts are we to take as the pattern for logical study ? We cannot, definitely, take our own thoughts as the subject-matter of Logic Because it is difficult to observe thought when it is actually being thought Also, we cannot take our own thinking as an example of all thinking It is also not possible for us know exactly and correctly the thoughts of others through direct observation

It may be asked What is the practical use of study of Logic? People have been thinking correctly throughout the ages without logical training Also those who have received logical training may go wrong in their thinking Even then, it is useful to study Logic, for it will help its student in recognizing his mistakes in thought and grading himself against them in the future Thus logic is indirectly and negatively useful And, positively, Logic gives its student intellectual discipline and helps him to think correctly The most important characteristic of man is his thinking power and a study of the principles of correct thinking must be of great importance to him

The Principle of Thinking and the Syllogism

The word 'Logic' is derived from the Greek word 'logos' which means 'thought' and 'word as expression of thought' From this the definition of Logic may be understood as the science of thought expressed in language That is, thought, as such in the abstract, can never be studied We have to deal with the results of thinking, rather than with the thought-processes themselves The ideas and thoughts that are already there must be combined in such a way that their result leads to certainty This is known as reasoning In reasoning we have certain basic facts given to us, and from these we derive knowledge which follows from

them Reasoning is always from what is given to something that is not given At every stage of our experience, we are explaining things in terms of ideas and meanings Sometimes we change old ideas into new meanings To know a thing means, then, to transform it into ideas and meaning which connect that thing with other things either positively or negatively. We say an object belongs to one class of things or is different from another class of things or is different from another class So in every reasoning we have these three parts (i) A given statement, fact or idea, (ii) A statement, fact or idea which follows from the given idea, (iii) The basis or ground on which we draw (ii) from (i)

Such thinking is done in the form of judgements Judgement is the way in which the mind interprets the facts supplied to it by sensations It is one single act of thought When we look at the 'rose' and understand the colour 'red' as belonging to the object 'rose', we are making a judgement in terms of ideas and meanings about an external object 'rose' This is purely mental But ideas, as we have already stated, cannot be known in the abstract unless we think in languages Reasoning has always to be done in language Aristotle, the famous Greek Logician, said that a statement in which something is said either positively or negatively about something else, is a proposition Taking this as a simple and preliminary definition of a proposition we find that statements like 'a rose is red', 'crows are not white' are propositions We affirm or deny some quality of some object In reasoning we make use of such propositions to arrive at knowledge We affirm or deny some quality of some object In reasoning we make use of such proposition from one or more given propositions, the reasoning process is known as inference To draw a conclusion from the given statement, there must be something that is common between the conclusion and the given statements For example, I am inferring a conclusion because of the universal fact that my body is similar to all the other bodies which are mortal The common element or the ground of inference is the physiological similarity of all mortal beings Therefore, without such a universal ground, inference is impossible

There are two types of inference If one proposition is all that is given and from that if we draw a conclusion, the inference is known as immediate inference For example, if we say 'A' is 'B' because 'B' is A', it is a case of immediate inference By this we mean that because 'B is A', the conclusion 'A is B' must follow On the other hand, if the given propositions are more than one which lead to a conclusion, the inference is called mediate inference In immediate inference the conclusion is reached directly, whereas in mediate inference the conclusion is reached after some comparison with a common factor is done So the conclusion is reached mediately or indirectly For example, if we argue 'S is P because M is P and S is M', it is a case of mediate inference Here the relation between S and P is determined because each of them is related to a third term M A typical example of such a mediate inference is made up of three propositions The third proposition is derived from the first and the second proposition Aristotle called this type of mediate inference syllogism This word means thinking two propositions together But every pair of propositions do not lead to a third proposition as conclusion For example, from the statements 'dogs are animals', and 'men are rational' no conclusion can be drawn, because they have nothing in common There must be something that is to be drawn from them In the following argument

'All men are mortal

Socrates is a man

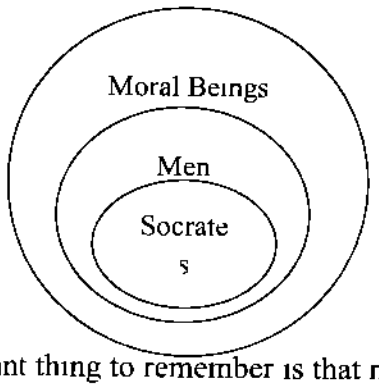
Socrates is mortal'

There is a passage from the facts given in the first two propositions to the third In this example 'man' is the basis on which it is maintained that Socrates is mortal So we think together the first two propositions as a result of which thinking, we arrive at a conclusion given in the third proposition The whole is one piece of argument, although for the sake of

convenience, we can divide it into two parts But the most important fact to be remembered here is that the first two given propositions are to be taken as true These two given propositions are known as premises, and the third proposition which we draw from these two, is known as the conclusion, 'Socrates is mortal' This type of syllogism is the simplest example of mediate inference The word 'premise' means the starting point which is taken as true Therefore in a syllogism the first two statements are called premises because they are the starting points for the argument and also because they are taken as true The conclusion is derived from such true premises and therefore, is true

Each proposition of a syllogism consists of two terms and a copula The terms are the extremes of the proposition and are known as the subject and the predicate of the proposition Thus in the proposition 'the weather is pleasant', 'the weather' is the subject, pleasant, is the predicate and the word 'is', which connects the subject and the predicate, is called the copula In the syllogism given above, we are said that the first two propositions have a common term The common term is 'man' and is known as the middle term The reason for this name is clear It is the mediating term or the term to which the subject and predicate and referred

It has already been pointed out that for inference there must be a common element binding the two terms, before we can say anything about their relation In the example given above, mortal beings are much larger in number than men and includes men within it That is, man is to a certain extent is identical with those beings which are mortal Again we find that human beings are larger in number, and Socrates is only one of them That is, since Socrates belongs to the species of man, we say, he also has the characteristics of mortality which belongs to all men This whole relationship may be illustrated by means of circles



Here the most important thing to remember is that man is the connecting link between a mortal being and Socrates, Such a link is known as the middle term

In the syllogism we have just considered, there are two other terms, viz , Socrates and mortal, which have to be explained These form the subject and predicate of the conclusion and are known as minor term and major term These get their names from the fact that major term always has the greatest extension and that which has the least extension is the subject term As already shown by circles we find that 'mortal' which is the predicate or the major term has the largest extension and 'Socrates' the subject of the conclusion has the least extension

Now, if we look at the syllogism as a whole ,

'All men are mortal

Socrates is a man

Socrates is mortal,

We find that the major term 'mortal' appears in the first premise, 'all men are mortal' Therefore that premise is known as the major premise The minor term 'Socrates' appears in the second premise That premise in which the minor term appears is known as the minor

premise When the major premise is first, the minor premise second and the conclusion third Thus

All men are mortal - Major premise

Socrates is a man - Minor premise

Socrates is mortal – Conclusion

WIt will be convenient to use symbols for the terms and represent the syllogism symbolically We shall use the letter P,S and M S (which is the subject of the conclusion) will indicate the minor term, P (which is the predicate of the conclusion) will indicate the major term and M will indicate the middle term Making use of these symbols, we have

M – P

S – M

S – P

This is the general pattern of the argument known as syllogism Aristotle maintained that this is the most important form of reasoning Here we proceed to draw a conclusion from the given premises We deduce a conclusion from something that is given 'Deduce' means to draw out Hence this process of logical arguing from the known and the unknown The facts that are given are such that they are related to a common ground It is this common ground or mediating fact which helps us to reason out the relationship between the known facts That is why it is usually maintained by logicians that in deductive arguments, we always have something new in the conclusion which we did not have before But it is not new in the sense that we did not know anything about it completely before We had also known their independent relationship with the mediating term Now, on that basis, we have gathered because it is drawn from premises which are given as true In deduction, we always proceed to include the particular instance under a general rule So it is proceeding from universal truths to truth of the particular

PREPOSITION AND ITS PARTS

1. WHAT IS A PROPOSITION?

Logic deals with validity of arguments The validity of an argument depends upon the nature of relation between its premises and its conclusion The premises and the conclusion of an argument are propositions Thus, the basic unit of logic is proposition Let us take an argument and consider the propositions it contains

All boys are tall

Ashok is a boy

Ashok is tall

Now, what is it that strikes us about the propositions in the above argument? We notice two things Firstly, these propositions express either true or false statements The first statement is false, the second statement is true, and the third one may be either true or false Secondly, all the propositions are expressed in words They are, what grammar calls, sentences Thus, we have to consider two problems These are (1) What is a proposition? (2) Is proposition the same as grammatical sentence?

The thinker is concerned with the truth and falsity of propositions He draws inferences on the assumption that the given propositions (premises) are true Since the verbal expression (of a proposition does not affect the validity of an argument, the thinker is not concerned with it Thus, truth or falsity is the essence of a proposition **So, we may define proposition as a statement which is either true or false.** Let us take examples -

1 Tagore was a great poet

2 Mickey Mouse appears in Walt Disney's cartoons

3 Dogs do not dance

4 If Panchatantra contains fables, it is interesting to read

5 Either Bangladesh or Burma has an atom bomb

The following are the main characteristics of a proposition

i) Every proposition is either true or false *It cannot be both true and false*

Let us illustrate The proposition "India has Congress government" appears to be true for some years, and false for some other years However, this wrong impression is created, because the proposition has not been expressed fully A proposition is asserted with reference to a given date And with reference to that date, it cannot be both true and false The above proposition would be fully expressed thus "India has Congress government in July 1995 " If it is so expressed, it cannot be both true and false

ii) *The truth or falsity of a proposition is definite* It always remains the same, it cannot change Of course, we may not know whether a given statement is true or false For example, today we cannot say whether the statement "There are living beings on the Planet Mars" is true Further, we may even hold a wrong belief about its truth or falsity But neither absence of knowledge nor wrong belief affects the truth or falsity of a statement A true statement will continue to remain true, and a false statement will always be false There are some statements which look like propositions, but which are not propositions Consider the following statements

1 A foot consists of twelve inches

2 A kilogram consists of one thousand, grams

These sentences appear to express propositions Really, they do not While asserting these statements, we are not raising the question of their truth or falsity We are merely saying that the words "foot" and "kilogram" are to be used in these ways Of course, the answer to the question "Do we use these words in the above senses" may be true of false But *such propositions are about the use of word* and not about, the objects for which the words stand [1]

2. PROPOSITION AND FACT

What determines the truth or falsity of a proposition? It is the facts If a proposition represents the facts as they are, it is true If it does not, it is false *"Butter melts in heat"* is a true proposition, while *"A horse has two legs"* is a false proposition

Though a proposition claims to represent a fact, it is different from a fact If it were not so, there would be no possibility of error We walk across a street, and see something long and dark We say that it is a snake Really, it is a rope This shows that we made a mistake This mistake would not have been possible, if the proposition *"This is a snake"* were not different from the fact *A proposition claims to represent facts* This claim may or may not be justified If it is justified, the proposition is true, otherwise, it is false ,

3. PROPOSITION AND JUDGMENT

Propositions are often confused with the mental act of judging In fact, some logicians call propositions judgments This confusion is due to ambiguity in the use of the term 'judgment' Sometimes the term 'judgment' is used in the sense of the mental act of judging, and sometimes in the sense of what is judged However, the two are different The mental act of judging is different from the result of this act (e g what is judged) While propositions are a result of thinking (the mental act of judging), they are not to be identified with this thinking

[1] Cohen and Negal, An Introduction to Logic and Scientific Method, 1964, p 29

activity Logic is concerned with what is judged It is only this that can be considered to be either true or false Of course, the thinker arrives at the proposition *"Ram is taller than Gopal"*, by comparing Ram and Gopal in respect of their height But what is true or false is the judgment *"Ram is taller than Gopal "*, and not the mental act by which this judgment is passed

