LEGAL MAXIM

A

- a coelo usque ad centrum : In principle, the extent of the right of the owner.
- a fortiori : Much more, with stronger reason.
- a la : After the manner of.
- a mensa et thoro : From table and bed (from 'board and bed'). It is a term used to describe a partial divorce in a case in which the marriage was just and lawful ; but, for some supervening cause, such as the commission of adultery or cruelty by the husband or wife it becomes improper or impossible for them to live together. The partial divorce was earlier effected by the Ecclesiastical Court. It only caused the separation of husband and wife ; but did not dissolve the marriage so that neither of them could marry during the life of the other. This is now substituted by section 22 of the Indian Divorce Act. Thus, a divorce 'a mensa et thoro' has to be distinguished from a regular divorce and also from a divorce 'a vinculo mariytimonii', which means a decree for nullity. (R. S. Manual Raju v. Mary Sara AIR 1982 Kar. 235)
- a posse ad esse : From possibility to reality.
- a posteriori : (From the effect to the cause) Inductive reasoning; pertaining to the process of reasoning whereby principles or other propositions are derived from observations of facts.
- a priori : From cause to effect; deductive reasoning; pertaining to the line of reasoning based on specific assumptions, rather than experience.
- a verbis legis non est recedendum : You must not vary the words of statute.
- ab initio : From the beginning.
- ab intestato : From an intestate (Person); Succession to property of a person who has not made a will.
- ab intra : From within.
- absolute sententia expositore non indiget : Plain language does not need an interpretation. (Amar Singh v. State of Rajasthan AIR 1955 SC 504)
- absque hoc : Without this.
- absque tali causa : Without such cause.
- abundans cautela non nacet : There is no harm in being cautious The presumption that Parliament may be presumed not to make superfluous legislation, the presumption is not a strong presumption and the statutes are full of provisions introduced because abundans cautela non nacet (there is no harm in being cautious) (Gokaraju Rangaraju v. State of AP AIR 1981 SC 1473)
- act in pais : Judicial or other act performed out of court and not a matter of record.
- acta jure gestionis : Commercial acts.
- acta jure imperii : Governmental acts. The test what constitutes an act jure imperii is whether the act in question is of its own character a governmental act, as opposed to an act which any private citizen can perform. It follows that in the case of acts by a separate entity it is not enough that the entity should have acted on the directions of the State, because such an act need not possess the character of a governmental act. To attract immunity, what is done by a separate entity must be something which possesses the character of a governmental act, the entity will not be entitled to state immunity. Likewise, in the absence of such character the mere fact that the purpose or motive of the act was to serve the purposes of the State will not be sufficient to enable separate entity to claim immunity. [see Kuwait Airways Corporation v. Iraqi Airways Co.

[1995] 1 WLR 1147 (HL)]. It is clear, therefore, that— (a) it is first necessary to consider what is the relevant act of the separate entity which forms the basis of the claim of immunity; (b) to qualify for immunity, the act must be govenmental rather than commercial in character; (c) this is a question of the analysis of particular facts against the whole context in which they have occurred; (d) if the act in question is not governmental, the mere fact that the purpose or motive of the act was to serve the purposes of the State will not be sufficient to enable the separate entity to claim immunity. [see In re, Banco Nacional De Cuba [2002] 1 WLR 2039 (Ch.D)/110 Comp. Cas. 889] In the case of a central bank, for example, line between governmental and commercial acts is difficult to be drawn, since the role of a central bank is necessarily to exercise a role over financial and economic activity. The authorities have held that : (1) The issue of letter of credit by a central bank is a commercial act [Trendtex Trading Corporation v. Central Bank of Nigeria [1977] QB 529 and Hispano Americana Mercantil SA v. Central Bank of Nigeria [1979] 2 Llyod's Rep 277]; (2) The issue of bank notes is a governmental act [Camdex International Ltd. v. Bank of Zambia (No. 2) [1977] 1 WLR 632, 636, F-G]; (3) The regulation and supervision of nation's foreign exchange reserves is an aspect of Government's sovereign function of regulating the monetary system and is governmental [Crescent Oil and Shipping Services Ltd. v. Banco Nacional de Angola (unreported) 28 May, 1999 Cresswell J., applying De Sanchez v. Banco Central de Nicaragua (1985) 770 F 2d 1385]; (4) The issue of promissory note by a central bank is a commercial activity [Cardinal Financial Investments Corpn. v. Central Bank of Yemen affirmed by Court of Appeal (2001) Lloyd's Rep Bank 1].

- actio : An action; the right of suing before a judge for what it is due; also proceedings or a form of procedure for the enforcement of such right.
- actio personalis moritur cum persona : A personal right of action dies with the person. When he dies, the suit should abate. (Syedna Taher Saifuddin Saheb v. State of Bombay AIR 1958 SC 253.) The maxim is applicable only when the action is one for damages for a personal wrong. It has no application in a suit for property. (Kakumanu Pedasubhayya v. Kakumanu Akkamma AIR 1958 SC 1042.) The expression, thus, operates in a limited class of actions ex delicto such as action for damages for defamation, assault or other personal injuries not assuming the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory - Girijanandini Devi v. Bijendra Narain AIR 1967 SC 1124.

B

- benificium invito non datur : A benefit cannot be conferred upon a person unwilling to accept it
- benignae faciendae sunt interpretationes et verba intentioni debent inservire : Liberal interpretation should be the rule, and the words should be made to carry out the intention.
- benignior sententia, in verbis generalibus seu dubiis, est praeferenda : The most favourable construction is to be placed on general or doubtful expression.
- bona : Good
- bona fide : Literally, it means "in good faith", but used in English as an adjective with the meaning of "genuine", "without fraud". "Bona fide" means in good faith or genuinely. It conveys absence of intent to deceive. (Smt. Subhadran Devi v. Sunder Dass Tek Chand AIR 1965 Punj. 188.) It refers to honest intention. (See Madhurilata Devi v. Gourapada Basak AIR 1985 NOC 18 (Gauhati).) Bona fide is a mental state negativating dishonesty and has no relation to negligence or want of care. It only means negation of fraud or dishonesty and a real genuine transaction. Although the meaning of good faith may vary in the context of different statutes, subjects and situations, honest intention free from taint or fraud or fraudulent design is a constant element of its connotation [Brijendra Singh v. State of UP AIR 1981 SC 636]. The essence of "good

faith" is honesty. It precludes pretence or lack of fairness and uprightness [Sardar Gur Iqbal Singh v. CIT [1992] 197 ITR 269 (All.)]. Section 3(22) of the General Clauses Act defines 'good faith' as "a thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not". 'Good faith' would mean anything done honestly, whether done negligently or not. A person could not be said to be acting honestly where he has a suspicion that there is something wrong and does not make further enquiries. Being aware of possible harm to others and acting in spite thereof is acting with reckless disregard of consequences. It is worse than negligence for negligent action is that the consequence of which the law presumes to be present in the mind of the negligent person, whether actually it was there or not. This legal presumption is drawn through the well-known hypothetical reasonable man. For the purposes of judging whether anything was done in good faith what is to be seen is whether an authority or individual, being aware of a possible harm to the others, acts in spite thereof in reckless disregard of consequences. If it is so, it would be a case, so far as the actual state of mind of the actor is relevant, of mala fides. It would appear that for purposes of the definition of the expression 'done in good faith' as given in section 3(22) of the General Clauses Act, any action taken by a person being aware of possible harm to others in total reckless disregard of the consequences can be treated as not honest. In deciding the question of good faith, what comes into consideration is the intention of honesty and the absence of bad faith or mala fide. (Shareef Ahmad v. CWT [1979] 117 ITR 35 (All.)) It is pertinent to note section 52 of the Indian Penal Code which defines 'good faith' as nothing is said to be done or believed in 'good faith' which is done or believed without due care or attention. For purposes of criminal liability, anything which is done or believed without care and attention, cannot be said to have been done or believed in good faith. In quasi-criminal proceedings like penalty proceedings, it is this definition which in any case would be more relevant in judging the state of mind of the person for the purposes of arriving at a conclusion, whether or not there is a conscious concealment. If this definition is borne in mind, it would be apparent that cases of gross neglect which would necessarily involve want of due care and attention, would prove a guilty state of mind. (CIT v. Drapco Electric Corpn. [1980] 122 ITR 341 (Guj.).) If the assessee by his gross neglect, brings about avoidance or evasion of tax thereby causing loss to the public revenue, he could not be said to have acted in good faith. The conclusion can be legitimately reached in that case that gross neglect is equal to lacking in bona fides. The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Indian Penal Code, it is to be enquired whether a person acted with due care and attention. There is no doubt that its mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith. Simple belief or actual belief by itself is not enough. The person must show that the belief in his impugned statement has a rational basis and is not just a blind simple belief. (Harbhajan Singh v. State of Punjab AIR 1966 SC 97.)

