

Date- 30.03.2020

Reading Material for B. Com LL.B. X Semester

LEGAL LEXICON (continued.....)

1.5 Borrowed Legal Maxims:

Legal maxims have been the integral part of the legalese. Their foreign/alien origin often complicates the discourse though their presence makes (appears) the language rich and sophisticated. Some of the famous maxims are as follows:

□ **Absoluta Sententia Expositore Non Indiget:** this means the language which is unequivocal and unambiguous does not require an interpreter

• **Rex Non Protest Peccare:** King can do no wrong. This maxim has two meanings:

a) King is above all laws and everything he does is just and lawful. b) Crown (king) can do no injury to its people.

• **Ignorantia Facit Excusat:** Ignorance of law is no excuse (though ignorance of fact may be excused).

• **Noscitur A Sociis:** The meaning of doubtful word may be ascertained by reference to the meaning of words associated with it.

1.6 The Use of the Modal Auxiliaries 'Shall' and 'May':

In the everyday discourse *will* is used extensively and *shall* has a very limited use as far as the reference to future is concerned. *Shall* is hardly used after the first

pronoun pronouns now a day. However *shall* denotes obligation and so is customarily used to communicate an obligatory or mandatory outcome of a legal decision. The word ‘shall’ is frequently used as the most powerful imperative expression. It is not just a marker of the future tense but also an imperative marker. It denotes something which is compulsory, final and without any alternative. E.g. “*A person appointed as Member shall hold office for a term of five years from the date on which he enters upon his office.*” (Chitnis 84) It is used for something obligatory and if not ‘may’ is used for permission. It represents a type of binding sequel of a legal decision. However, ‘shall’ and ‘may’, by the non-law persons are basically perceived and interpreted as Modal Auxiliaries and the meaning is derived accordingly. This leads to ambiguity quite often.

However, the court verdict in *State of UP v. Manbodhan Lal Srivastava* (SC Nirnay Patrika 606) while interpreting ‘shall’ adds more complexity. It says that the meaning of the word ‘shall’ in any statute is interpreted as mandatory, but is not necessary that is used always in mandatory sense.

Traditionally, the modal *shall*, in legal texts, carries an obligation or a duty as opposed its common function: expressing futurity (Tiersma 105)

Usually, ‘shall’ denotes command and ‘may’ denotes permission and possibility. But in the legalese in general and in statues in particular shall makes it directory and not mandatory, e.g. ‘shall be accepted’, ‘notice shall be given’. It is synonymous to the expression ‘may be’. Sometimes other modal auxiliaries like *must* and *would* are also used.

‘Shall’ has a special function in statutes. It has been used to indicate something that is intended to be legally compulsory or binding. This also makes it unambiguous. Frederick Bowers has rightly noted that ‘shall’ is generally “used as a kind of totem,

to conjure up some flavour of the law”. (80) It is because of this reason that it has been pervasiveness in legal discourse.

1.7 Quotidian Words Having Different Meanings in Law:

The literary and non-literary students find it difficult to decode and distinguish the literal meaning with figurative (suggesting) meaning. In the law (legal) discourse also as some words have different meaning in it (legalese), it makes the context (discourse) little more intricate. Such words differ in meaning from the ordinary everyday discourse. The words e.g., *action* (lawsuit), *consideration* (support for a promise), *execute* (to sign to effect), and *party* (a principal in a lawsuit) are commonly used in the legalese. There are other words like *right*, *suit*, *duty*, *wrong*, *necessary*, *arbitrary* which have dual meanings.

Some other legal Quotidian words which have been discussed in many law books are:

Action : not a physical movement, but a lawsuit.

Brief : a noun referring to a type of legal document, not an adjective, and despite the name, virtually never brief.

Continuance : the postponement of a proceeding until a later date; if a judge continues a hearing, it will not continue, but will stop and start up again later.

Notice : formally notifying a person of something, as in giving notice of a claim against that person. It is legally effective, as a rule, regardless of whether anybody actually notices it.

Personal property: Property other than real property, including not only used clothing and furniture, but also automobiles and large trucks.

Prayer, usually the last part of the pleading in which the party requests the court to grant or deny the relief sought by the plaintiff.

Tandon and Behl note:

“Lawyers are partial to typical legalistic words like adjacent to, contiguous to, forthwith intimate, subsequent to, pursuant to etc.” they further expose the defects in the legalese saying “The legal draftsman shares a special rapport with certain words.

Lawyers ‘execute’ rather than sign; they ‘demise’ and not ‘lease’; they insist on ‘shall’ when it means ‘must’.”

Interpretation is a very important thing in legal discourse. Words do not carry same meaning in all the situations. Certain words have distinctive meanings in legal contexts. We are here reminded of Lord Macmillan who emphasises the golden rule of interpretation that “the grammatical and ordinary sense of the word is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical or ordinary sense of the word may be modified so as to avoid that absurdity and inconsistency but no further.” (quoted, Tandon & Behl 4)

Legal language is characterized by the words or expressions with general or sometimes flexible meanings. It has been believed that such terminology is used for its pliability. It has been taken quite positively. Reed Dickerson (48) notes that flexibility in legal language is often a “positive benefit”. The best example of such flexible words is the word ‘reasonable’ which has been exploited quite often in the legal language. We find it in the expressions like ‘reasonable care’, ‘beyond a reasonable doubt’ and ‘reasonable man.’ A foremost American commentator on law William Prosser (15) has said:

“The conduct of the reasonable man will vary with the situation with which he is confronted; under the latitude of this phrase, the courts have made allowance and have applied, in many respects, a more less subjective standard.”

1.8 The Recurrence of Certain Words and Expressions:

The words like *fair*, *just* and *reasonable* are used recurrently.

The expression ‘as to’ recurs in many instances:

- *As to* the question, the plaintiff has no reply.
- She did not know *as to* where the offence was committed.

The motive for such repetition is to ascertain there can be no ambiguity whatsoever in what is being referred to. Outside legal discourse such recurrence would be deemed as unusual, even comic.

1.9 Use of Multiword Prepositional Structures:

The multiword prepositional structures e.g. *in respect of*, *in accordance with*, *pursuant to*, *as far as*, *so far as* are found in plenty in the legalese. It has become more a mark of legal style than the necessity.

‘And’ is conjunctive in the usual sense and ‘or’ is disjunctive. Moreover, the two conjunctions are never used together. ‘Owner or master’ means owner and master obviously without any confusion. But this grammatical rule is not followed by the legal experts. ‘And’ in “or abets or aids or solicits or incites and does any act....” is wrongly used. Derivates like *with*, *by*, *above*, *on*, *upon* etc confuse the students of plain English.