If the term 'judgment' is understood in the sense of a product of judgment (or what is judged), the logician is concerned with it But he is concerned with the product of judgment only when it has assumed a fixed and definite form We find that a judgment assumes a fixed and definite form, when it is expressed in language When a judgment is expressed in language, it is called a proposition Thus, to avoid misunderstanding, it is better to say that logic deals with propositions

PROPOSITION AND SENTENCE

Some logicians use the terms "proposition", "statement" and sentence" in the same way But, to maintain the usual meaning of "sentence", we shall use "proposition" and "statement" in a narrower sense than the term "sentence" However, for us, there will be no distinction between "proposition" and "statement"

A proposition is expressed in the form of a sentence But it is not the same as a sentence The same proposition may be expressed by different sentences Let us illustrate For the English expression

"calling a spade a spade", the French people use the expression

"calling a cat a cat" Similarly, a sentence in English and one in Hindi may differ as sentences Yet they may express the same proposition This is because proposition (statement) is what a sentence states, and not the words in which the statement is made

As we have stated in Section 1, a proposition is either true or false But the question of truth or falsity arises only with regard to what declarative (or indicative) sentences say Therefore, in a direct, or straightforward, way declarative (or indicative) sentences alone express propositions Other kinds of sentences, e g those expressing questions, feelings, wishes, commands, requests, etc cannot be used to make statements For example, the following sentences do not express propositions

1 Why do people believe in astrologers?

2 Hurrah! We won the match

3 I wish man had wings

4 Shoot!

5 Please give me your pen

Sometimes we come across sentences which are in the form of a question or exclamation, but which are really declarative sentences Let us consider two such sentences

a) What thief would trust a thief?

b) Thief

Obviously, the first sentence is not a real question It does not demand information, it gives information It states that no thief would trust a thief The second sentence too gives information The speaker is pointing to a thief Since these sentences give information, they express propositions Thus, we see that *every sentence does not express a proposition, but every proposition is in the form of a sentence*

A sentence has physical existence When spoken, it is sound waves, when written, it is marks or signs on a surface On the other hand, a proposition is what a sentence says The statement has no physical existence It can be easily seen that sentences have physical

existence The fact that we can talk about their length shows so But we cannot say that a given proposition is either long or short This is because a proposition does not have physical existence

The form of a sentence is not a proper guide to the form of a proposition The logical form of a proposition depends upon the statement that a proposition expresses The grammatical form of a sentence is determined by various considerations Some of these have nothing to do with giving information To illustrate, often proverbs and idiomatic expressions have a force which is not a part of their logical meaning The expression "United we stand, divided we fall " This expression emphasizes the fact that unity is strength, and disunity is a weakness

Distinction between proposition and sentence in traditional logic:

If we accept the traditional view of proposition, we would find certain further differences between proposition and sentence These are

1 *A proposition contains a single statement,* but a grammatical sentence may contain more than one statement When a grammatical sentence is reduced to the logical form of proposition every statement that a sentence contains is expressed by a separate proposition Thus, the sentence "India is a secular State, where people of all religions are treated equally" contains two statements Therefore, it will be reduced to two propositions These are

a) India is a secular State

b) People of all religions are treated equally in India

2 *The grammatical order of subject and predicate is often different from the logical subject and predicate* In the sentence "Blessed are the poor", the logical subject is 'the poor', while the grammatical subject is 'blessed'

Thus, we see that there are important differences between proposition and sentence Yet there is an intimate connection between the two Logic deals with propositions only when they have a definite and fixed form This definite form is not possible, till a proposition is expressed in language Thus, only when a proposition is expressed by a sentence, its form becomes definite,

5. CONSTITUENTS AND COMPONENTS

Though proposition is the basic unit of logic, it can be analyzed into its elements However, the elements into which a proposition is analyzed have no existence apart from the proposition. *The elements into which a proposition can be analyzed are called its constituents* The constituents of a proposition are what the proposition is about The proposition "Brutus killed Caesar" is about "Brutus", "Caesar" and "killing"

A constituent is any element of a proposition It may or may not be its subject In the proposition "Sheela is honest", the constituent 'Sheela' is the subject of the proposition, but the constituent being a honest is not the subject

In every proposition there is one element which combines the other elements *This combining element is called component* In the proposition "Ram loved Sita", the constituent 'loved' is a component Without this combining element, there would be no proposition "Ram-Sita" is not a proposition The component "is" is required to make it a proposition

Component and other constituents A component and other constituents differ in the following respects

1 *A component is universal while the constituents it combines can be particular* That is why, the constituents it combines may be changed, and yet the proposition would be meaningful We shall change the individuals combined by the component 'loved', and see what happens

a Ajay loved Laila

b Yusuf loved Zulekha

c Fardeen loved Shereen

In these propositions the combining element 'loved[1] has remained the same, even though, the other constituents have changed Now, this combining element loved[1] cannot be replaced by an individual Thus, we may say that a particular can occur as a constituent, but it cannot be a component

2 Every proposition is about a certain content (or subject-

matter) The constituents are what the proposition is about So, the constituents indicate the content of a proposition Since *the contents of propositions differ, their constituents too differ* However, even though propositions differ in their constituents, they may have the same form Consider the following propositions

a 1 Ram is honest

b 2 Savitri is clever

c 3 This mango is ripe

All the above-propositions assert that an individual possesses a 'quality' Thus, we see that though the above propositions have different, constituents, the relation between the constituents is the same To put it differently, in all the above propositions the component is the same This component is predication (that is, assertion of a quality about an individual)

3 The form of a proposition depends upon the way combined That is to say, it depends upon the component

In the first proposition, the component *is predication* The attribute of intelligence is affirmed of John In the second proposition, the component is *membership of a class* Lata Mangeshkar is a member of the class of singers In the last proposition, the component is *class-inclusion* The class of peacocks is included in the class of birds As *the components in these propositions are different, these propositions are of different forms*

6. TRADITIONAL ANALYSIS OF PROPOSITION

The traditional logicians maintained that every proposition has *f* two constituents These were called the subject and the predicate of the proposition The *subject is* that about which something is said The *predicate is* that which is affirmed or denied of the subject In the proposition "This paper is white", 'this paper' is the subject and 'white' *is* the predicate The subject and the predicate of a proposition are called terms

A proposition consists of only two terms These terms stand in a certain relation to one another The relationship is that of affirmation or negation This relationship is expressed by the copula *Thus, copula is that element which expresses affirmation or denial* When the predicate is affirmed of the subject, the copula is affirmatives when it is denied of the subject, the copula is negative Let us see the copula in the following propositions

a All kings are men

b John is a Christian

c No men are perfect

d Peter is not reliable

The first two propositions express agreement between the subject and the predicate Therefore, the copula is affirmative The last two propositions express disagreement between the two terms Therefore, the copula is negative

In the third proposition above, it may appear as if the copula is not negative This is because the word, which is a part of the copula, occurs before the subject While dealing with the traditional classification of propositions (in Chapter 4), we shall see why the sign of negation is placed before the subject

Copula is not to be considered a link between the subject and the predicate It is only a sign of predication (that is, asserting a quality) It shows that the predicate is **either** affirmed or denied of the subject

The traditional logicians maintained that the copula must be in the present tense of the verb 'to be' That is, it must be 'is', *'am'* or *'are'* However, the real copula is not the word 'is' or 'am' It is predication That means, it is the act of affirming or denying the predicate of the subject In the proposition " *What cannot be cured must be endured* ", the verb 'is' or 'are' does not occur Yet there is a copula This copula is the relationship between the subject *'things that cannot be cured'* and the predicate *'things that must be endured'* The traditional logicians would bring this proposition to its-logical form thus *"All things that cannot be cured are those which must be endured*

The function of the copula is the same as that of the component. In fact, copula is a component It is that element which unites the terms However, the traditional logicians did not realize that there are various ways in which the copula unites the terms Some of these are

i predication (that is, asserting an attribute of an individual), e g "This table is polished "

ii membership of a class, e g "John is a Christian "

iii inclusion of one class in another class, e g "All kings are men", "Some teachers are respected "

The traditional logicians believed that there is only one kind of relation between terms, namely predication That is why their classification of propositions is defective

Simple and Compound Propositions

The traditional logicians recognized the distinction between simple and compound propositions But the distinction is not clear Moreover, the terms "simple proposition" and "compound proposition" are not used in the sense in which modern logic uses these expressions

Simple proposition: A simple proposition is one which affirms or denies a predicate of a subject That is, in a simple proposition, the predicate is asserted of the subject All the following propositions will be regarded as simple propositions by the traditional logicians

i All fairies are beautiful

ii Everything changes

iii No dogs whistle

iv There are no ghosts

v Some singers are handsome

vi Some actresses are not beautiful

vii Sai Baba is a saint

viii Samson is not weak

From the above examples we see that the so-called simple propositions may be about an individual, or about classes The subject term of some simple proposition is an individual

Propositions (7) and (8) are this type On the other hand, the subject and the predicate term (1), (3), (5) and (6) are classes As for as propositions (2) and (4), we do not find the two terms But, while reducing the above sentences to the logical form of a proposition, even these propositions would be shown as expressing a relation between two terms which are united by the copula

Compound propositions when a proposition makes on assertion under certain conditions, it is called a compound propositions in the traditional logic

1 If ghosts frighten, they are dangerous
2 If dogs cannot whistle, they can bark
3 Either Meena or Mohini is intelligent
4 Either monkeys do not sing or tigers do not dance

The propositions in which the predicate is affirmed or denied of the subject absolutely (i e without any condition) were called categorical propositions by the traditional logicians So, simple propositions are categorical propositions As distinguished from these propositions, compound propositions make the assertion under certain conditions So they are called conditional propositions In the next section, we shall deal with "categorical" and "conditional" propositions

Categorical and Conditional Propositions

Under the head of relation, Kant classifies propositions into categorical, hypothetical and disjunctive The last two are generally grouped under the head of conditional propositions This was done to distinguish categorical proposition from them

Categorical proposition: A categorical proposition affirms or denies a predicate of a subject absolutely "Congress is a political party" and "All rats are colour- blind" are categorical propositions In both of them the predicate is asserted without any expressed condition

Conditional proposition: a conditional proposition is one in which the assertion is made subject to some expressed condition In the proposition " If petrol is brought near fire, it will explode", the occurrence of explosion depends upon the condition of petrol being brought near fire

Conditional propositions are of two kinds These are hypothetical and disjunctive propositions

Hypothetical Proposition A hypothetical proposition is one which presents a condition together with some consequence which follows from it The example of conditional proposition taken above is that of hypothetical proposition It states the condition "petrol being brought near fire" and the consequence of this condition, viz "petrol will explode" The proposition does not refer to any actual instance of petrol being brought near fire It only states if the condition is fulfilled, the consequence will follow

In a hypothetical proposition, there are two propositions they are

1 The proposition which states the condition and
2 The proposition which expresses the consequence The proposition which states the condition is called antecedent that expresses the consequence is called consequent

In the strict logical form of hypothetical proposition, the antecedent is placed before the consequent Moreover, the condition is introduced by the word 'if' and the consequence by the word 'then' However, in most hypothetical propositions the word 'then' does not occur But it is understood to be there

Disjunctive Propositions A disjunctive proposition is one which states alternatives This proposition asserts that at least one of the alternatives is true The following propositions are disjunctive

1 Bertrand Russell was either a mathematician or a philosopher

2 A line is either straight or curved

Let us look to the alternatives in the above propositions In the first two propositions the alternatives are such that, by affirming one of them, we cannot deny the other For instance by affirming the alternative " Russell was a mathematician", we cannot deny that he was a philosopher and vice- versa This shows that the alternatives in the first propositions are not mutually exclusive On the other hand, in the second proposition , the alternatives are mutually exclusive If we affirm that line is straight, we deny that it is curved and vice-versa