- bona gestura : Good behaviour

C

- cadit quaestio : The matter admits of no further argument
- caeteris paribus : Other things being equal
- casus fortuitus : A matter of chance
- casus omissus : The omissions in a statute cannot be supplied by construction. If a particular case is omitted from the term of the statute, though such a case is within the obvious purpose of the statute and the omission appears to have been done by accident or inadvertence, the court cannot include the omitted case by supplying the omission. (See CIT v. K.S. Vaidyanathan [1985] 153 ITR 11 (Mad.) (FB).) The courts are no doubt to harmonise the various provisions of an Act, it is certainly not the duty of the courts to stretch the words used by the Legislature to fill the gaps or omissions in the

provisions of the Act. (See Hira Devi v. D.B. Shahjahanpur 1952 SCR 1122.) A casus omissus cannot be supplied by the court, except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. (CIT v. National Taj Traders [1980] 121 ITR 535 (SC).)

- causa causae est causa causti : The cause of a cause is the cause of the thing caused. The cause of the cause is to be considered as the cause of the effect also (see Black's Law Dictionary) [see Callipers Naigai Ltd. v. Govt. of NCT of Delhi [2005] 128 Comp. Cas. 730 (Delhi)]
- causa causans : The immediate cause. The last link in the chain of causation. It is to be distinguished from causa sine qua non which means some preceding but for which the causa causans could not have become operative.
- causa justa : A true or just cause.
- causa mortis : In respect of death.
- causa proxima, non remota spectatur : The immediate and not the remote cause is to be regarded
- causa sine qua non : An indispensable cause/condition
- cause sine qua non : A necessary or inevitable cause. A cause without which the effect in question could not have happened (see Black's Law Dictionary) [see Callipers Naigai Ltd. v. Govt. of NCT of Delhi [2005] 128 Comp. Cas. 730 (Delhi)]
- caveat emptor : Let the buyer beware
- caveat venditor : Let the seller beware
- certiorari : Certiorari is a prerogative writ of Supreme Court to call for the records of the inferior court or a body acting in a judicial or quasi judicial capacity. An essential feature of a writ of certiorari is that the control over judicial or quasi-judicial tribunals or bodies is exercised not in an appellate but supervisory capacity. (Sewpujanrai Indrasanarai v. Collector of Customs AIR 1958 SC 845.)
- certum est quod certum reddi potest : That which is capable of being made certain is to be treated as certain.
- cessante causa, cessat effectus : When the cause ceases, the effect ceases
- cessante ratione legis cessat ipsa lex : The reason of the law ceasing; the law itself ceases. The maxim applies to the principles of common law, but not to any considerable extent to statute law. A law does not cease to be operative because it is out of keeping with the present time. But this principle does not apply where custom outlines the conditions which gave it birth. (Mirza Raja v. Pushpavathi Wisweswar [1964] 2 SCR 403.)
- cestui que trust : A person for whom another is trustee, beneficiary
- cestui que vie : The person for whose life the land is held
- ceteris paribus : Other things being equal

D

- damnosa hereditas : An inheritance which was insolvent
- damnum absque injuria : Loss or damage for which there is no legal remedy
- damnum sentit dominus : The owner suffers the damage
- damnum sine injuria : Damage without injury, i.e., without infringement of any legal right. There may be damage or loss inflicted without any act being done which the law deems an injury. For instance, harm may be caused by a person exercising his own rights or property (Mayor of Bradford v. Pickles [1895] AC 587.), by trade competition. (Mogul Steamship Co. v. Gregor Gow & Co. [1892] AC 25.)
- dan : Gift
- data : What is given; the premises on which an argument is based

- de bene esse : To act provisionally or in anticipation of a future occasion. The expression is used when anything is allowed to be done at the present time with a view to its being examined at a future time, and then standing or falling according to the merit of the thing in its own nature. In modern times it is chiefly used in reference to an examination, out of the court and before trial, of witnesses who are old, dangerously ill or about to leave the country, on the terms that if the witnesses continue ill or absent, then evidence be read at the trial, but if they recover or return, the evidence is taken in a usual manner.
- de bonis non : Of goods not administered. Where a sole or last surviving executor dies intestate without having fully administered, his administrator does not become the representative of the original testator, and it is accordingly necessary to appoint an administrator to administer the goods of the original testator left unadministered. This is a grant of administration cum testamento annexo de bonis non administratis, for short called de bonis non. This expression thus means that an administrator is appointed to succeed a deceased administrator to complete the administration of a intestate estate.
- de die in diem : From day to day; continuously
- de executione facienda : Writs of execution
- de facto : In fact; really actual; actual state of circumstances independently of question of right or title A person in physical control or de facto possession may have an interest but no right to continue; whereas a person in possession, de jure, actually or constructively has the right to use, enjoy, destroy or alienate property (Krishna Kishore Firm v. Government of Andhra Pradesh AIR 1990 SC 2292)
- de hors : Outside of; unconnected with
- de jure : By right; rightful; independently of what obtains in fact
- de minimis non curat lex : The law does not concern itself with trifles. The Supreme Court in Smt. Somawanti v. State of Punjab (AIR 1963 SC 151.) observed that “they are not intended to be repeated by others or to be used in such a way as a book may be used, but still the principle de minimis non curat lex applies to a supposed wrong in taking a part of dramatic works, as well as in reproducing a part of a book.”
- de non apparentibus, et non existentibusm eadem est ratio : Of things which do not appear and things which do not exist, the role in legal proceedings is the same
- de novo : A new
- de odio et atia : Of malice and ill-will
- de propio motu : Of one’s own volition
- de recte : A writ of right
- de seisina habenda : For having seisin

E

- E & OE : Errors and omissions excepted
- e contra : On the other hand; conversely
- e contraria : On the contrary
- e converso : Conversely
- e re nata : From this circumstance arisen; according to the exigencies of the case
- ei incumbit probatio qui dicit, non qui negat : The burden of proof lies on him who alleges not on him who denies it.

- ei qui affirmat, non ei qui negat, incumbit probatio : The burden of proof lies on him who affirms a fact, and not on him who denies
- ejusdem generis : Of the same kind or nature Where two or more words which are susceptible of analogous meaning are coupled together, a noscitur a sociis, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general. One application of this general principle is the ejusdem generis rule. The true scope of the rule of ejusdem generis is that words of general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be applied with caution and not pushed too far. It is a rule which must be confined to narrow bounds so as not to unduly or necessarily limit general and comprehensive words. If a broadbased genus could consistently be discovered, there is no warrant to cut down general words to dwarf size. If giant it cannot be, dwarf it need not be (UP State Electricity Board v. Hari Shanker Jain AIR 1979 SC 65.). To invoke the application of ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to the different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply. Unless there is a category, there is no room for application of the ejusdem generis doctrine and where the words are clearly wide in their meaning, they ought not to be qualified on the ground of their association (Mangalore Electric Supply Co. Ltd. v. CIT [1978] 113 ITR 655 (SC).). The Andhra Pradesh High Court in CIT v. Sri Ramakrishna Motor Transport ([1983] 144 ITR 797.) held that there is no warrant to apply the principle of ejusdem generis and cut down the amplitude and power of rectification under section 154(1)(a) of the Income tax Act, 1961 to the orders of assessment and refund, more particular in view of the fact that words “assessment” and “refund” do not constitute a class.
- en autre droit : In the right of another
- en bloc : As one unit, piece, lump
- en masse : In a crowd, body, heap
- en route : On the road : let us go; march
- en ventre sa mere : In the womb of its mother. A child not yet born
- ens legis : A legal being, entity
- enure : To operate or take effect
- eo instante : At that instant
- eo nomine : In that name, by that name, on that claim
- eodem modo quo oritur, eodem modo dissolvitur : What has been effected by agreement can be undone by agreement
- equi aliquid statuerit parte inaudita altera, aequum, licet dixerit, haud aequum fecerit : He who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right (see Satyavir Singh v. Union of India AIR 1986 SC 555)
- equity : Primarily fairness or natural justice

F

- f.o.b. : Free on board
- f.o.r. : Free on Railway
- facsimile : (Make it like) An exact copy
- factum : An act or deed

- factum est : It is done
- factum probanda : Facts which are required to be proved
- factum probantia : Facts which are given in evidence to prove other facts in issue
- factum valet or quod fieri non debuit : Where a fact is accomplished or where the act is done and completed, though in contravention of the directory provisions, the fact will stand and the act shall be deemed to be legal and binding. But where the provisions are mandatory, the principle does not apply
- fait : A deed
- fait accompli : An accomplished act
- fait justitia ruat caelum : Let right be done, though the heavens should fall
- falsa demonstratio : An erroneous description of a person or thing in a written instrument
- falsa demonstratio non nocet : A false description does not vitiate a document
- falsa demonstratio non nocet cum de corrore constat : Mere false description does not vitiate, if there be sufficient certainty as to the object. The rule signifies that where description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise; the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is true, applies to one only (see Harikrishna Lal v. Babu Lal Marandi [2003] 8 SCC 613)
- falsus in uno, falsus in omnibus : False in one, false in all. The Supreme Court held in Sohrab v. State of M.P. (AIR 1972 SC 2020.) that falsus in uno, falsus in omnibus is not a sound rule, for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries and embellishments. In Gangadhar Behera v. State of Orissa [2002] 8 SCC 381, the Supreme Court held that this principle is not applicable in India. It is only a rule of caution. Court has to separate chaff from grain and to find in each case as to what extent the evidence is acceptable. If separation is not possible, the entire evidence has to be rejected in toto.
- familia : Family
- felo de se : One who murders himself
- feme covert : A married woman
- feme sole : An unmarried woman
- festinatio justitiae est noverca infortunii : Swift justice is the step mother of misfortune

G

- generale tantum valet in generalibus, quantum singulare in singulis : When words are general, they are to be taken in a general sense, just as words relating to a particular thing are to be taken as referring only to that thing
- generalia specialibus non derogant : Generalia specialibus non derogant, or, in other words “where there are general words in a later Act capable of reasonable and sensible application without extending to subjects specially dealt with by the earlier legislation, you are not to hold that earlier or special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of particular intention to do so” (see Maharaja Pratap Singh Bahadur v. Man Mohan Dev AIR 1966 SC 1931). The literal meaning of this expression is that general words or things do not derogate from special. This expression was explained to mean that when there is conflict between a general and special provision, the latter shall prevail (CIT v. Shahzada Nand & Sons[1966] 60 ITR 392 (SC) and Union of India v. India Fisheries (P.) Ltd. AIR 1966 SC 35.), or the general provisions must yield to the special provisions. (State of Gujarat v. Patel

Ramjibhai AIR 1979 SC 1098.) The maxim is regarded as a 'cardinal principle of interpretation' (State of Gujarat v. Patel Ramjibhai AIR 1979 SC 1098.), and is characterised as a well recognised principle. (See Secy. of State v. Hindustan Co-operative Society AIR 1931 PC 149 and Patna Improvement Trust v. Shrimati Lakshmi Devi AIR 1963 SC 1077.) The general provision, however, controls cases where the special provision does not apply as the special provision is given effect to the extent of its scope. (South India Corpn. (P.) Ltd. v. Secretary Board of Revenue AIR 1964 SC 207.) Thus a particular or a special provision controls or cuts down the general rule. (Bengal Immunity Co. v. State of Bihar AIR 1955 SC 661.) In Paradip Port Trust v. Their Workmen (AIR 1977 SC 36.), the Supreme Court was called upon to decide whether representation by a legal practitioner was permissible in an industrial dispute before adjudicatory authorities contemplated by the Industrial Disputes Act. By applying this maxim, the Supreme Court held that the special provision in the Industrial Disputes Act would prevail in that regard over the Advocates Act which was held to be a general piece of legislation relating to subject-matter of appearance of lawyers before all courts, tribunals and other authorities, whereas Industrial Disputes Act was concerned with the representation by legal practitioners. This maxim was applied when the questions relating to assessments of a firm and its partners arose under the Income-tax Act, 1961 where the dissolution of the firm and its succession are held to be governed by the Special Act viz., the Income-tax Act and not the Partnership Act. The technical view of the nature of a partnership cannot be taken in applying the law of income-tax. Where a special provision is made in derogation of the provisions of the Indian Partnership Act, the effect is given to it. Where the provisions of the Indian Income-tax Act are clear, resort cannot be had to the provisions of another statute. (Dharam Pal Sat Dev v. CIT [1974] 97 ITR 302 (P&H) and Nandlal Sohanlal v. CIT [1977] 110 ITR 170 (P&H) (FB).) When the Legislature has deliberately made a specific provision to cover a particular situation, for the purpose of making an assessment of a firm under the Income-tax Act, there is no scope for importing the concept and the provisions of the Partnership Act. (See CIT v. Shambulal Nathalal & Co.[1984] 145 ITR 329 (Kar.).) The legal position of a firm under the income-tax law is different from that under the general law of partnership in several respects : "In case of conflict between the two statutes, the general rule to be followed is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied: (i) The two are inconsistent with each other; (ii) There is some express reference in the later to the earlier enactment" (Ajay Kumar Banerjee v. Union of India AIR 1981 SC 1130) In determining whether a statute is special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and distinction cannot be blurred when finer points of law are dealt with. The Supreme Court in D.J. Bahadur's (See LIC of India v. D.J. Bahadur AIR 1980 SC 2181.) case held that "...vis-á-vis 'industrial disputes' at the termination of the settlement as between the workmen and the Corporation, the Industrial Disputes Act is a special legislation and the LIC Act is a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalis maxim as expounded by English textbooks and decisions leaves us in no doubt that the I.D. Act being special law prevails over the LIC Act which is but general law."

- generalia verba sunt generaliter intelligenda : General words are to be understood in a general way
- generalibus specialia derogant : Special things derogate from general things. If a special provision is made on a certain matter, the matter is excluded from the general provisions. Applying this rule, the Supreme Court held in its judgment in South India Corpn. (P.) Ltd. v. Secretary, Board of Revenue AIR 1964 SC 207 that the general provision under Article 372 of the Constitution regarding continuance of existing laws is subject to article 277 of the Constitution which is a special provision relating to taxes, duties, cesses, or fees lawfully levied at the commencement of the Constitution. In Vinay Kumar Singh v. Bihar State Electricity Board [2003] 8 ILD 318, the Patna High Court observed that article 351 of the Constitution of India is a general provision regarding development of Hindi all over India, whereas article 348 is a specific provision

with regard to the language to be used in the Supreme Court and the High Courts and that, therefore, the applicability of article 351 of the Constitution is entirely obviated.

- grammatica falsa non vitiat chartum : False grammar does not vitiate a deed
- gratis dictum : A mere assertion unsupported by evidence

H

- habeas corpus : This means 'you have the body'
- habendum : The clause in the conveyance which indicates the quantity of interest conveyed
- hac lege : With this law, under this condition
- hereditas : Inheritance
- hereditas jacen : Inheritance not taken up
- heres : The universal successor of a deceased person
- heres factus : Heir appointed by Will
- heres natus : Heir by descent
- hiba-ba-shart-up-iwuz : It is a gift with stipulation for return
- hiba-bil-iwaz : A gift for a consideration. It is in reality a sale
- hifo : Highest in, first out
- hoc anno : In this year
- hoc genus omni : All of this sort, class
- hoc tempore : At this time
- honest vivere, non alienum laeders, suum lunique tribute : To live honourably, not to injure another, to render each his due. These are the three percepts of law [Mrs. Banoo E. Cowasji v. CIT [1997] 223 ITR 40 (MP)]
- hors de purpose : Aside from this purpose

I

- IOU : I owe you
- ibid (inbidem), id : In the same place, case
- id certum est quod certum reddi potest : That is certain which can be made certain
- id est, i.e. : That is to say, namely
- id genus omne : All that class or kind
- idem : The same
- idem per idem : An illustration or proof
- idem quod, i.q. : The same as
- ignorantia eorum quae quis scire tenetur non excusat : Ignorance of those things which everyone is bound to know does not constitute an excuse
- ignorantia facti excusat : Ignorance of fact excuses
- ignorantia judicis est calamitas innocentis : The ignorance of a judge is the misfortune of the innocent
- ignorantia juris, quod quisque scire tenetur non excusat : Ignorance of the law which everybody is supposed to know does not afford excuse
- ignorantia legis neminem excusat : Ignorance of law excuses nobody (Basheshar Nath v. CIT AIR 1959 SC 149)

- ignoratio elenchi : Ignoring the point in question
- impossibilium nulla obligatio est : Impossibility is an excuse for the non-performance of an obligation
- impotentia excusat legem : Impotency excuses law. Inability is an excuse. Law does not compel to do what one cannot possibly perform (In the matter of Special Reference No. 1 of 2002 [2002] 8 SCC 237). When law creates a duty or charge and the party is disabled to perform it, without any default in him, and has no remedy over it, then the law in general will excuse him - (R.M. Bagal v. Union of India AIR 1994 Delhi 173)
- imputatio : Legal liability
- in : "In" in Latin means "not"
- in absentia : In absence
- in aequali jure melior est conditio possidentis : When the rights of the parties are equal, the claim of the actual possessor is the stronger.