Now the question arises as to whether the alternatives in a disjunctive proposition are to be taken as exclusive? This question has to be answered negatively To determine whether the alternatives are exclusive, we have to examine the content of a proposition But logic is a formal science as such it is concerned with the form of a proposition, and not with its content From the form of the disjunctive proposition, we cannot know whether the alternatives are exclusive In view of this, Keynes maintains that the alternatives of disjunctive propositions are to be interpreted as non- exclusive That is to say, a disjunctive proposition asserts that at least one of the alternatives is true It does not exclude the possibility that both the alternatives may be true

5. FOURFOLD CLASSIFICATION OF PROPOSITIONS

We have seen that according to quality, propositions are classified into affirmative and negative According to quantity they are classified into universal and particular On the basis of these two principles (of quality and quantity), there are four kinds of propositions This is called the *fourfold classification* of propositions It is also called the *traditional scheme* (or traditional schedule) of propositions The four kinds of propositions included in the traditional scheme are the following

1. Universal Affirmative: In this kind of proposition the predicate is accepted of the whole subject *"All fairies are beautiful"* and *"All Brahmins are Hindus"* are universal affirmative propositions ('A' Propostion)

2. Universal Negative: In this kind of proposition the predicate is denied of the whole subject *"No thieves are moral"* and *"No fool is a good friend"* are propositions this kind ('E' Propostion)

3. Particular Affirmative: In this kind of proposition the predicate is affirmed of a part of the subject *"Some singers are rich"* and *"Some boys are clever"* are propositions of this kind ('I' Propostion)

4. Particular Negative: In this kind or proposition the predicate is denied of a part of the subject *"Some modern men are not religious-minded"* and *"Some magicians are not rich"* are the two vowels of the word "nego" ('O' Propostion)

These four types of propositions are symbolized by the vowels A, E, I and O These vowels are taken from the Latin words *affirm* (meaning 'I affirm') and *nego* (meaning 'I deny') 'A' and 'I' are the first two vowels of the word "affirm", 'E' and 'O' are the two vowels of the word "nego"

Using the symbol "S" for the subject and the symbol "P" for the predicate, the above four kinds of propositions may be represented thus

Universal Affirmative (A) All S in P [SaP]

Universal Negative (E) No S in P [SeP]

Particular Affirmative (I) Some S in P [SiP]

Particular Negative (O) Some S is not P [SoP]

When we come to immediate inferences, we shall find it more convenient to indicate the quality and quantity by the small letters 'a', 'e', 'i' and 'o' The letter 'S' (standing for the subject) will be placed to the left, the letter 'P' (standing for the predicate) to the right, and the small letters 'a', 'e', 'i' and 'o' in the middle Thus, 'A', 'E', 'I' and 'O' propositions may also be represented thus

A SaP

E SeP

I SiP

O SoP

DISTRIBUTION OF TERMS IN A CATEGORICAL PROPOSITION

A categorical proposition asserts relationship between the subject term and the predicate term The assertion may be with regard to the entire denotation or to the partial denotation of these terms The doctrine of distribution of terms deals with this

A term is said to be distributed when the reference is to all the individuals denoted by the term It is said that to be undistributed when the reference is to a part of the denotation of the term Even when the denotation is not definite, the term is taken to be undistributed This means, only when there is explicit reference to the entire denotation, a term is said to be distributed

There is no difficulty in deciding whether the subject term of a proposition is distributed The quantity sign "all" or "some", before the subject, clearly indicates this In a universal proposition the reference is to the entire denotation of the subject Thus, in the 'A' proposition "All judges are fair-minded", the assertion is about the entire denotation of 'judges' Similarly, in the 'E' proposition "No lemons are sweet", the subject is taken in its entire denotation The word "no", before the subject, indicates that the predicate is denied of the entire denotation of the subject

The traditional logicians considered singular propositions to be universal Therefore, in singular propositions too, the subject term is distributed

Whether the predicate term is distributed or not depends upon the quality of the proposition The predicate of an affirmative proposition is not distributed, because in an affirmative proposition there is no explicit reference to the denotation of the predicate Let us understand this with the help of examples The universal affirmative proposition "All judges are impartial" does not state whether all impartial persons are judges or not Therefore, the predicate term is taken as undistributed

Similar is the case of particular affirmative proposition We do not know whether the reference is to the entire denotation of the predicate or to a part of its denotation The particular affirmative-proposition "Some students are clever" does not tell us whether the whole class of clever persons is covered by some students There may be clever persons who are not students Thus, in a particular affirmative proposition also, the predicate term is taken to be undistributed

There is one exception to the distribution of predicate in affirmative propositions In 'A' proposition when the denotation of the subject and the predicate is the same, the predicate term also is distributed In the proposition "All triangles are plane figures enclosed by three straight lines" both the terms are distributed

In negative propositions the predicate term is denied of the subject That is to say , all things denoted by the predicate are excluded from the subject Therefore, negative propositions distribute predicate Let us take examples of 'E' and 'O' propositions In the 'E' proposition "No lemons are sweet", the whole class of lemons (subject) is excluded from the class of sweet things (predicate) Not only this, the entire denotation of the predicate term is excluded from that of the subject Similarly, in 'O' proposition, a part of denotation of the subject terms excluded from the entire denotation of the predicate In the proposition "Some Shopkeepers are not honest", a part of the class of shopkeepers is excluded from the entire denotation of honest beings

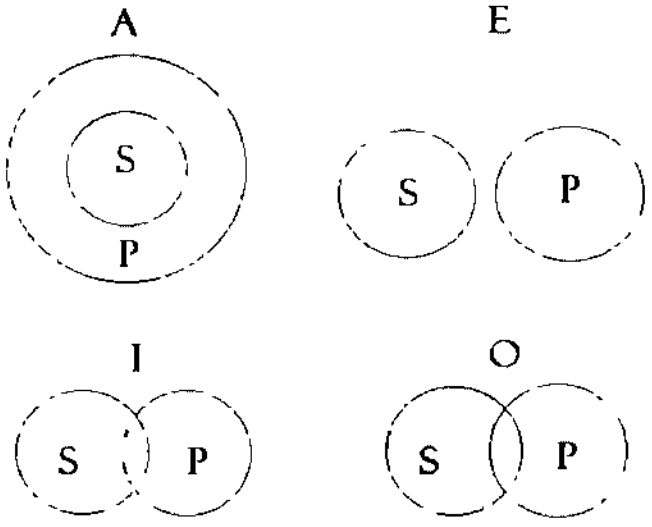
Thus, we see that the subject of a universal proposition is distributed, but the subject term of a particular proposition is not On the other hand the predicate of a negative proposition is distributed, but the predicate of an affirmative proposition is not **This shows that the quantity of a proposition determines the distribution of the subject term, while the quality of a proposition determines the distribution of the predicate term.** Let us state these results

A proposition	-	subject distributed, predicate undistributed Both subject and predicate distributed
E proposition	-	subject distributed, predicate distributed Neither subject nor predicate distributed
I proposition	-	subject undistributed, predicate undistributed
O proposition	-	subject undistributed, predicate distributed

ASEBINOP

As an aid to memory, the word **'ASEBINOP'** may be remembered for the distribution of terms In this word vowels stand for the four propositions The consonants 's', 'b', 'n' and 'p' occur after the **four** vowels These consonants indicate the distribution of terms The consonant 's' indicates that only the *subject* term is distributed The consonant 'b' indicates that *both* the subject and the predicate are distributed The consonant 'n' indicates that *neither* of the terms are distributed The consonant 'p' indicates that the *predicate* is distributed

The distribution of terms in the 'A' 'E', 'I' and 'O' propositions can be easily seen from the following diagrams



In these diagrams the broken circle indicates the term that is undistributed The diagram for `A' proposition shows that the class represented by the subject term is included in the class represented by the predicate term, but the subject class does not cover the entire predicate class This indicates that the subject term is distributed, but the predicate is not The diagram for 'E' proposition shows that both the classes are completely separate They exclude each other Therefore, both the terms are distributed The diagram for 'I' proposition shows that some members of the subject class (the shaded part) and some members of the predicate class (the shaded part) are the same But neither term is taken as a whole The diagram for 'O' proposition differs from the diagram for 'I' proposition in the shaded part 'O' proposition is about that part of the subject which is shaded This part of the subject (the shaded part) is excluded from the whole of the predicate class From this we see that 'O' proposition does not distribute the subject, but it distributes the predicate

3. SYLLOGISM

The theory of Syllogism was propounded by Aristotle Aristotle considered syllogism as an argument in which the middle term stands in a certain relation to the other two terms And only categorical propositions can be analyzed into terms Some logicians have extended the term 'syllogism' to arguments containing hypothetical and disjunctive propositions as premises

1. NATURE OF SYLLOGISM -ITS STRUCTURE

Syllogism is composed of three propositions **It is a mediate inference in which the conclusion is deduced from two given propositions.** The given propositions are called *premises* The proposition which follows from them is called the *conclusion* Let us take an example of syllogism

All politicians are ambitious

All ministers are politicians

All ministers are ambitious

In this syllogism the first two propositions are the premises, the third one is the conclusion

Let us now analyze the nature of syllogism As a mediate inference, syllogism differs from immediate inferences like deductions and opposition of proposition The conclusion of syllogism is jointly implied by the two premises It is not drawn from each of the premises, separately

Syllogism is a deductive inference Therefore, its conclusion cannot assert more than what is asserted by its premises That is to say, if one of the premises is particular, the conclusion cannot be universal

Structure of syllogism In a syllogism the constituent propositions are analyzed into terms These terms are given names The predicate of the conclusion is called the major term The subject of the conclusion is called the minor term The term which occurs in both the premises, but not in the conclusion, is called the middle term The major term is represented by the symbol 'P' , the minor term by the symbol 'S' and the middle term by the symbol 'M'

The premise in which the major term occurs is called the major premise and that in which the minor term occurs is called the minor premise In the major premise, the middle term is related to the major term and in the minor premise, the middle term is related to the minor term The relation between the middle term and the other two terms may be that of affirmation or negation

The validity of a syllogism does not depend upon the order in which the three constituent propositions are expressed However, when a syllogism is reduced to its logical form the constituent propositions are stated in a certain order This order is

Major premise

Minor premise

Conclusion

FUNCTION OF THE MIDDLE TERM

The conclusion follows from the premises, because there is a common element between them This common element is the middle term As we have stated, the middle term is that term which occcurs in both the premises, but not in the conclusion

Now, the conclusion can be deduced from the premises, because there are certain relations between the terms Thus, in a syllogism the inference depends upon the analyses of the constituent propositions The conclusion depends upon the manner in which the terms are related in the premises

As we have stated above, in a syllogism the conclusion is jointly implied by both the premises It does not follow from either of the premises, taken separately Let us take examples

All teachers are educated persons,

All lions are ferocious

These two propositions have no common element They cannot be joined together Therefore, there is no question of the conclusion from them Now consider the following argument

All cats are animals

All dogs are animals

Therefore all dogs are cats

In this argument there appears to be a common element This common element, called the middle term is "animals" But though there is a middle term, the middle term is not able to perform its function of relating the major and the minor term This is because the middle term is taken in partial denotation in both the premises In both the premises, it stands as the predicate of 'A' proposition Now 'A' proposition doesnot distribute its predicate Therefore, the middle term is not distributed Since, the middle term is not distributed, it is possible that the part of the middle term which is related to the major term may not be the part which is related to the minor term That is why the middle term is not able to perform its function of relating the two terms