J

- judex est lex loquens : A judge is the law speaking
- judex non potest esse testis in propria causa : A judge cannot be witness in his own cause
- judici officium suum excedenti non paretur : Effect is not to be given to the decision of a judge delivered in excess of his jurisdiction
- judicia publica : Public prosecutions
- judicis est jus dicere, non dare : It is for the judge to administer, not to make law
- judicium dei : The judgment of God. Trial by ordeal
- jura in personam : The rights of persons
- jura non remote causa sed proxima spectatur : In law the immediate or the proximate and not the remote cause of any event is regarded
- jura publica anteferenda privatis : Public rights are preferred to private
- jura regalia : Sovereign rights
- jura rerum : The rights which a person acquires in things
- juratores sunt judices facti : Juries are the judges of fact
- jure divino : By divine law
- jure naturae aequum est neminem cum-alterius detrimento et injuria fieri locupletiorem : It is the law of nature that one should not be enriched by the loss or injury to another. Thus, who seeks equity must do equity [Babu Lal v. DIT [2005] 147 Taxman 318 (All.)]
- jure uxoris : By reason of wife's right
- juris et de jure : Of law and from law The Supreme Court in the case of B. L. Sreedhar v. K. M. Munireddy [2003] 1 ILD 185 observed : "Estoppel is based on the maxim, allegans contraria non est audiendus (a party is not to be heard to allege the contrary) and is that species of presumption juries et de jure - (absolute or conclusive or irrebuttable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done, it is in truth a kind of argumentum ad hominem"
- juris peritus : One learned in the law
- juris praecepta sunt haec, honeste vivere, alterum non laedere, suum unique tribuere : These are the precepts of the law, to live honestly, to hurt no one, and to give to every man his own

- jus : Law, right, equity, authority, rule The word “jus” is defined by the Century Standard Dictionary as conforming to the requirements of right or positive law. In Anderson’s Law Dictionary as probable, reasonable [see Mrs. Helen C. Rebello v. MSRTC [1999] 95 Comp. Cas. 509 (SC)]
- jus accrescendi : The right of accrual. The right of survivorship between joint tenants

K

- kompetenz - kompetenz or competence de la competence : The doctrine means that the Tribunal has the power to rule on its own jurisdiction. Section 16(1) of the Arbitration and Conciliation Act, 1996, incorporates this doctrine. It recognises and enshrines an important principle that initially and primarily, it is for the arbitral tribunal itself to determine whether it has jurisdiction in the matter, subject of course, to ultimate court control. Kompetenz - Kompetenz is a widely accepted feature of the modern international arbitration, and allows the arbitral tribunal to decide its own jurisdiction including ruling on any objections with respect to the existence or validity of the arbitration agreement, subject to final review by a competent court of law [Justice C.K. Thakker in S.B.P. & Co. v. Patel Engineering Ltd. [2005] 128 Comp. Cas. 465 (SC)]

L

- lata culpa dolo aequiparatur : Gross negligence is equivalent to fraud. Negligence is not fraud. Fraud is dishonesty, and it is not necessarily dishonest, though it may be negligent, to express a belief on the grounds that would not convince a reasonable man. The law does not require a representor to warrant the truth of his statement, but insists that he shall warrant his belief in its truth. A fraudulent misrepresentation is a false statement which, when made, the representor did not honestly believe it to be true (Derry v. Peek [1889] 14 App. Cas. 337). Distinction between negligence and fraud, thus, is never blurred. If a person honestly believes that what he asserts is true, the statement thus made is not fraudulent though it may be negligent. But gross negligence would mean fraud. Even if a person does not have a wrongful intention or even a conscious or deliberate act may not be there, but the negligence is of severe type and the carelessness is so aggravated in nature as to indicate a mental attitude of indifference to the known or obvious risks. Thus ‘gross negligence’ means greater negligence than the absence of ordinary care. It is such a degree of negligence as excludes the loosest degree of care, and is said to amount to dolus. (Cashill v. Wright [1856] 6 E & B 891.)
- legatum : Legacy
- legatum generis : A legacy of thing in general terms as belonging to a class
- legatum nominis : A legacy of a debt
- legatum optionis : A legacy of choice
- legatum partitionis : A legacy where the legatee divided the inheritance with the heir
- legatum poenae nomine : A legacy by way of penalty to constrain their heir to do or not to do something
- leges posteriores priores contrarias abrogant : Later laws abrogate prior contrary laws
- lex : Law
- lex dilationes semper exhorret : The law always abhors delays
- lex domicilii : The law of the place of a person’s domicile
- lex est dictamen rationis : Law is the dictate of reasons
- lex est tutissima cassis sub clypeo legis nemo decipitur : Law is the safest helmet; under the shield of law none are deceived. This principle is well recognised from the days of Magna Carta [Mrs. Kailash Suneja v. Appropriate Authority [1998] 231 ITR 318 (Delhi)]

- lex fori : The law of the place of action
- lex loci contractus : The law of the place where a contract is made
- lex loci delictus : The law of the country where a tort has been committed
- lex loci rei sitae : The law of the place where a thing is situate
- lex loci solutionis : The law of the place of performance
- lex marcatoria : The law of merchant
- lex non cogit ad impossibilia : The law does not compel the impossible. The performance of impossible duty may be excused. (Cochin State Power & Light Corpn. Ltd. v. The State of Kerala AIR 1965 SC 1688.) The law itself and the administration of it must yield to that which everything must bend to necessity; the law, in its most positive and pre-emptory injunctions is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases. (Raj Kumar Dey v. Tarapada Dey [1987] 4 SCC 398; Mohammed Gazi v. State of M.P. [2000] 4 SCC 342.)

M

- majus continet minus : The greater contains the less
- mala fide : In bad faith
- mala fides : Bad faith. Opposite to bona fides, good faith; bad for want of necessary care and caution Being aware of possible harm to others and acting inspite thereof is acting with reckless disregard of consequences. It is worse than negligence, for negligent action is that the consequences of which the law presumes to be present in the mind of the negligent person, whether actually it was there or not. This legal presumption is drawn through the well-known hypothetical reasonable man. For purposes of judging whether anything was done in bad faith, what is to be seen is that whether an authority or individual, being aware of a possible harm to the others, acts in spite thereof in reckless disregard of consequences. If it were so, it would be a case so far as the actual state of mind of the actor is relevant of mala fides. Bad faith as expressed in State of Punjab v. Gurdial Singh AIR 1980 SC 319, the attainment of ends beyond the sanctioned purpose of power by simulation or pretention of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object, the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted. When the custodian of power is influenced in its exercise by considerations outside those of promotion of which the power is vested, the court calls it colourable exercise and is undeceived by illusion (Smt. Zahida Bi v. State of MP AIR 1992 MP 68). An action is mala fide if it is contrary to the purpose for which it is authorised to be exercised. Dishonesty in the discharge of duty vitiates the action without anything more. An action is bad even without proof of motive and dishonesty [Mahesh Chandra v. UP Financial Corporation [1993] 78 Comp. Cas. 1 (SC)]. The charge of mala fides must be established with sufficient material and no presumption can be drawn only on a bare plea [Smt. Ramana v. CIT [1999] 235 ITR 197 (Punj. & Har.)]. Thus, mala fides must be specifically pleaded and proved. (S. Partap Singh v. State of Punjab AIR 1964 SC 72). In E.P. Royappa v. State of Tamilnadu AIR 1974 SC 555, the court said that the burden of establishing mala fides is very heavy on the person who alleges it and pointed out that allegations of mala fides are often more easily made than proved and the very seriousness of such allegations demands proof of a higher order of credibility.
- mala grammatica non vitiat chartam : Bad grammar does not vitiate a deed
- mala in se : Acts wrong in themselves
- mala prohibita : Acts prohibited by human laws

- maledicta expositio quae corrumpit textum : It is a bad exposition which corrupts the text
- malitia supplet aetatem : Malice supplements age; malice supplies want of age. A child is presumed to be doli incapax (incapable of crimes); but this presumption may be rebutted by evidence of 'mischievous discretion' or guilty knowledge that he was doing wrong; except that a boy under fourteen cannot be convicted of rape. The principle of law is malitia supplet aetatem
- mandamus : We command
- me judice : In my opinion
- mea culpa : By my own fault
- melior est conditio possidentis et rei quam actoris : The position of the possessor is the better; and that of the defendant is better than that of the plaintiff
- mens legis : The spirit of the law
- mens rea : Criminal intention or guilty mind One of the cardinal principles of the English Criminal Law is the maxim actus non facit reum nisi mens sit rea i.e., a person cannot be convicted and punished in a proceeding of criminal nature unless it can be shown that he had a guilty mind. (Chisholm v. Doulton [1889] 22 QBD 736.) There is a presumption that mens rea, an evil intention, or knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals (Sherras v. De Rutzen [1895] 1 QB 918 and also see Ravula Hariprasada Rao v. State AIR (38) 1951 SC 204; State of Maharashtra v. Mayer Hans George AIR 1965 SC 722.)
- mesne : Middle, intermediate
- metes and bounds : By measurement and boundaries
- mobilia sequnter personam : Movables follow the person. A person's powers of dealing with his movable estate and its devolution on his death are governed by the law of his domicile
- modus : Manner; mode
- modus et conventio vincunt legem : Custom and agreement overrule law [see Achaldas Durgaji Oswal v. Ramvilas Gangabisan Heda [2003] 2 ILD 817 (SC)]
- modus legem dat donationi : Agreement gives law to the gift

N

- nam omne testamentum morte consummatum est; et voluntae testamentoric est ambulatoria usque od mortem : For, where a testament is there, there must also of necessity be death of testator. For, a testament is of force after men are dead; otherwise it is of no strength at all while the testator liveth [see Uma Devi Nambiar v. T.C. Sidhan [2004] 13 ILD 1059 (SC)].
- ne plus ultra : The topmost performance, achievement
- nec vi, nec clam, nec precario : Not by violence, stealth, or entreaty. The Kerala High Court observed in Devaki Pillai Saradamma Pillai v. Gouri Amma Meenakshi Amma [2003] 5 ILD 83, that to be 'adverse' the possession must be nec vi, nec clam, nec precario i.e., peaceful, open and continuous
- necessitas inducit privilegium quoad jura privata : Necessity gives a privilege as to private rights
- necessitas non habet legem : Necessity knows no law
- necessitas publica major est quam privata : Public necessity is greater than private
- negatio destruit negationem et ambae factiunt affirmativum : A negative destroys a negative; and both make an affirmative

- negator : It is denied
- negligentia semper hebet infortunium comitem : Negligence always has misfortune for a companion
- nem. con.: nemine contra dicente : No one saying otherwise
- nem.dis: nemine dissentiente : No one dissenting
- nemine contra dicente : Without opposition
- neminem oportet legibus esse sapientiorem : It is not permitted to be wiser than the laws
- nemo : No one.
- nemo admittendus est inhabilitare seipsum : Nobody is to be permitted to incapacitate himself
- nemo agit in seipsum : No one can take proceedings against himself; no one impleads himself
- nemo commodum capere potest de injuria sua propria : No one can take advantage from his own injury
- nemo contra factum suum proprium venire potest : No one can go against his own deed
- nemo dat quid non habet : No one gives what he does not possess; No one can give a better title than what he has. To this maxim, to facilitate mercantile transaction the Indian Law has granted some exceptions, in favour of bona fide pledges by transfer of documents of title from persons, whether owners of goods or their mercantile agents who do not possess the full bundle of rights of ownership at the time pledges are made
- nemo debet bis punibi pro uno delicto : No one should be punished twice for one fault This maxim is embodied in article 20 of the Constitution. It means that a man must not be put twice in peril for the same offence. If a man is indicted again for the same offence in an English court, he can plead, as a complete defence, his former acquittal or conviction, or as it is technically expressed, take the plea of autrefois acquit or autrefois convict. (See S.A. Venkataraman v. Union of India [1954] SCR 1150, State of Bombay v. S.L. Apte [1961] 3 SCR 107; Maqbool Hussain v. State of Bombay [1954] SCR 730, State of M.P. v. Veereshwar Rao Agnihotry [1957] SCR 868.)

O

- obedientia est legis essentia : Obedience is the essence of law. Obedience is the guiding force to sustain the law, rule, regulation or custom. It is that force we call it as discipline (Headmaster, Poilkav High School v. Murali A. AIR 1995 Ker. 21)
- obiter : By the way; cursorily.
- obiter dictum : A saying by the way a cursory remark. An incidental opinion by a judge which is not binding; an incidental remark or observation. Obiter dictum is an observation by a judge as a legal question suggested by a case before him, but not arising in such a manner as to require decision, which is either not necessary for the decision of the case or does not relate to the material fact in issue. (K. Jayarama Iyer v. State of Hyderabad AIR 1954 Hyd. 56.) Obiter dicta is a judicial declaration, unaccompanied by judicial application, is of no authority; but having a pursuasive force. The obiter dicta of the Supreme Court is however, binding. (See CIT v. Madhukant M. Mehta [1981] 132 ITR 159 (Guj.) and CIT v. Smt. T.P. Sidhwa [1982] 133 ITR 840 (Bom.).)
- obligatio civilis : A statutory obligation, or one recognised by the jus civile
- obligatio ex contractu : Obligation arising out of contract
- obligatio ex delicto : Obligation arising out of wrong
- omne quod inaedificatur solo cedit : Everything which is built in the soil is merged therein
- omne testamentum morte consummatum est : Every will is completed by death. A will is ambulatory until death

- omnes licentiam habent his, quae pro se indulta sunt, renunciare : Everyone has liberty to renounce those things which are granted for his benefit
- omnia praesumuntur contra spoliatorem : A strong presumption arises against party who suppresses or destroys evidence. The applicability of the maxim is so strong that it sometimes displaces even the presumption of innocence in favour of the accused person (see Mange Ram v. Brij Mohan AIR 1985 Punj. & Har. 6)
- omnia praesumuntur legitime facta donec probetur in contrarium : All things are presumed to have been legitimately done, until the contrary is proved
- omnia praesumuntur rite esse acta : It is an expression, in short form, of a reasonable probability, and of the propriety in point of law of acting on such probability. The maxim expresses an inference which may reasonably be drawn when an intention to do some formal act is established; when the evidence is consistent with that intention having been carried into effect in a proper way; but when the actual observance of all due formalities can only be inferred as a matter of probability. The maxim is not wanted where such observance is disapproved. The maxim comes into operation where there is no proof one way or the other, but where it is more probable that what was intended to be done as it ought to have been done to render it valid; rather than that it was done in some other manner which would defeat the intention proved to have been done with no effect (see K.M. Varghese v. K. M. Oommen AIR 1994 Ker. 85)
- omnia praesumuntur rite et solenniter esse acta : All acts are presumed to have been done rightly and regularly
- onus probandi : The onus of proof; the burden of proving
- op cit : The book previously cited
- optima est lex quae minimum relinquit arbitrio judicis, optimus judex qui minimum sibi : That system of law is best which confides as little as possible to the discretion of a judge; that judge the best who trusts as little as possible to himself
- optima interpres rerum usus : The best interpreter of things is usage
- optima legum interpres est consuetudo : Custom is the best interpreter of the law
- opus : Work

P

- pacta dant legem contractui : Agreements constitute the law of the contract
- pacta privata juri publico derogare non possunt : Private contract cannot derogate from public right
- pacta quae contra leges constitutioneseque vel contra bonos mores fiunt nullam vim habere, indubitati juris est : It is undoubted law that agreements which are contrary to the laws and constitutions, or contrary to good morals, have no force
- pacta sunt servanda : Contracts are to be kept
- pactum illicitum : An illegal compact
- pactum nudum : A pact without consideration
- par excellence : Pre-eminently
- pari delicto potior est conditio defendentis : The principle that the courts will refuse to enforce an illegal agreement at the instance of the person who is himself a party to the illegality or fraud is expressed in this maxim. But there are exceptions to that. The Supreme Court in the case of Sita Ram v. Radha Bai AIR 1968 SC 534 has said,“But as stated in Ansons’ Principles of English Law of Contract 22nd edn., page 343: there are exceptional cases in which a man will be relieved of the consequences of an illegal contract into which he has entered-cases to which maxim does not apply. They fall into three classes : (a) where illegal purpose has not yet been substantially carried into effect before it is sought to recover money

paid or goods delivered in furtherence of it; (b) where the plaintiff is not in pari delicto with the defendant; (c) where the plaintiff does not have to rely on the illegality to make out his claim." In this judgment, the Supreme Court has further added (page 537) "It is settled law that where the parties are not pari delicto, the less guilty may be able to recover money paid, or property transferred, under the contract." This possibility may arise in three situations : First, the contract may be of a kind made illegal by a statute in the interests of a particular class of persons of whom the plaintiff is one. Secondly, the plaintiff must have been induced to enter into the contract by fraud or strong pressure. Thirdly, there is some authenticity for the view that a person who is under a fiduciary duty to the plaintiff will not be allowed to retain property, or to refuse to account for moneys received, on the ground that the property or the moneys have come into his hands as the proceeds of an illegal transaction.