It may be pointed out that, in some syllogistic arguments, even though the middle term is not distributed, the conclusion appears to follow from the premises But really this is not possible Let us take an argument and discuss this point

All philosophers are thinkers

Some poets are thinkers

Therefore, some poets are philosophers

In this argument the middle term remains undistributed in both the premises (being the predicate of affirmative propositions), yet the conclusion is true However, though the conclusion is true, it is not validly drawn Here the relation between the premises and the conclusion is independent of the connection provided by the middle term Therefore, the conclusion does not necessarily follow from the premises

Syllogism is a formal inference It is not concerned with the content, either of the premises or of the conclusion That is why, every syllogistic argument can be represented symbolically, and its validity decided on the basis of formal relations between the premises and the conclusion If the premises imply the conclusion, the inference is valid, if not, it is invalid

RULES OF SYLLOGISM

In a syllogism, the conclusion is deduced from the two premises, taken together But we cannot draw any conclusion from any premises, because the implications of different kinds of propositions are different For instance, when one of the premises is a particular proposition, we cannot draw a universal proposition as the conclusion As we shall see later, this is the basic condition of syllogism This principle is called the *Dictum de omni et nullo*

The traditional logicians observed that we can test the validity of a syllogistic argument by applying certain rules A syllogism whose conclusion is drawn in accordance with these rules would be valid If a syllogism violates any of these rules it would be invalid *When a syllogism is invalid, it is said to commit a fallacy* There are seven rules of syllogism Two of these are the rules of structure, two of them are concerned with the distribution of terms, and three of them deal with quality

Rules of Structure :

1 There must be three and only three terms in a syllogism

This can hardly be said to be a rule of syllogism It is the condition which determines whether an argument is syllogism When a syllogism has more than three terms it is said to commit the *fallacy of four terms* This happens especially when one of the terms is ambiguous A term is ambiguous when it is used in two different senses Really speaking, what is ambiguous is a word, and not a term Terms have a fixed and definite meaning A word becomes a term when it stands as subject or predicate of a proposition Now, when a word occurs in a proposition (i e , becomes a term), it cannot have more than one meaning However, the fallacy arising out of the ambiguous use of a term is considered to be a fallacy of syllogism This is called the **fallacy of equivocation** Let us take an example

Sound is that which travels at 1120 feet per second

His knowledge of history is *sound*

Therefore his knowledge of history is that which travels at 1120 feet a second

Here the middle term "sound" is ambiguous It means "what is heard" in the major premise, and "free from defect" in the minor premise

The fallacy of equivocation may arise with regard to any of the terms Since there are three terms, it takes three forms These are called the fallacies of **Ambiguous Major, Ambiguous Minor and Ambiguous Middle.** The above example is that of Ambiguous Middle

2 There must be three and only three propositions in a syllogism

This rule restricts the scope of syllogism Various kinds of arguments will be ruled out on the basis of this rule In some arguments the conclusion follows from three, four, or even more premises The traditional logicians would express such arguments in units of three propositions each They would consider each unit of three propositions as a syllogism, and the whole argument as a series of syllogisms Take an example

Logic is a science

All sciences are those that aim at truth

All things that aim at truth are useful

Therefore logic is useful

This argument is called sorites. We shall not discuss such arguments However, we shall analyze the above argument, and show that it consists of syllogisms

1 All sciences are those that aim at truth

Logic is a science

Therefore, logic is that which aims at truth

2 All things that aim at truth are useful

Logic is that which aims at truth

Therefore, logic is useful

Rules of Distribution of Terms

The most important factor which would determine the validity or otherwise of a syllogism is the range of generality of a term By range of generality we mean whether a term is taken in its entire denotation or whether it is taken in its partial denotation There are two rules regarding the distribution of terms

3 The middle term must be distributed at least once in a premise

The function of middle term is to unite the major term and the minor term The middle term cannot perform this function, if it is not distributed

The violation of this rule involves the fallacy of *Undistributed Middle* Let us take examples of syllogisms committing this fallacy

1 All good citizens are those who vote

Some women are those who vote

Therefore some women are good citizens

2 Some taxes are levied at death

Excise duty is a tax

Therefore, excise duty is levied at death

In the first arguments the middle term is the predicate in both the premises Both the premises being affirmative, they will not distribute the predicate Therefore, the first argument commits the fallacy of Undistributed Middle In the second argument, the middle term is the subject of the major premise which is 'I' propositions and the predicate of the minor premise(which is 'A' proposition) So it remains undistributed in both the premises As such, this argument also commits the fallacy of Undistributed Middle

4 No term can be distributed in the conclusion unless it is distributed in the premise

There are two terms in the conclusion These are the major term and the minor term Therefore, this rule means that the major term cannot be distributed in the conclusion unless it is distributed in the major premise Similarly, the minor term cannot be distributed in the conclusion unless it is distributed in the minor premise

This rule expresses the general condition of deductive inference In deduction the conclusion cannot go beyond the evidence The violation of this rule results in the *fallacy of illicit process of terms* Since there are two terms in the conclusion, two fallacies arise These are the fallacy of *Illicit Major* and the fallacy of *Illicit Minor* To take examples

Fallacy of Illicit Major

All tigers are *ferocious*

No tiger is a tea-drinking creature

Therefore, no tea-drinking creature is *ferocious*

The major term "*ferocious*" is not distributed in the major premise, being the predicate of 'A' proposition But it is distributed in the conclusion, being the predicate of 'E' proposition

Fallacy of Illicit Minor

No ghosts are contended

All ghosts are *terrifying*

Therefore, No *terrifying* things are contended

The minor term "*terrifying things*" is not distributed in the minor premise, being the predicate of 'A' proposition But it is distributed in the conclusion, being the subject of 'E' proposition

Rules of Quality

5 No conclusion can be drawn from two negative premises

The three rules of quality (i e , rules 5,6 and 7) can be ruled by taking examples We have stated earlier that the premises of a syllogism imply its conclusion As such, it could not be the case that the premises are true, but the conclusion is false Now let us take two arguments with negative premises

1 No Arabs are Catholics

No Britishers are Arabs

All Britishers are Catholics

2 No Arabs are Catholics

No Britishers are Arabs

Therefore, no Britishers are Catholics

The premises of these two arguments are true, yet the conclusion is false As such the relation between the premises and the conclusion is not that of implication It will be noticed that the conclusion of the first argument is affirmative, while that of the second argument is negative This shows that no conclusion (neither affirmative nor negative) can be drawn from two negative premises

The violation of this rule involves **the fallacy of negative premises.** The above arguments commit this fallacy

FALLACIES

Introduction

The purpose of Logic is to give us valid principles of thinking Thinking must be done correctly if we are to get conclusions This is done when thought conforms to the laws of systematic reasoning The function of logic is only to give us the rules of standards for right thinking Not only should we know positively what is right, we should also know negatively what is wrong Such wrong inferences are known as fallacies A fallacy may be defined as a conclusion resulting from thought which claims to be valid but which violates the principles of reasoning As we have already seen, thinking always proceeds in two ways We have general, universal judgements from which we argue about the truth of a particular We include the particular statement under the universal This type off reasoning we have called deduction We deduce the truth of the particular from the given universal The other way of thinking is known as Gold Induction where are arrive at a universal truth as a result of such observation Both these form of thinking are governed by laws When these laws are violated, we have fallacies We shall examine the fallacies of deductive reasoning first

Deductive Fallacies

We may divide all deductive fallacies into formal fallacies and material fallacies Formal fallacies are those where the forms of inference are incorrect There are two types of inference, the immediate and the mediate When the rules governing these inferences are not followed, we have formal fallacies But inference not only obeys certain formal laws, it also has a meaning and content When the contents of a syllogism are absurd, although the form is valid, we have material fallacies These may be because the words in the premises are wrongly used and interpreted or may be because the premises assume truths which they should not do so

(a) Formal fallacies :

(i) We have seen the obversion and conversion are forms of immediate inference When the rules of these are violated, we have Illogical education In obversion the logical contradictory of the predicate is taken in the place of the original predicate Instead of this, if the logical contrary is used, the observe will be fallacious For example, if from the proposition 'Honesty is always a good policy', we draw the conclusion that 'Di-honesty is always a bad policy', we are having a wrong inference Again the A proposition should be converted per accidents When this is not done, we have an illogical conversion e g , 'all men are mortal', when simply converted Becomes 'all mortals are men', which is materially wiong, for, men are not the only mortal beings

ii) There are fallacies which result from the violation of the rules of the syllogism in mediate inference

(1) Quaternio Terminorum or the fallacy of four terms : The first rule of the syllogism states that a syllogism must contain three and only three terms When this rule is not followed, we have the fallacy of four terms

For example

Cultured men are reasonable

Logicians are wise-men

Logicians are reasonable

This argument, although in the form as syllogism, is not a syllogism at all, since the premises contain four terms which have nothing in common between them In some cases, the four terms will not be so differently and clearly stated The same word may be used with different meanings

For example

Gold can be expelled by heat

Govinda's illness is cold

Govinda's illness can be expelled by heat

Here the word cold is used in the two senses First as showing temperature condition and second as an illness So, although the argument looks like a good syllogism, it is not so as it has four terms Just like this, even the major and minor terms may have double meaning, in which are the fallacy will be Quaternion Terminorum

(2) Undistributed middle : The third rule of the syllogism says that the middle term must be distributed in one, at least, of the premises When this is not observed, the fallacy of undistributed middle arises

For example,

All Punjabis are Indians

All Bengalis are Indians

All Bengalis are Punjabis

The argument is fallacious because the middle term 'Indians' is not distributed even once The middle term should be such that it relates the minor and the major terms and this it will not be able to do if it is undistributed in both the premises

(3) **Illicit major :** The fourth rule of the syllogism says that no term must be distributed in the conclusion which is not distributed in the premise, If the major term is distributed in the conclusion and not in its premise, it means we are inferring more from the less It is called illicit process of the major term or shortly illicit major

For example

All rational beings are responsible people

Brutes are not rational beings

Brutes are not responsible people

(4) **Illicit minor:** This fallacy also occurs when the fourth rule is broken This happens when the minor term remains undistributed in its premise and becomes distributed in the conclusion

For example

All generous people are loved by the poor

All generous people are polite

All polite people are loved by the poor

Here the minor term 'polite people', which as the predicate of an 'A' proposition is undistributed, becomes distributed in the conclusion This is a fallacy if illicit process of the minor term or shortly illicit minor

(5) **Negative premises:** The fifth rule of syllogism says that from two negative premises there can be no conclusion When this rule is broken, we have the fallacy of two negative premises e g , Anger is not good Calmness is not anger from these two negatives, we cannot draw any conclusion

(6) **Particular Premises:** The seventh rule states that from two particular premises there can be no conclusion Some Asians are Indians, Some Asians are Chinese, Some Chinese are Indians Here, since the middle term remains undistributed, the conclusion does not follow from the premises

(7) **Denying the Antecedent:** This is a fallacy in hypothetical reasoning In a hypothetical proposition, the antecedent is only one of the conditions Because it is absent, we cannot say the consequent also must be absent for the consequent may have other conditions Hence the rule Affirm the antecedent Instead of doing this, if the antecedent is denied in the minor premise, the syllogism will be fallacious Such a fallacy is known as the fallacy of denying the antecedent For example If my friend is in need, he would come to me He is not in need He will not come to me Here the antecedent is denied and the conclusion is given as negative We do not know, if 'being in need' is the only condition under which he would come Just as we know, if there is fire there is heat, we cannot say wherever there is heat, there must be fire Hence the conclusion is wrong