- pari materia : In equal materials
- pari passu : Simultaneously and equally; equally without preference; with equal steps; that is to say proceeding side by side at the same place [See Karnataka State Industrial & Development Corpn. Ltd. v. Shivmoni Steel Tubes Ltd. [1998] 94 Comp. Cas. 1 (Kar.)]
- particeps criminis : A partner in crime
- partim : In part
- patria potestas : The authority of a Roman father over his children
- pendente lite : While the litigation is pending
- per : Through, by means of, according to as stated by
- per annum : By the year
- per capita : By heads, individually, all sharing alike
- per contra : On the contrary
- per cur, per curiam : By the court
- per diem : By the day

Q

- Quando lex aliquid alicut camadit, concedere videtur id sine quo ipsaesse : When law gives anything to any one, it gives also all those things without which the thing itself could not exist. The source for the rule of inherent powers of a Court can be traced to this Latin maxim (Kanedena Veeraiah v. Narra Venkateswarlu (1985) (2) ALT 200)
- qua : As; in the capacity; character of; in virtue of being
- quae frequentius acciddunt : It is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom (see Fenton v. Hampton 11 Moore, PC 345, and Maulvi Hussein Haji Abrahim Umarji v. State of Gujarat [2004] 6 SCC 672)
- quae non valeant singula, juncta juvant : Words which are of no effect by themselves are effective when combined
- quaelibet concessio fortissime contra donatorem interpretanda est : Every grant is to be construed as strongly as possible against the grantor
- quaere : Inquire
- quaeritur : The question is asked
- quando acciderint : When it happens
- quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud : When anything is commanded everything by which it can be accomplished is also commanded

- quando aliquid prohibeture, fieri, prohibeture ex directoet per obliquum : When the doing of anything is forbidden, then the doing of it either directly or indirectly is forbidden. To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined : quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud. This manner of construction has two aspects. One is that the courts, mindful of the mischief rule, will not be astute to narrow the language of a statute so as to allow persons within its purview to escape its net. The other is that the statute may be applied to the substance rather than the mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of thereby falling outside the Act. When the courts find an attempt at concealment, they will, in the words of Wilmot C.J., 'brush away the cobweb varnish, and shew the transaction in their true light.' (Collins v. Blantern [1767] 2 Wils KB 347 and also see CIT v. Navabharat Enterprises (P.) Ltd. (No. 2) [1988] 170 ITR 332 at 346 (AP).)
- quando duo jura in una persona concurrunt, aequum est ac si essent deversis : When two titles concur in one person, it is the same as if they were in different persons
- quando jus domini regis et subditi concurrunt jus regis praeferri debet : When the title of the king and of the subject concur, that of the king is to be preferred
- quando lex aliquid alicui, concedit, concedere videtur id sine quo res ipsa esse non potest : Whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect. On this maxim is based the doctrine that if a Legislature enables something to be done, it gives powers at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view. This doctrine can be invoked where an act confers a jurisdiction. It also confers by implication the power of doing all such acts, or employing such means, as are essentially necessary to its execution. (See Bidi, Bidi Leave & Tobacco Merchants Association v. State of Bombay [1961] (ii) 1 LJ 663.) This maxim was discussed by the Supreme Court in Dinesh Dutt Joshi v. State of Rajasthan [2001] 8 SCC 570.
- quando plus fit quam fieri debet videtur etiam illud fieri quod faciendum est : When more is done than ought to be done, then that is considered to have been done which ought to have been done
- quantum meruit : As much as he has earned; so much as he deserves; reasonable amount
- quantum valebant : As much as they are worth. This relates to an action analogous to quantum meruit, but brought in respect of goods supplied
- quarantine : This relates to a period of forty days
- quasi : As if it were, not really, half; almost; a seeming or seemingly, appearing as if resembling in certain degree as quasi-official
- quasi judicial The word "decision" in common parlance is more or less a neutral expression and it can be used with reference to purely executive acts as well as judicial orders. The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner which makes the difference, and the real test is : is there any duty to decide judicially. (Province of Bombay v. Khushaldas S. Advani AIR 1950 SC 222.) It is clear enough that in day-to-day administration the executive authorities have to take decision on various matters. It cannot be the law that wherever there is a requirement to take a decision, the function must be quasi-judicial. Everything depends upon the nature of the power conferred by the statute. In order toυ Because an executive authority has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are matters of an administrative character. υ The main thing to be considered is whether the authority concerned has to decide a dispute between two parties or it has merely to take note of the dispute to inform its mind

before it exercises the power conferred upon it in its discretion. In the former case it acts judicially or quasi-judicially, but in the latter case it acts administratively. (Registrar, University Allahabad v. Dr. Ishwari Prasad AIR 1956 All. 603.) υ If the dispute between them is a question of law, the submission of legal argument by the parties. A decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including, where required, a ruling upon and disputed question of law. FEATURE DISTINGUISHES QUASI-JUDICIAL ACT FROM ADMINISTRATIVE - The real test which distinguishes a quasi-judicial act from an administrative act is the duty to act judicially. (Province of Bombay v. Khushaldas S. Advani AIR 1950 SC 222.) A body may satisfy the required test; it is not enough that it shall have legal authority to determine the question affecting rights of subject. There must be super added to that characteristic the further characteristic that the body has the duty to act judicially. In cases where the authority is bound to act judicially, there must be some parties making a claim under a statute and some others opposing such claim and the statutory authority is empowered to adjudicate upon the matters in issue between the parties and to grant or refuse the claim. The point to note is that there should be a lis, i.e., a proposition of a party making a claim and an opposition of another party making a counter claim and the statutory authority is authorised to decide the question. Such a decision is regarded as quasi-judicial. Where any of these ingredients is missing, the proceeding cannot be quasi-judicial. υ If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties υ The presentation (not necessarily orally) of their case by the parties to the dispute υ: Judicial in some respect or sense, but not in every respect. The concept of quasi-judicial act implies that the act is not wholly judicial, it describes a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. (See Gullapalli Nageswara Rao v. A.P. State Road Transport Corpn. AIR 1959 SC 308.) The word 'judicial' imparts an act, duty, function or power pertaining to judiciary or the administration of justice, relating to such bodies or offices and have the power of adjudicating personal or property rights, irrespective of the quality or nature of the act, duty, function or power; and this has been defined as belonging to a cause, trial or judgment, belonging or emanating from a judge as such; consisting of or resulting from, legal inquiry or judgment; or, or belonging to, a court of justice, or a judge; pertaining to courts of justice or to administration of justice. A fortiori, a duty is not judicial merely because it is to be performed by a judge if in its performance he does not exercise the powers that appertain to his judicial office though its performance requires the exercise of his judgment. (See Arcot N. Veeraswami v. M.G. Ramachandran AIR 1988 Mad. 192.) The term 'judicial' is sometimes contrasted with 'administrative', sometimes with 'ministerial', sometimes with 'executive' and sometimes with the word 'non-judicial'. Whatever be the meaning, it is at least certain that the term "judicial" extends to acts and orders of a competent authority which has powers to impose a liability or to give decision which determines the rights of the affected parties. It embraces the acts of special Tribunals which though administrative in character, perform the functions resembling those of Courts. Such authorities are subject to certiorari and mandamus, but appeals against their decisions cannot be taken to a Court without the right being expressly given. It, therefore, follows that a judicial act seems to be an act done by a competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights of others. When a person has legal authority to determine question affecting the rights of the parties in a judicial manner, the act cannot be said to be of an executive nature. Whether an act is a judicial or a quasi-judicial nature or a purely executive depends on the terms of the particular rules and the nature, scope and effect of particular powers in exercise of which the act may be done and would, therefore, depend on the facts and circumstances of each case. Where an authority is required to act judicially, either by an express provision of the statute under which it acts or by necessary implications of the said statute the decisions of such an authority generally are of quasi-judicial nature. On the other hand, where the executive is not required to act judicially and is competent to deal with the issue referred to administratively, its

conclusions cannot be called quasi-judicial conclusions. JUDICIAL DECISION PRESUPPOSES EXISTENCE OF DISPUTE - A true judicial decision presupposes an existing dispute and involves the following requisites: (Cooper v. Wilson [1937] 2 KB 309 and Bharat Bank Ltd. v. Employees of Bharat Bank Ltd. AIR 1950 SC 188.) determine whether a power is an administrative or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is to be exercised. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was once considered as an administrative power some years back is now being considered as a quasi-judicial power. It is, therefore, evident that if a matter is required to be approached with a judicial mind, then the decision on it is a judicial or a quasi-judicial decision. There are not only formal courts of law, but also administrative Tribunals, the committees or the councils or the members of the trade unions and of professional bodies established by statute which for the sake of convenience may have to act on their knowledge and on their own inspection of the relevant papers in order to give decision without providing hearing to either party. These bodies although functioning administratively are said to exercise quasi-judicial powers. With the increase of the powers of the administrative bodies it has become necessary to provide guidelines for just exercise of these powers. To prevent the abuse of the power and to see that it does not become a new despotism, the Courts are gradually evolving the principles to be observed for the exercise of such powers.