(8) **Affirming the consequent :** This is the other fallacy in hypothetical reasoning which occurs when the minor premise affirms the consequent For example, If there is rain, he will not go out He has not gone out, there is rain Here again the antecedent is only one of the reasons and not the only reason Rain is a cause of the person not going out, but it is not the only cause, for he may not go out on account of other reasons also Hence this a fallacy of affirming the consequent

(9) Improper Disjunction: The condition of a disjunctive syllogism is that the alternatives must exclude each other and that they must together exhaust all possible alternatives When this is not so, we have an improper disjunction which is the fallacy of disjunctive syllogism For example, He will either pass in the first class or fail He has not passed in the first class He has failed This is improper, because there are other ways of passing also such as passing with a second class or a third class So the disjunction does not give all the alternatives Hence it is a fallacious argument Similarly, He is either an orator or a musician He is an orator, he is not a musician Here the alternatives are not exclusive of each other A man can be both an orator and a musician Hence such argument are also fallacious

(b) Material fallacies : An argument may be correct in form, and still may be invalid This is because the matter of the syllogism is wrong For example, All men are monkeys X is a man X is a monkey Here, though the form of the syllogism satisfies all the rules, still it is not a valid syllogism because the meaning is nonsensical There are two important principles of logical reasoning which should not be violated, if materially the argument is to be correct The first principle is that the terms used in an argument should not be ambiguous That is, the terms should not be doubtful in their meaning The second principle is that what is to be proved, must be proved strictly from the premises Nothing that is not given in the premises must be assumed or taken for granted If the first rule is broken, we have the following fallacies

(1) Fallacy of ambiguous and shifting terms: Here the various terms of the syllogism are used in an ambiguous manner For example, He who is most hungry eats most, He who eats least is most hungry, He who eats least eats most In this example since the meaning of words used is not definitely fixed We arrive at an absurd conclusion Such a fallacy can also be included under the formal fallacy of four terms When the same term is used with different meanings in the syllogism, it becomes a syllogism with four terms

(2) Fallacy of Composition: An argument in which words, which should be taken separately, are taken together, commits the fallacy of composition The fallacy is one where, from a statement about where, from a statement about a class of things distributively, we pass to a statement about the whole, collectively When a word is used detractively, we refer to the whole class represented by the word When a word is used collectively, we refer to a group which is made up of similar individuals taken as a whole In arguments where the fallacy of composition is committed, a term is first used in a distributive sense and then used in a collective sense This happens because the word 'all' is misleading For example, All the angles of a triangle are less than two right angles A, B, and C are all the angles of this triangle A,B, and C are less then two right angles Here the word 'all' is used in the major premise in the distributive sense, and in the minor in a collective sense Another example of this fallacy is 'A regiment of a hundred men is composed of soldiers who are all six feet high, therefore the whole regiment is six hundred feet high'

(3) Fallacy of Division: This is the opposite of the fallacy of composition Words which must be taken together are here taken separately For example, "Hindus and Muslims are men and brethren Therefore Hindus are men and Muslims are men and brethren That is, the fallacy of division occurs when we pass from a statement about the class considered collectively to the same statement about each every member of the class taken distributively For example 'All the plays of Kalidasa cannot be acted in a day The Sakuntala is a play of Kalidasa, therefore, the Sakuntala cannot be acted in a day'

(4) Fallacy of Accident: This fallacy has two forms (a) the direct or simple fallacy of accident and (b) the converse fallacy of accident

(a) the direct fallacy of accident consists in arguing that what is true as a general rule is true also under special circumstances For example, 'What is bought in the market is eaten raw meat is bought in the market, therefore raw meat is eaten '

(b) This is the opposite of the direct fallacy of accident If consists in arguing that what is true under special circumstances is true also generally For example, 'When a person is ill, staying in bed is good for his health Therefore staying in bed is always good'

When the second rule concerning the matter of the syllogism is broken, we get certain fallacies 'That is, when the conclusion that is drawn is not strictly based on the premises, we have the following fallacies

(1) **Petitio Principle or begging the question :** Here we assume the conclusion in the premises We prove the conclusion by premises which can be proved by the conclusion itself For example, 'Virtue is right, to give to beggars is a virtue, therefore to give to beggars is right' Here the conclusion is only a restatement of the minor premise The major premise is a repetition, because to call charity a virtue and to call it right are the same And so, to say that to give to beggars is a virtue is not to prove that it is right Another form of this fallacy is where we argue in a circle Two propositions are used, each in turn, to prove the other For example 'I should not tell a lie, because I know that I should not tell lies' So we must be always careful to see that the conclusion is not assumed in the premises and that the conclusion must always follow the premises

(2) Ignoratio Elenchi or irrelevant conclusion : There are several forms of this, but we shall examine only two of them

(a) Argumentum ad hominem : This is arguing about the person instead of about the proposition which he puts forward For example, 'This man followed the principle of non-violence all these days, now he wants to follow violent methods to put down riots So we cannot follow him ' Here instead of arguing about the proposition whether violence is good or bad under the given circumstances, we are arguing about the person of the man Hence it is a wrong argument known as argumentum ad hominem

(b) Argumentum ad verecundiam : Another form of the irrelevant conclusion is the fallacy of verecundiam This is an appeal to authority or long-established custom in favour of, or against, a proposition To argue that 'we must agree to a proposal because so and so approves of it' is to commit this fallacy Instead of arguing and giving reasons for arriving at a conclusion, if authorities are quoted in support of the argument, we have the fallacy of verecundiam

(3) Non-Sequitur : This is otherwise known as the fallacy of false cause, non cause pro cause It is committed whenever the conclusion does not follow from the premises For example 'Australians usually win cricket test matches in India Therefore Indians must be a civilized people ' Here although there is a form of argument, it is not correct The conclusion does not follow from the given statement Hence the argument contains the fallacy of non-sequitur

Inductive Fallacies: We have so far been discussing fallacies which occur in Deduction Now we shall consider some fallacies which occur in induction Induction is the process whereby we arrive at universal statements by an analysis of particular instances This process is strictly governed by the law of causation Several processes have been shown already to be employed in arriving at such universals Scientific induction is that where the causal relation is established without doubt between two phenomena The processes used are enumeration, observation, analogy, and explanation In every one of these, it is possible to have wrong applications We shall deal with these one by one

(i) Based on enumeration we have two fallacies (1) Perfect induction, (2) Simple enumeration

1. Perfect Induction: Sometimes we infer a conclusion by the method of complete enumeration This is known as 'perfect induction' For example, after carefully going through the list of members, I infer that they are all Hindu This way of arriving at the conclusion is not satisfactory The conclusion which is reached through 'perfect induction' is not the result of generalization There is no inductive leap

2. Simple Enumeration : Our generalizations are very often based on incomplete enumeration or simple enumeration We count some instances and make a general statement which is true, not only of the observed cases but also of the unobserved ones For example, after seeing several crows which are black, we generalize 'all crows are black' This generalization is not well-established There is no analysis here to show why crows must be black It can easily be disproved by one contradictory instance Hence the conclusion cannot be accepted as certain

(ii) Errors of Observation : Observation is the process where we count instances and examine them to see if they can support a theory or build up a theory While doing this, it is quite possible to omit to notice instances which would contradict our hypotheses We have a tendency to consider only those facts which would support our theory and neglect those which would go against it This error in observation is known as non-observation Those who believe that number thirteen is not an auspicious number will always give instances of cases where the number was associated with failure or disaster But, it will be noticed that they will purposely omit to mention cases where, although the number thirteen was present, no disaster has occurred Such observation is known as non-observation

Sometimes, we also misinterpret facts so as to suit the theory which we want to prove Such wrong observation is known as mal- observation A person who is always afraid of snakes will see a snake in anything that has got that shape Such misinterpretation of facts is a fallacy of observation

(iii) Fallacies of Analogy: Whenever words are wrongly used in metaphors, we have fallacies of analogy By using analogy we arrive at conclusions about facts which are similar to a large extent For example, the city is compared to the heart and the country is compared to the body Then it is said that, since the heart is diseased, the body also becomes bad, so also when the city is bad, the country is also bad Here the error in reasoning is due to the metaphorical use of the words 'heart' and 'body' If we devote some thought to it, we will know the difference between a living body and a country A second form of unsound analogy is in not distinguishing between essential and nonessential properties Sound analogy is always based on a comparison of essential points For example, 'A child has come to know that, when the dog is pleased, he wags his tail On this, the child argues that, when the cat wags its tail, it must be pleased 'The child's argument here is a case of analogical reasoning He observes a resemblance between the dog and the cat as regards wagging of the tail He knows that the dog wags when he is pleased and therefore concludes that the cat also wags because it is pleased But the resemblance is not an essential one Hence the analogy is unsound

(iv) Fallacies of Explanation : There are two important fallacies of explanation

(a) The fallacy of non-observation may also be said to be a fallacy off explanation known as hasty generalization Sufficient number of instances are not observed Negative instances are omitted from the enumeration and a generalization is arrived at Such a generalization, as it does not cover all instances, is known as hasty generalization or illicit generalization

(b) A second error of explanation is in mistaking as cause and effect what merely follow each other This fallacy is known as post hoc ergo propter hoc or the fallacy of false cause One form of it we have already discussed as a non- sequitur To argue that 'A is because of C since it is after C' is fallacious For example to say that since night follows day, day is the cause of night, is an absurd argument which commits the fallacy of post hoc propter hoc

Conclusion

We have come to the close of our study of the fundamentals of logic The nature of thought, the principle that govern its processes, the mistakes in reasoning that we most commonly make when we stray away from the path of truth-these and other related topics have been discussed Thinking is what each one of us is intimately concerned with Even without our knowledge we employ logical principles in our daily conversation and arguments The science of logic appears difficult and strange at first But when once its principles are understood, we realize that we have been using them, however imperfectly, in our commonest thoughts and expression

UNIT V
LEGAL TERMS

Introduction

Vocabulary is a vital part of lingual expression A good knowledge of words helps in an effective presentation of ideas, oral or written It creates an impact on the listeners / readers about the communicator as being a learned and erudite person Enhancing the word power is sought after by students and professionals alike as it lends fluidity to words and most appropriate idea that is in one's mind Knowledge and usage of Legal Terms are vital for law students Understanding the meaning of the legal terms is essential since they may have different meanings and wider connotation then the literal meaning of the term Legal Terms and Legal Maxims come under legal jargon Jargon is the language peculiar to a profession So in order to improve and widen legal jargon for the law students, these legal terms have been prescribed in the syllabus

Meaning, Explanation and Sentence Formation

1. Accomplice

Accomplice is someone who helps another person to commit a crime

An accomplice is one who takes part with, abets or assists an offender in the commission of an offence He may turn approver and confess his guilt and offer himself as a witness against his co-accused

2. Act of god

Act of God is an extreme naturally occurring event that could not have been anticipated.

Those events such as an earthquake, avalanche or flood beyond the control of human beings and could not be reasonably foreseen by human foresight or skill are often referred to as **'Act of God' 'Act of God'**, is offered as a defense in the commission of torts and the wrong-doer is excused for such wrong

3. Approver:

Raju turned an approver in the mining scam.

An approver is an accomplice in crime, who has undertaken to make full disclosure of the commission of crime against his companions in the crime committed jointly by them, on a promise of a pardon being granted to him

4. Ad-Idem:

Consensus ad-idem' is an essential feature of a valid contract.

If two or more persons agree upon the same thing in the same sense, they are at 'ad idem' If they give their consent after such (ad) idem, they are said to be willing parties to the agreement Between the contracting parties, there must be mutuality of minds, which is known as 'ad-idem'

5. Adjudication

Cases relating to interpretation of the constitution can be adjudicated only by the Supreme Court.

The passing of a judgement, sentence or decree is called 'adjudication' If any matter is finally decided by a court of law, the matter is said to be adjudicated

6. Adjournment:

Frequent adjournment leads to delay in justice.

If a case is postponed from one date to another, or if a sale to be held by the court is postponed to a later date, or if any proceeding of the court is postponed to a later date, that case, sale or proceeding is said to have been 'adjourned'

7. Admission:

The respondent admitted beating his wife regularly.

In the legal parlance, this term has a definite connotation, which is somewhat different from its ordinary meaning with which it is known in the ordinary parlance Admission may be either a direct admission or an indirect admission If a fact stated by one party is not specifically denied by the other party, the other party is said to have indirectly admitted the said fact When that fact is put to the other party, and the other party says, 'yes' the fact is said to be directly admitted by the other party An admitted fact need not be proved Self-harming statements in civil cases are called, 'admissions' and those in criminal cases, are called, 'confessions'

8. Ad Valorem:

The ad valorem fee paid by the party to the court was ten lakh rupees.

This term is mostly used in calculating the court fees payable upon any suit for recovery of damages in money, suit for recovery of moneys, suit for recovery of debts, suit for recovery of possession of moveable or immovable properties, etc, When the court-fess are to be calculated in the proportion to the value of the property or other things involved in the suit then the court fees is called 'ad valorem'

Ad valorem is in proportion to the value or according to value Ad valorem duty goes up as the value of the goods, shares and so on that it is charged rises

9. Affidavit:

Affidavit is a written statement which is sworn to be true by the person signing it and is sworn before someone authorised by the court.

It is written statement affirmed by the person making it in the presence of another person having authority to test the affirmation of the statement by the person making it The person making such a statement is called,' deponent' and the act of affirming is called, 'deposition' In such statements, only those facts of which the deponent has personal knowledge must be stated

10 **Amicus Curiae**

An 'amicus curiae' is a friend of the court and offers advice whenever sought.

Whenever the court has any doubt in regard to any legal point involved in a particular case before the court, any member of the bar (an Advocate) may be requested by the court to assist it in clearing such a doubt Such a member is called, 'amicus curiae' and must be one who is not engaged by either of the parties to the case

11. **Amendment**

The Supreme Court has the power to amend its own judgments.

An act of improving, correcting or altering is called amendment In the civil courts, this term is used in reference to pleadings, and sometimes in reference to decrees passed by the court If any fact stated either by the plaintiff or by the defendant to a suit is sought to be altered, or corrected , or modified, or deleted or substituted, subsequently, such an act of alteration, etc , is called, an ' amendment' In certain circumstances, decrees passed by the court also may be so, 'amended'

12. Bonafide:

The term bonafide implies 'good faith'.

Bona fide means genuine, sincere or in good faith There is an absence of any intention to cheat or deceive If an act is done honestly, faithfully and genuinely without having any intention to deceive or defraud, or cheat the other person to whom the act is done, then the act is said to have been performed, bonafide' – in good faith The element of innocence in commission of an act constitutes bonafide

13. Breach of Contract:

Failing to carry out a duty under a contract is deemed to be Breach of contract.

X was sued by Y for breach of contract.

If a party to a contract undertakes to perform an obligation and he does not perform that obligation, he is said to have 'breached' the contract Breach of contract contemplates an act of omission Non-performance of an obligation arising out of a contract is called, 'breach of contract'

14. Capital Punishment

Capital punishment or death sentence is given in the 'rarest of rare cases'

Capital punishment is punishing someone for a crime by giving death sentence The object of punishment in criminal law, is to deter the person from committing the same in future It is also to make others understand that they will be similarly dealt with in case they too commit such offences Punishment is not compensation but it is penalty

15. Coercion:

Use of Coercion in contract can lead to voidable contract.

The widow was coerced to sign the property in her brother-in-laws' name.

The simple meaning of this term is, 'threatening' In the law of contract, only when both the parties to an agreement, give their consent freely without any fear, a contract comes into existence, in case an unwilling party is forced to sign a contract it amounts to coercion If a person detains any property belonging to the 'unwilling person' in order to compel him to give his consent for the agreement or he threatens to detain the property for the said purpose of compelling him to give his consent to the said agreement, the act of detaining or threatening to detain is called 'coercion' Coercion is a defense that a crime was committed because the person accused was forced to do it

16. Consent:

A contract would not be valid unless all the parties give their free consent.

This term means the expression of willingness of a person to enter into agreement with another person Two or more persons are said to consent when they agree upon the same thing in the same sense This element of consent is one of the essential elements of a contract When there is no consent, there is no contract For an agreement, consent is most essential, and for the agreement to become a contract, this consent may be a 'free consent'

17. Counter Claim

Counter claim is an independent claim made against the claimant.

Countering the claim of the plaintiff is only an act of defense by the defendant A counter – claim imposes a liability on the plaintiff The claim of the plaintiff and the counter – claim of the defendant are two different and independent claims Counterclaim is making a claim in court against someone who has already made a claim in court against you

18. Compromise:

The judge asked the parties to come to a compromise.

An adjustment between parties to a dispute ending in a settlement is known as compromise A compromise means a mutual adjustment

19. Cur-Adv-Vult:

Cur-Adv-Vult means 'the court desires to consider' and it is an abbreviation of 'Curia Advisari Vult'.

This term is usually denoted by the abbreviation 'C A V', On any point of fact, the Court has taken time to consider the point to indicate that the Court has not come to the decision at once, simply after hearing the arguments, but after taking sufficient time to consider the point of fact, the Judge places these letters at the end of arguments, in his judgment

20. Damages:

The plaintiff claimed damages from the transport agency for rash driving resulting in loss of his legs.

Damages are the compensation awarded by the Court to compensate the loss suffered by the aggrieved person Damages are the compensation to compensate the damage caused to the innocent party If A has suffered a loss due to the act of B, the loss is called, 'damage If A then claims certain sum of money to compensate that 'loss', his claim is called, 'damages'

21. Defamation:

The leader of the opposition filed a case against the chief minister for defamation.

Defamation is making a statement, either orally or in writing, which damages someone's reputation 'Defamation' is the generic name of 'wrong Libel and slander are the particular forms of it Defamation may be caused either by expression of words, or by indication of signs, or by visible representations (gestures) Such an act must have been intended to harm the reputation of the person to whom it is directed or against whom it is levelled It is not enough if the concerned person alone knows about it The defamation or defamatory matter must be published, or at least communicated to a person other than the one defamed

22. Defence:

The defendant in his defence claimed that the accident was caused due to the plaintiff's rash driving.

Defence is the specific denial of the plaintiff's allegations by the defendant Defence is that thing which a man does in order to defend himself from the legal consequences of the proceedings instituted against him It starts with the act of denial, and ends with the act of proof A mere denial without its proof is no defence

Defence also means the team of people (lawyers and so on) who bring proceedings brought against someone In a civil case a written statement (pleading) by the defendant setting out the facts that the defence will rely on is also known as defence

23. De Facto:

The orphaned minor's uncle acted as the de facto guardian.

This term means, 'in fact' 'De facto' implies a factual position without legal sanction used with reference to any person or a thing in existence If a person is a guardian of a minor without there being any legal sanction for occupying such a position, that person is deemed to be 'de facto guardian' of the minor If a minor is in the actual care and custody of another person who is neither natural guardian nor the appointed guardian of the said minor then that person is called 'de facto guardian'

De facto means in fact or in reality

24. De Jure:

The court appointed the maternal grandparents as the de jure guardians of their orphaned grandson.

De jure means rightfully and is opposite to the meaning of the above term It implies the legal position with a legal sanction For a minor who has no parents or any person to take care of him and in that situation if the Court appoints a person of its choice as the minor's guardian, such a guardian is known as, 'de jure guardian'

25. Deposit:

The Court directed the respondent to deposit the compensation amount to the plaintiff's account within a week.

An act of receiving, keeping, preserving a thing belonging to another with his consent is known as deposit The person in whose custody things are deposited does not become the owner of the things deposited He has an obligation to return the things on the fulfilment of the stipulated condition Though the thing comes to the possession of the other person, the person depositing the thing does not cease to be the owner of the thing

26. Detinue:

Detinue is the legal action taken for the recovery of chattels.

If a person is detaining the things belonging to other without the latter's consent, the other person is entitled to an action in detinue If a person is detaining the money of the other then the other is entitled to an action in debt Debt is an action for the recovery of money, and detinue is for chattels

27. Distress:

The petitioner moved the court to claim his right of distress over the respondent's vehicle for non repayment of loan amount.

Distrain/distress is to seize goods as security for an unpaid debt It is another kind of legal action If a person fails to do his obligation, the affected person can take the movable property of the defaulting person and keep it with him in order to compel the wrong doer to perform the obligation Until the obligation is performed the things can be detained by the affected person Such a right is known as right of distress

28. Earnest-Money:

The builder had to forfeit his earnest money for not constructing as per the agreement.

It is sum of the money deposited by one party to a contract, with the other party to the said contract for due performance of the first party's obligation He guarantees his performance which is secured by this earnest money In case the performance is not done, the party depositing this earnest-money is losing that money Earnest-money is paid as token of good faith acknowledging the binding character of the bargain on penalty of forfeiture

29. Equity:

In ordinary language equity means natural justice.

Equity is the body of rules considered as governing all on account of their excellence and universality Equity is part of the law of England, but not part of the common law The rules are not rigid In its primary sense, equity is fairness of the rule of conduct which ought to be followed by all

30. Estoppel :

Estoppel is a rule of civil action.

Estoppel is a rule of law wherein a person cannot deny something he previously said It means that in certain circumstances a party will not be allowed to show the truth in his own favour, when he has, by some act or deed or negligence, led the other party to believe that something else is the truth It has no application to criminal proceedings When a person makes a declaration, or does an act with an intention to make the other person to believe a thing to be true, and that other believing it to be true has acted upon that belief, the first person cannot be allowed to deny the truth of that thing

31. Evidence:

The plaintiff was directed to produce the evidence in the proper order.

Facts stated by a person can be proved only by his evidence A fact stated may be proved either by oral evidence or by documents Statements made by witnesses in relation to matters of fact under enquiry are called oral evidence Documents produced in relation to matter of fact under inquiry are called documentary evidence If a fact is stated in the plaint or written statement, it is called 'pleading' If the same fact is spoken by the plaintiff or the defendant as the case may be, in the court in the witness-box, it is called evidence

32. Execution:

The defendant was jailed for not executing the court's orders.

It is the court procedure by which a decree is passed by a Trial Court or Appellate Court is directing the enforcement of an order When a court passes a decree directing the defendant in the suit to carry out certain obligation, the defendant has a legal liability to carry out the obligation If he fails, then the court has the power to enforce the said decree in the matter permitted under the Civil Procedure Code This term is also applicable to documents A document is said to be executed if the authority of the document duly puts his signature subscribing to the contents of the document

33. Ex-Parte:

Ex-parte judgment was given to the petitioner due to the absence of defendant.

Ex parte means that done by one side only in a case Since April 1999, it is often replaced with 'without notice' The expression does carry with it the connotation that a court has proceeded with a case in the absence of the other party to the case This expression is used to signify something done or said by one person not in the presence of his opponent If a court passes any decree or order or dismissal, in the absence of one of the parties to the case In favour of the party present in the Court, the decree or the order is said to be one of ex-parte

34. Fraud:

The petitioner filed a case in the court against his brother for fraud.

Fraud means lying or deceiving to make a profit or gain an advantage, or to cause someone else to make a loss or suffer a disadvantage This term connotes actual dishonesty Any act of suppression of facts, of suggestion of false thing, done with an intention to deceive the other party, is called 'fraud' When fraud is committed, the aggrieved party has a right to proceed against the fraudulent party for damages In simple terms, this fraud may be described, as 'procuring of advantage to one self by causing a person with whom one deals to act upon a false belief

35. Habeas Corpus

A writ of habeas corpus was filed by the parents of the detained youth.