- quasi-contract : Quasi-contract is an act or even from which, though not concensual contract, an obligation arises as if from a contract (obligatio quasi ex contractu). The basis of the action for money had and received is thought to be rooted in quasi-contract on the footing of an implied promise to repay. In Sinclair v. Brougham ([1914] AC 398.), Lord Heldane said that law could not 'dejure' impute promises to repay whether for money 'had and received' otherwise, which may, if made de facto, it would inexorably avoid. In an action for money 'had and received' liability is based on unjust benefit or enrichment, i.e., the action is applicable wherever the defendent has received money which, in justice and equity, belongs to the plaintiff under circumstances which render the receipt of it by the defendent a receipt to the use of the plaintiff. The doctrine of 'unjust enrichment' is that in certain circumstances, it would be unjust to allow the defendant to retain a benefit at the plaintiff's expense. The modern principle of restitution is of the nature of quasi-contract. The principle of unjust enrichment requires : first, that the defendant has been 'enriched' by the receipt of a 'benefit'; secondly, that this enrichment is at the expense of the plaintiff; and, thirdly, that the retention of the enrichment be unjust. This justifies restitution. Enrichment may take the form of direct advantage to the recipient of wealth such as by the receipt of money or indirect one, for instance, where inevitable expense has been saved. Another analysis of the obligation is of quasi-contract. It was said : "if the defendant be under an obligation from the ties of natural justice to refund, the law implies debt, and gives this action founded in the equity of the plaintiff's case, as it were, upon a contract (quasi ex contractu) as the Roman law express it." As Lord Wright in Fibrosa Spolka v. Faibairn Lawson [1943] AC 32/[1942] 2 All ER 122 pointed out "the obligation is as efficacious as if it were upon a contract. Such remedies are quasi-contract or restitution and theory of unjust enrichment has not been closed in the English law". Section 72 of the Indian Contract Act, 1872 deals with liability of person to whom money is paid or thing delivered, by mistake or under coercion. It says : "A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it".

R

- raison d'etre (Fr) : Reason for existence
- ratio decidendi : The reason or grounds of a judicial decision. The decision of a court consists of three parts; statement and enumeration of the facts of the case, the 'reason for decision' based on the application of law on its statement, which is necessary for deciding the case in hand, and sometimes the discussion on the points of law involved in the case but the decision on which is not essential for the decision of the case. Thus in the decision the second part is known as 'ratio decidendi', whereas the third 'obiter dicta'. The only thing in a judge's decision binding as authority upon a subsequent judge is the principle upon which the case was decided. (See Osbome v. Rowlett 13 Ch. D. 785.) A decision is an authority for what it actually decides and what is of essence in a decision is its ratio and not what logically follows from various observations made while deciding the case. (Nav Nirman (P.) Ltd. v. CIT [1988] 174 ITR 574 (MP).) The ratio decidendi is not binding where it is obscure or too wide, or where the decision itself is 'out of line' (See Scruttons v. Midland Silicones [1962] 2 WLR 186.). It is disregarded if it is contrary to law or contrary to reason, in the opinion of the court before it is cited.
- ratio legis est anima legis : The reason of law is the soul of law
- ratione materiae : By reason of subject-matter
- ratione soli : By reason only
- re : In the matter of
- re vera : In truth
- rebus sic stantibus : Treaties may be discharged as a result of the rebus sic stantibus doctrine. A treaty may become null and void in case there is a fundamental change in the state of facts which existed at the time the treaty was concluded
- reddendo singula singulis : Giving each to each. A clause in an instrument is so read when one of the two provisions in one sentence is appropriated to one of the two objects in another sentence, and the other provision is similarly appropriated to the other object.
- reddendum : That which is to be paid or rendered.
- redditus : Rent
- reductio ad absurdum : Method of improving an argument by showing that it leads to an absurd conclusion
- regula generalis : General rules
- remise : To release or surrender
- renwoi : The doctrine regarding the choice of law where law of more than one country may be applicable.
- replevin : Whenever chattels are taken by one person out of the possession of another, whether by way of distress or otherwise, the latter may by way of proceedings in replevin recover immediate and provisional possession of them, pending the result of an action brought by him to determine the rights of the parties.
- repugnancy, doctrine of : Repugnancy between two pieces of legislation means that conflicting results are produced when both the laws are applied to the same facts. Things are inconsistent when they cannot stand together at the same time; and one law is inconsistent with another law when the command or power or rather provision in one law conflicts directly with the command or power or the provision in the other. (Clyde Engg. Co. Ltd. v. Cowburn [1926] 37 CLR 466.) The laws must operate on the same field and one must be repugnant or inconsistent with the other. (Hoechst Pharmaceuticals Ltd. v. State of Bihar AIR 1983 SC 1019.) The basic test of repugnancy is that if one prevails, the other cannot prevail. (National Engg. Industries Ltd. v. Shri Kishan Bhageria AIR 1988 SC 329.) But the absence of direct conflict does not necessarily mean absence of repugnancy. Even the test of obedience to both laws is not conclusive. Two competing laws enacting

divergent provisions relating to the same subject-matter may be repugnant to each other. Secondly, where a paramount law evinces an intention to cover a subject, a subordinate law seeking to deal with the same subject would be repugnant to the permanent law. (State of Orissa v. M.A. Tulloch & Co. [1964] 4 SCR 461.)

- res : Things - The literal meaning of 'res' is 'everything that may form an object of rights and includes object, a subject-matter or status' (Escorts Farms Ltd. v. Commissioner AIR 2004 SC 2186/[2004] 4 SCC 281)
- res accessoria sequitur rem principalem : Accessory things follow principal things.
- res derelicta : An abandoned thing

S

- Salus populi suprema lex : This maxim means that the welfare of the people is the supreme law, enunciates the idea of law. This can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted and this cannot be effective unless respect for it is fostered and maintained (Pritam Pal v. High Court of Madhya Pradesh AIR 1992 SC 904). The Andhra Pradesh High Court observed in Special Deputy Collector v. N. Vasudeva Rao [2003] 12 ILD 342 "The maxim 'salus populi suprema lex' i.e. 'the welfare of the people is the supreme law' adequately enunciates the idea of law. This can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted, and this cannot be effective unless respect for it is fostered" :
- saisie conservatoire : It is a procedure whereby the assets of debtor may be impounded before a judgment, and orders commonly known as Mareva injunction often practiced in British Australian and even in India law under the provisions of the said order [Sony India Ltd. v. CIT [2005] 276 ITR 278 (Delhi)]
- salvo jure : Saving the right
- sans frais : Without expense
- sans recours : Without recourse
- scienter : Knowledge; knowingly. In an action of deceit the scienter must be averred and framed
- scilicet : That is to say
- scintilla juris : A fragment of a right
- scribere est agere : To write is to act
- se defendendo : In self-defence
- secundum allegata et probata : According to pleadings and proof
- secundum artem : Skilfully; professionally
- secundum ordinem : In order
- secundum quid : In some respects only
- secus : Otherwise; to the contrary effect
- seisin : The possession of land or chattels by one having title thereto
- semble : It appears, it seems. A point is not decided directly but may be inferred
- semper idem : Always the same
- semper in dubiis benigniora praeferenda : In doubtful matters the more liberal construction should always be preferred
- semper praesumitur pro legitimatione puerorum : It is always to be presumed that children are legitimate