Habeas corpus is a writ which can be applied for to order a person's release if he / she has been imprisoned unlawfully Literally it means, 'have the body' When any person is detained by a government servant, such as a police officer, without reasonable cause or without there being an order of a court for such detention, such detained person may be ordered to be produced before the court Such an order is known as writ of Habeas Corpus The writ is one of the safe-guards of personal liberty, 'which may be taken away by public restraint

36. Hearsay:

Hearsay evidence is usually not admissible in the court of law.

This term is used in evidence. Hearsay evidence means evidence given by a witness on matters heard by him from someone else Sometimes, the term hearsay means whatever a person has heard and sometimes it means whatever a person declares as information given by someone else It is otherwise called second-hand evidence

37. Homicide:

The wife who killed her husband in defense was charged with culpable homicide.

Homicide literally means killing of a human being If a human being is killed by another human being, it is called 'murder' Homicide may be either (i) lawful, or (ii) Unlawful Again, Unlawful homicide is of two kinds (a) Murder, and (b) Culpable Homicide not amounting to murder An act of killing done with the intention to cause the death is called murder An act of killing done without any intention to cause death is called culpable homicide not amounting to murder

38. Informa Pauperis:

Court procedure allows poor people to file 'informa pauperis' suits to make justice accessible to all.

It is a privilege accorded to an indigent person (also called 'Pauper') who is unable to pay the required court – fees to institute a suit to enforce his civil right A person who has no means to pay court-fees to institute a suit, may be allowed by the court to institute the suit without paying the required court – fees, provided he is able to convince the court that he has no means to pay the required court-fees If he institutes the suit without paying court-fees, he is said to have filed the suit 'informa pauperis

39. In Camera:

The actor requested the court that his divorce proceedings may be held in camera

The private room of the Judge is called, 'Camera' The court may permit cases to be conducted in the private chamber of the Judge in sensitive cases where the parties to the suit, the Counsel and if needed witnesses alone are permitted Such proceedings are called, 'in camera proceedings'

40. In Limine:

The case was dismissed by the judge in limine.

In Limine means, at the outset and he dismissal of a suit if it appears to be a bad case without calling for any evidence is said to have been dismissed 'In limine'

41. Injuction :

An injunction was passed by the court forbidding big cutouts near flyover.

The court can restrain persons from doing certain things detrimental to the interests of others or a person Preventive detention is when a person is prevented or restrained from doing any

act Mandatory injunction is if the court directs a person to do something and an order of injunction can be either (i) temporary or (ii) permanent

42. Insolvent:

The Court declared George as an insolvent

A debtor unable to pay off debts on their due date is said to be an insolvent The state of that person is called insolvency meaning that the assets of that person are not sufficient to pay the liabilities The court may declare such a person as an "Insolvent"

43. Insurance:

It is mandatory to take insurance for one's vehicle.

Insurance is the contract between the insurer and the insured where the insurer undertakes to pay certain sum of money to the insured in case future event happens or does not happen In life insurance policy the insurer agrees to pay certain amount of money, in the event of the death of insured, despite the fact that time of death is not certain

44. Issue:

In moots each side can have 4 or 5 issues to be argued.

An 'issue' is a point or points, and is a material proposition of fact affirmed by one party and denied by the other 'Facts in issue' mean the matters either of fact or law, which are to be decided by the Court Issue is also the legal word for children, or a matter to be decided by a court

45. Judgement

The judgment in Bombay terrorist attack case was lengthy.

Judgment is the decision of a Court and binds both parties to the suit It contains the facts of the cases of both the sides It includes the Judge's views on the facts, and the conclusion along with the reasons for arriving at the conclusion Judgment is a decision by a court

46. Jurisdiction:

Court's Jurisdiction refers to the authority of the court to entertain an action.

The territorial limit or pecuniary limit of a court in entertaining various civil and criminal matters is known as jurisdiction of a court

47. Liability:

The state has a liability to protect its citizens.

Liability means the legal responsibility or obligation to do something In civil law the term means an obligation to door to pay In criminal law it means and covers every punishment to which a person invites by violating the laws of the land Liability is a debt or obligation

48. Licence:

I have to renew the licence for my vehicle.

Licence is a permission given by one person to another by the state or its agencies permitting the licencee to do something It cannot be transferred But a licence to attend a place of public entertainment can be transferred when it is specifically prohibited Licence is an authority to do something

49. Magna Carta:

Magna Carta is a legal document.

It was granted by King John in 1215 and later enacted by the British Parliament It means the "Bill of Rights" and remains part of the Constitution in the Statute Books of Great Britain

50. Maintenance:

The husband agreed to pay the maintenance on time.

It is provision for food, clothing and other necessaries given to near relatives, husband to wife and children Children have to give maintenance to aged parents

51. Mala Fides

An act done without good intention is said to have been done mala fides.

Mala fides and malice are synonymous terms The term, 'mala fides' implies breach of faith or wilful failure to respond to one's known obligation or duty 'Bona' means good and 'mala' means bad Bona fide means good faith and mala fide means bad faith

52. Minor

Minor's contract is void ab initio.

Minor is a person who has not attained the legal age as per the law and hence does not have full legal rights and responsibilities Under law, a minor has no capacity to enter an agreement If he is a party to any agreement, that agreement is void Law wants to protect minors because they lack maturity of mind to decide what is good and what is bad for them

53. Mortgage:

He raised a loan by mortgaging his house.

Mortgage is using property as security for a debt It is also the name for the contract which is signed by the borrower and lender when money is lent using property as security for a loan The person who borrows is called mortgagor and the person who pays money is called mortgagee

54. Murder:

Crime statistics reveal that everyday two elderly persons are murdered in the city.

Murder is a form of culpable homicide Every murder is a culpable homicide, but every culpable homicide is not a murder In murder, death of the victim is caused by an unlawful act done with an intention to cause death The victim must be a human being If the victim is an animal, it is not a murder

55. Natural justice:

In natural justice the conscience is invoked and not legal principles.

Natural justice is the administration of justice on a common sense liberal way It flows from natural ideals and ends in human values Rules of natural justice are not codified, but they are principles ingrained into the conscience of people It is opposite to legal justice wherein strict legal rules are observed

56. Necessaries:

Necessaries are those material things which are needed for the survival of a person according to his status.

Necessaries means those that are indispensable, needful or essential Necessaries are a relative term What is necessary to one person may not be necessary to another person

57. Negligence:

The driver of the school van was booked under negligence for rash driving.

Negligence is lack of proper care to do a duty properly The omission to do an act which ought to be done, the commission to do an act which ought not to be done, is negligence Where diligence is required, and that amount of diligence has not been exercised, it is negligence

58. Negotiable instrument:

A negotiable instrument creates certain rights in the person who is in possession of the instrument.

An instrument to be called negotiable instrument, must be transferrable by mere delivery of it or endorsement and delivery of it It can be easily transferred (negotiated) There are certain presumptions attached to a negotiable instrument If it is delivered to another person, all rights the person hitherto has been enjoying on the instrument are transferred to the other person

Negotiable instrument is a document which is signed, is an instruction to pay an amount of money, can have its ownership changed by changing the name it is paid to, and can have its ownership changed simply by being delivered to its next owner

59. Oath:

The Prime Minister took the oath on the Gita.

Oath is swearing the truth of a statement It is an appeal to God to witness the truth of the statement Any statement made after taking oath is believed to be true Any statement made on oath will, if found to be false, be a ground for a proceeding against the person making it, for perjury

60. Obscene:

The sensor board deleted obscene dialogues from the film.

Obscenity creates immoral influences which corrupts people As long as it is not published, distributed, sold, and imprinted so as to influence the minds of persons in whose hands this is passed, it is not an offence It is a relative term and what is obscene for one person may not be obscene to another person

61. Partition:

The partition of an ancestral property was conducted smoothly by the family elders.

Partition indicates the joint enjoyment and possession of a property by those who have shares of it, and who have the rights to divide that property into separate divisions The sharers of the property may divide the property, each one taking a division in it and thereafter having an individual title to that division There is no conferment of any new title to the sharer, who acquires his individual title by virtue of partition There is a change of status as well as division of property, by mutual agreement

62. Persona Designata:

A retired Judge was appointed to the human rights tribunal as persona designata.

A persona designata is a person who is appointed or described as an individual filling a particular character He is a person selected to act in his private capacity and not in his capacity as a judge This expression connotes a person pointed out by name or other personal description in contra-distinction to one whose identity is to be ascertained by the office which he holds

63. Perjury:

Pigott was accused for perjury.

Perjury is an offence of giving false evidence If a person lawfully sworn as a witness, makes a statement in a judicial proceeding which he knows to be false or which he does not believe to be true, he is said to be guilty of perjury A person to be guilty of perjury should have a legal obligation to state the truth, but he makes a false statement knowing it to be false

64. Plaintiff:

Plaintiff is the person who goes to court to make a claim or plaint against someone else.

He is the complaining party in a litigation, commencing a law suit for a relief against his grievance A plaint is a statement of facts giving the cause of action to seek a relief in the court of law The person making and signing such a statement of facts to advance his case for obtaining that relief from the court is called plaintiff The other person against whom such relief is sought for is called the defendant

65. Pre-Emption:

At the time of partition of ancestral property, a clause was inserted vesting the pre-emptive rights of any sale of shares only to the other share holders.

It is also the right of a person who has option of first refusal which right is called 'pre-emptive right' It is a right of a person to purchase a property in preference to another property The benefit as well as the burden of the right of pre-emption runs with the property concerned If a society owns certain lands and desires to sell those lands, its members may be given the pre-emptive right to purchase those lands in preference to outsiders (non-members)

66. Prescription:

Title by prescription may be either negative, or positive.

In law, the terms prescription indicates creation of a right by long usage Rights acquired by long usage of a property are known as 'rights of prescription'

67. Presumption:

Judgments are normally based on presumption of law and facts.

Presumptions are aids for reasoning and argumentation A presumption is an inference as to a matter of fact which a Judge draws, or directs a jury to draw, as a matter of law They may be grounded on general experience or probability of any kind, or merely on policy and convenience Presumption may be either (i) presumption of fact, or (ii) presumption of law or (iii) mixed presumption of law and fact

68. Privity:

Privity of contract is only between the parties to a contract, who can sue each other over breaches of contract.

This term indicates participation in, interest or knowledge Privity exists between any two persons who understand each other in relation to an agreement of an estate The relationship subsisting between the parties to an agreement, where there is mutuality of minds, is often indicated by the term, 'privity' The privity that exists between a landlord and a tenant, between a covenanter and a covenantee, is termed as privity of estate

69. Promissory Note:

Promissory note is a kind of a negotiable instrument.

It is an instrument creating a right in the promisee to demand certain sum of money to the promisee It contains an unconditional undertaking by the promisor to pay certain sum of money to the promisee thereof, on a demand made by him

70. Proof:

Any evidence that stands the test of legal scrutiny is accepted as legal proof.

Proof consists of either evidence or testimony serving the purpose of convincing the mind of the truth or falsehood of a fact Such a proof may be either by documentary evidence, or by oral evidence Mere allegation of facts is not proof, their evidence is proof If there is no evidence, there cannot be any proof

71. Proviso:

Proviso is a clause in a legal document which qualifies another section of the agreement.

Proviso is a clause, in a deed, or in an instrument, or in a statute, whereby certain condition/conditions are stated to qualify the contents made before If some condition is annexed to statement, that statement can be put into effect only subject to the condition stated below in this proviso clause

72. Quid Pro Quo:

Quid Pro Quo means the mutual consideration and performance of both the parties to an agreement.

The literal meaning of this term is that for that, agrees or what for what If 'A' agrees to sell his property to 'B' at a price of fifty lakh rupees and 'B' to buy it at that price, it is said to be quid pro quo promise B's money is quid pro quo for A's property

73. Receiver:

The court appointed the bank authorities as receiver of rents in the property pledged to them.

In legal parlance, receiver is a person/organization appointed by an interlocutory order of a court to receive rents or other income of an estate of which there is or are disputes between the parties to a suit

74. Redemption:

Ameer khan wants to redeem his ancestral property.

Redemption is the act of getting back a thing and it denotes the right of a mortgagor to get back his mortgaged property from the mortgagee on payment of the loan received by the mortgagor from the mortgagee A suit by a mortgaged property discharged from debt is known as redemption suit

75. Remand:

The JNU student union leader was remanded to custody by the police.

The meaning of the term is custody which term is used in the court procedure also To remand a prisoner or arrested person, means to keep him in custody If any case is sent back by the appellate court to the lower court for taking further evidence, or for any other purpose which the lower court has omitted to do, the case is said to have been remanded

76. Remedy:

Ubi jus ibi remedium is a legal maxim which means where there is a right, there is a remedy.

Remedy is a legal solution for an invasion of a right and may be found out by the parties themselves without going to court of law The parties may take it to the court of law by means of a suit For the infringement of every right, there is a remedy

77. Rent:

The land lord sued the tenant for non-payment of rent for more than a year.

The term, 'rent' means any payment made for use of land or buildings and includes the payment by a licensee in respect of the use and occupation of any land or building It also means payment made by tenant to landlord for property demised to him, or any consideration rendered by a lessee to his lessor is called 'rent'

78. Res Judicata:

Res Judicata is a matter which has been conclusively decided by a competent court.

Res Judicata means 'a matter already decided' If any matter or dispute in between any two or more parties has already been decided by a competent court, that matter cannot be again raised before the court by any of those parties But the decision of the former court must be final and conclusive, and must have been arrived at by that court judicially

79. Settlement:

The karta of the family made a settlement of all the movable and immovable properties among the family members.

Settlement means any testamentary disposition in writing of moveable or immovable properties made, (a) in consideration of marriage, (b) for the purpose of distributing the properties among the members of a family, (c) for the purpose of making some provision to some person who has some relationship (sapinda or non-sapinda), or for any religious or charitable purpose It is also denoted by another term, 'gift' Settlement is made in favour of person related to the settler but gift made is made even in favour of persons not the denote In both the cases, there is no money consideration

80. Sine Die:

Lok-Sabha was adjourned sine die by the Speaker due to unruly behavior of the members.

It means, 'indefinitely' Literal meaning is, 'without a day' This term is popularly used whenever a Legislative Body, such as Parliament or Assembly is adjourned without fixing a date for assembling again Such adjournment is referred to as sine die

81. Specific Performance:

Specific performance is a specific relief specified in a contract.

The term specific performance means, performing a specified act If any particular act obligation or promise is contemplated in a contract, the performance of that specific thing is known as specific performance It is a kind of remedy available to the innocent or aggrieved party from the defaulting party to a contract

82. Stamp Duty:

Payment of Stamp duty is a legal formality to validate written agreement.

Stamp duty is imposed on certain documents while being executed and/or registered Such duties (taxed or levied) are imposed upon written instruments such as, receipts, conveyances, testimonies Such duties may be either proportionate to the value of the subject matter or fixed in amount Payment of stamp duty is one of the legal formalities to be fulfilled to validate an agreement incorporated in writing

83. Stay of Execution:

The court ordered the stay of execution of the decree for three months.

If a Civil Court passes a decree against a defendant in a suit, he is legally obliged to act according to the decree Where he is unwilling to act according to the decree, or where he has failed to so act, or where he has refused to so act, or where he is delaying that act, the decree holder (plaintiff) can/may approach the court again for executing that decree through the court Under such circumstances, if the court is convinced that some more time may be given to the judgment-debtor, may order stay of execution, which means suspension of the operation of the decree

84. Summons:

Summons were served on the editor of The Hindu to appear in the Court for contempt of court.

Summons is a process of a court directing a person to appear before the court. It may be issued by a Judge of a Civil Court, or by Magistrate of a Criminal Court. It is a call of authority to appear before a Judicial Officer.

85. Surety:

My brother refused to sign surety for my project.

A peison who gives security for another is known as 'Surety". He is otherwise called, 'Guarantor'. A surety discharges the liability of a debtor in case of his default. A surety undertakes to make good the loss suffered by the creditor by the conduct of the debtor. The 'debtor', in such cases, is usually termed as 'principal debtor', which term further connotes that the surety is a 'secondary debtor'.

86. Taxation:

The law of taxation is not very difficult to comprehend.

A tax is collected for public purposes. It is a compulsory exaction of money by public purposes enforceable by law and is not payment for services rendered or to be rendered. Levying of taxes is known as, 'taxation'. A fee is supported by consideration, whereas a tax is not. A fee may be collected only by a Government.

87. Tenant:

My tenant pays the rent promptly.

It is a designation given to a person occupying lands or buildings belonging to another on an agreement to pay rent for occupying that land or building. He is a party to an agreement of tenancy, the other party being the landlord. Highlights and obligations are laid down in the agreement of tenancy in case where he is contractual tenant, and in case of statutory tenant his rights and obligations are provided in the relevant Act or Acts of Legislature.

88. Title:

I have full title over two acres of land in my village.

Title is right to a property, office or an appointment. It is transferable either by sale, or by settlement, or by gift, oi by will. Such a transfer is for consideration in some cases, and for no consideration in other cases. Such a title is created by document, transferred by, devoling upon succession, or inherited by inheritance.

89. Tort:

Tort is a civil wrong.

Tort is an act of omission which is unauthorized by law. Therefore, the affected person can claim damages. A tort is often distinguished from a crime. A tort is a wrong done to an individual foi which the wrong-doer is liable to pay damages. A crime is a wiong done to the public as a whole, for which the offender (wrong-doer) is punished by the state.

90. Trademark:

Trademark, an intellectual property right, can be protected only by registration.

A mark used for denoting that products, or the goods or the merchandise of a particular person is called a trade-mark The use of certain trade-marks is necessitated to distinguish the goods of the proprietor of a particular trade-mark from similar goods in the market

91. Transfer:

Nirbaya case accused wanted transfer of their case to a court outside Delhi.

A permanent alienation is transfer Such an alienation may be in respect of movables or immovables All the rights hitherto enjoyed by the owned are transferred to the buyer, or other alien It is not necessary that every transfer must be supported by consideration A transfei may be absolute or with conditions

92. Treason:

Treason is a punishable offence.

It is an offence against the State and is the highest known crime It aims at the very root of Government itself In India treason is treated as 'waging war' and attempting to or abetting the waging of war against the State and is punishable under the Indian Penal Code

93. Trespass:

Trespass is a civil wrong, but there some statutory offences for trespass.

The common declaration "trespasses will be prosecuted", has been called a 'wooden lie' for trespass has traditionally been a civil wrong not generally a crime But there are some statutory offences of trespass such as trespass on a railway line or public property A trespass is an injury committed with violence and may be either actual or implied Peaceful but wrongful entry into another man's lands' is an implied violence

94. Trial:

The Trial scene in the play 'The Merchant of Venice' will reveals Shakespeare's legal acumen.

The examination of a civil or criminal case by a competent court is known as, 'trial' and it ends in a conclusion known as judgment The hearing of a cause of action, civil or criminal, before a Judge who has jurisdiction over the matter according to the laws of the land, is also known as trial

95. Trust:

Paul created a religious trust.

A trust is an obligation annexed to the ownership of property and arising out of the confidence reposed in and accepted by the owner, or declared and accepted by him or, for the benefit of another and the owner The person who creates a trust is called 'author of trust', and the peison or persons on whom the trust is created is/are called, 'trustee' or 'trustees' and the person or persons in whose favor a trust is created is/are called, 'beneficiary' or 'beneficiaries' Sometimes, a trust is created for the owner himself

96. Ultra vires:

Any act contravening the provisions of Article 21 is declared as ultra vires of the Constitution.

'Ultra' means beyond, and 'Vires' means power If certain powers are legally conferred upon a person, that person can exercise only those powers If he does any act beyond the scope of those powers he is said to have done an act, ultra vires This term is very popularly used in constitutional matters and also in company matters When the Parliament or an Assembly passes a law, which is beyond the powers of the Parliament or the Assembly,

the Supreme Court or the High Court, can declare it as unconstitutional or as being ultra vires the Constitution

97. Usage:

Any usage practiced for a long time becomes a custom.

This term means what the people are presently in the habit of doing an act in a particular place and that habit is only of recent origin or it may have existed for a long time A habit may be called 'usage', only with reference to a particular place A usage in the long run may become a custom, provided it is very ancient, continuous and accepted by the majority of the people

98. Verdict:

Supreme Courts' verdict is binding on other lower courts.

The finding of a Judge by way of declaration is called, 'verdict' of the Court A verdict may be either general or special A general verdict is orally delivered in court Special verdict is popular in English law only If an accused is adjudged as 'guilty', guilty as charged or 'not guilty', this is a general verdict Special verdicts are not allowed under the Indian Penal Code

99. Vis-Major:

Vis-Major is a Latin term which means 'Act of God'.

Any act which is beyond the control of human beings, or any event which is supervening and creating 'impossibility in the efforts of human beings, is known as, 'Act of God', for which no one can be held responsible or liable Such acts cannot be foreseen by human beings It is beyond their ability, beyond their control, beyond their perception If a party to a contract is unable to do his obligation because of a supervening impossibility due to an 'Act of God' he is excused for non-performance of that obligation

100. Void:

Minors' contract is void.

Void means non-existence, ineffectual or inoperative This term is used, when total lack of existence is intended to be conveyed It is a vacuum which creates nothing enforceable Sometimes, a thing which has been in existence may become void and in such a case, the Courts declare that thing as null and void

101. Voidable:

Minors' marriage is voidable.

A thing which can be voided is a voidable thing A thing which has been valid in the beginning may become void subsequently But a thing which is voidable in the beginning continues to be so until it is avoided Such a thing is valid until avoided But a thing which is void can never become valid 'Void' and 'Voidable' are concepts developed in the private law of contract

102. Waiver:

The Self Help Groups requested the bank to waive the interest on their loans in the intial two months.

Waiver means relinquishment of one's right It is referable to a conduct signifying intentional abandonment of a right It may be expressed or may be even implied Waiver is a voluntary abandonment of a known excising legal right constituting a conduct warranting an inference of the abandonment of that right Waiver, in such a case, is defense against the subsequent enforcement of the said known right

BIBLIOGRAPHY

1 Bhatnagar R P *Law and Language,* Macmillan Publishers India Ltd, New Delhi, 1999, Print

2 Williams, Glanville *Glanville Williams Learning the Law,* Universal Law Publishing Co Pvt Ltd , Delhi, 2013 Print

3 Annoussamy, David *The Language Riddle,* English Language Teaching Centre Pondicherry University, Pondicherry, 1995, Print

4 Denning, Lord *The Due Process of Law,* Oxford University Press, New York, 2008, Print

5 Wren and Martin *High School English Grammar & Composition,* S Chand & Company, New Delhi, 1995 Print

6 Reeve C D C (Translator) *Aristotle Nicomachean Ethics,* Hackett Publishing Company, USA Internet

7 Blom and Unsworth (Editor) *Experimental Methods IN Language Acquisition Research,* John Benjamin Publishing Company, North America, 2010 Internet

8 J Girod, Robert *Logical Investigative Methods,* CRC Press, New York 2015 Internet