T

- Testatio mentis : It testifies the determination of the mind
- tant mieux : So much the better
- tanti : Worth while
- tanto : So much
- tempore : In the time of
- terminus a quo : The starting point
- terminus ad quem : The limit to which, the finishing point
- terra : Land
- terra firma : Firm ground
- tertius : Third
- testamenti factio : Capacity to take any part in making of will or any benefit under a will
- testamenti, secundum tabulas : According to the tablets or terms of the will
- testamentum : A will
- testantibus actis/ta : As the records show
- testate : Having made a will
- testator : One who makes a will
- testatum : A clause in a deed or clauses in a deed which witnesseth the operative act to be effectuated by the deed
- teste : Witness (so-and-so) The concluding part of writ, giving the date and place of its issue
- testes ponderantur, non numerantur : Witnesses are weighed, not numberd
- testimonium : A concluding part of a deed which begins with the words 'In witness'

U

- uberrimae fides : Of the utmost good faith; of the fullest confidence
- ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest : Where anything is granted, that is also granted without which the thing itself is not able to exist. Applying maxim, the Supreme Court in State of Karnataka v. Vishwabarathi Housing Co-op. Society [2003] 113 Comp. Cas. 536, observed :— "Every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective."
- ubi eadem ratio ibi idem lex et de similibus idem est judicium : Where the same reason exists, there the same law prevails, and of things similar, the judgment is similar
- ubi jus ibi officium : Where there is a right, there is a duty
- ubi jus ibi remedium : Where there is a right, there is a remedy
- ubi jus incertum, ibi jus nullum : Where one's right is uncertain, no right exists
- ubi remedium, ibi jus : Where there is remedy, there is a right
- ubi supra : In the place of above (mentioned)
- ubique : Everywhere
- ultima voluntas testatoris est perimplenda secundum veram intentionem suam : Effect is to be given to the last will of a testator according to his true intention
- ultimus haeres : In law, the State which succeeds to the property of those who die intestate or without next of him.

- ultra vires : Beyond one's power, or authority
- universitas : A corporate body
- uno amino : With one mind
- uno flatu : With one breath
- usufruct : Produce or fruit of the principal thing; issues or profits arising from something
- ut infra : As cited below
- ut lite pendente nihil innovetur : During a litigation nothing new should be introduced. The doctrine of lis pendens expressed in the maxim 'ut lite pendente nihil innovetur' has been statutorily incorporated in section 52 of the Transfer of Property Act, 1882. A defendant cannot, by alienating property during pendency of litigation, venture into depriving the successful plaintiff of the fruits of decree. The transferee pendente lite is treated in the eye of law as representative-in-interest of the judgment debtor and held bound by the decree passed against the judgment-debtor though neither the defendant has chosen to bring the transferee on record by apprising his opponent and the Court of the transfer made by him nor the transferee has chosen to come on record by taking recourse to order 22 Rule 10 of the CPC [Raj Kumar v. Sardari Lal [2004] 15 ILD 137 (SC)]
- ut res magis valeat quam pereat : It is better for a thing to have effect than to be made void, i.e., it is better to validate a thing than to invalidate it. A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it." From that function the court is not to resile, it has to abide by the maxim ut res magis valeat quam pereat, lest the intention of the Legislature may go in vain or be left to evaporate in thin air. (See CST v. Mangal Sen Shyam Lal AIR 1975 SC 1106.) The court should as far as possible avoid that construction which attributes irrationality to the Legislature. It must obviously prefer a construction which renders the statutory provision constitutionally valid rather than that which makes it void. (K.P. Varghese v. ITO[1981] 131 ITR 597 (SC)and State of Punjab v. Prem Sukhdas [1977] 3 SCR 403.) It is because the Legislature is presumed to enact a law, which does not contravene or violate the constitutional provisions, (M.K. Balakrishnan Menon v. ACED [1972] 83 ITR 162 (SC).) and is presumed not to have intended an excess of is own jurisdiction. (CWT v. Smt. Hasmatunnisa Begum [1989] 42 Taxman 133 (SC).) The rule is well-settled that a construction which imputes to the Legislature tautology or superfluity in the use of language must as far as possible, be avoided. The Court should always prefer a construction which will give some meaning and effect to the words used by the Legislature, rather than that which will reduce it to futility. (CIT v. R.M. Amin[1977] 106 ITR 368 (SC), Addl. CIT v. Surat Art Silk Cloth Mfrs. Association [1980] 121 ITR 1 (SC).) A construction which renders any provision in the Act nugatory and defeats the object of the provision, is avoided, (CIT v. S. Teja Singh[1959] 35 ITR 408 (SC).) even though the language of the statute suffers from a slight inexactitude. Thus when a harmonious construction is possible which furthers the objects of the Act, the same is preferred to a construction which leads to a conflict between the two provisions in the Act. (CWT v. Yuvraj Amrinder Singh [1985] 156 ITR 525 (SC).) Interpretation of machinery provision should be such as to makes it workable. (CIT v. Mahaliram Ramjidas [1940] 8 ITR 442 (PC).) All parts of a section should be construed together and every clause thereof with reference to the context and other clauses thereof so that the construction put on that particular provision makes a consistent enactment of the whole statute. (CIT v. National Taj Traders[1980] 121 ITR 535 (SC).) No part of the statute can just be ignored by saying that the Legislature enacted the same not knowing what it was saying. It is to be assumed that the Legislature deliberately used that expression and it intended to convey the same meaning. (CIT v. Distributors (Baroda) (P.) Ltd.[1972] 83 ITR 377 (SC).) Words used by Parliament must be given their ordinary meaning. (CIT v. Federation of Indian Chambers of Commerce & Industry[1981] 130 ITR 186 (SC).) The doctrine of ut res magis valeat quam pereat is also applicable in the interpretation of an instrument, document or deed. The interpretation which upholds its validity should be preferred. (See

Ram Laxman Sugar Mills v. CIT[1967] 66 ITR 613 (SC).) A deed has to be read as a whole and effect is given to all its parts, unless a part of the deed is so inconsistent with rest of it that no effect can be given to it. The law intends to save the deed if possible. This is sometimes expressed in the maxim ut res magis valeat quam pereat. If by a reasonable construction, the intention of the parties can be arrived at and that intention carried out consistently with the rule of law, the court will take that course. (See Narayan Prasad Vijaivargiya v. CIT [1976] 102 ITR 748 (Cal.).) This doctrine, however, cannot be pushed so far as to alter the meaning of the clear words used in an enactment and to, in effect, repeal statutory provisions, by making these useless without holding them void. (State of Punjab v. Prem Sukhdas [1977] 3 SCR 403.) Likewise if the words of the statute on a proper construction can be read only in a particular way, then it cannot be read in another way by a court of construction anxious to avoid its unconstitutionality. (See CWT v. Smt. Hasmatunnisa Begum [1989] 42 Taxman 133 (SC).)

- ut supra : As below

V

- vadium : A pledge or security
- venditioni exponas : That you expose for sale
- venire facias : Cause to come
- verba accipienda sunt secundum subjectam materiem : Words are to be interpreted in accordance with the subject-matter
- verba chartarum fortius accipiuntur contra proferentem : The words of deeds are to be interpreted more strongly against him who uses them
- verba cum effectu accipienda sunt : Words are to be interpreted in such a way as to give them some effect
- verba fortius accipuntur contra proferentem : Words must be construed against those who use them
- verba generalia generaliter sunt intelligenda : General words are to be generally understood
- verba generalia restringuntur ad habilitatum rei vel aptitudinem personae : General words are restricted to the nature of the subject-matter or the aptitude of the person
- verba intentioni non e contra, debent inservire : Words ought to be made subservient to the intent, and not contrary to it
- verba ita sunt intelligenda ut res magis valeat quam pereat : Words are to be understood that the object may be carried out and not fail
- verba posteriora, propter certitudinem addita, ad priora, quae certitudine indigent, sunt referenda : Subsequent words, added for the purpose of certainty, are to be referred to preceding words which need certainty
- verba relata hoc maxime operantur per referentiam ut in eis inesse videntur : Words to which reference is made in an instrument have the same operation as if they were inserted in the instrument referring to them.
- verbatim et literatim : Word for word, letter for letter
- verborum obligatio : A verbal obligation; contracted by means of a question and answer
- veritas est justitiae mater : Truth is the mother of justice
- versus/vs/v : Against
- vexata quaestio : A disputed question
- via : By way of
- via media : A middle course

W

- writ : An order or process issued by a court or judicial officer asking any person to perform or refrain from performing an act.

X

Y

Z